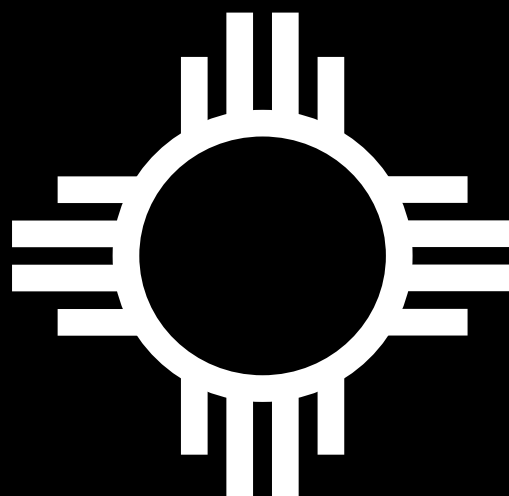


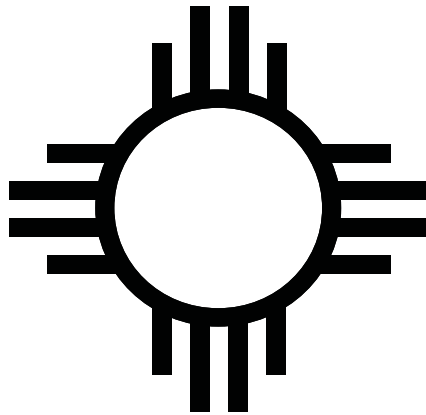
NEW MEXICO REGISTER



Volume XXI
Issue Number 12
June 30, 2010

New Mexico Register

Volume XXI, Issue Number 12
June 30, 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 12

June 30, 2010

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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

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

Public Accountancy Board Notice of Proposed Rulemaking

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and regular Board meeting on Thursday, August 19, 2010. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.1 NMAC	General Provisions
16.60.3 NMAC	Licensure and Continuing Professional Educational Requirements

Notice of the hearing and Board meetings has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at www.rld.state.nm.us/b&c/accountancy. Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Tuesday, August 17, 2010; however the 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 Board office at (505) 222-9852 by 5:00 p.m. on Thursday, August 12, 2010.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Acupuncture and Oriental Medicine will hold a Rule Hearing on Friday, August 20, 2010. Following the Rule Hearing the New Mexico Board of Acupuncture and Oriental Medicine will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Acupuncture and Oriental Medicine Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.2.1 NMAC -General Provisions; 16.2.2 NMAC – Scope of Practice; 16.2.3 NMAC – Application for Licensure; 16.2.4 NMAC – Examinations; 16.2.5 NMAC – Temporary Licensing; 16.2.6 NMAC – Reciprocal Licensing; 16.2.7 NMAC – Educational Programs;

16.2.8 NMAC – License Renewal; 16.2.9 NMAC – Continuing Education; 16.2.10 NMAC – Fees; 16.2.11 NMAC – Licensee Business Offices and Administrative Requirements; 16.2.12 NMAC – Grounds for Denial; 16.2.13 NMAC – Complaint and Disciplinary Procedures; 16.2.14 NMAC – Externships; 16.2.15 NMAC – Inactive License; 16.2.16 NMAC – Auricular Detoxification; 16.2.17 NMAC – Licensure by Endorsement; 16.2.19 NMAC – Expanded Practice Certifications; 16.2.20 NMAC – Expanded Practice Formulary

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4630 after July 16, 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 August 6, 2010. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary

aid or service to participate, please call the Board office at (505) 476-4630 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

RULE HEARING/BOARD MEETING NOTICE:

Notice is hereby given that the NM Board of Barbers and Cosmetologists Board will convene a Rule Hearing/Board Meeting to be held on **Friday, August 13, 2010 at 9:00 a.m.** The meeting will be held at the **Regulation & Licensing Department Real Estate Conference room 5200 Oakland NE, Albuquerque N.M. 87113**

Portions of the meeting may be closed to the public while the Board is in Executive Session to discuss licensing matters pursuant to Section 10-15-1.H of the Open Meetings Act.

A copy of the agenda of the meeting will be available at least twenty-four hours prior to the meeting and can be obtained by contacting the Board office (505) 476-4690. The agenda will be posted at the Board office located at the Toney Anaya Building, 2nd Floor, 2550 Cerrillos Road, Santa Fe, NM.

If you are a disabled person who needs reasonable accommodations in order to attend or participate in the hearing or meeting (such as sign language interpretation, a reader or amplifier), you should contact the Board office at (505) 476-4690, at least ten days prior to the meeting.. Disabled persons who need documents such as agendas or minutes in accessible form should also contact the Board office.

NEW MEXICO BOARD OF DENTAL HEALTH CARE

LEGAL NOTICE

Public Rule Hearing and Regular Board and Committee Meeting

The New Mexico Board of Dental Health Care will hold a Rule Hearing on Friday, July 30, 2010. Following the Rule Hearing the New Mexico Dental Hygienists Committee will convene a regular meeting; following the New Mexico Dental Hygienist Committee meeting the New Mexico Board of Dental Health Care will convene a regular board meeting to adopt the rules and take care of regular business. The New Mexico Board of Dental Health Care Rule Hearing will begin at 9:00 a.m.; the Regular Meetings will convene following the rule hearing. The meetings will be held at the Ruidoso Police Department, 1085 Mechem Drive, Ruidoso, NM 88345 in the Training Room.

The purpose of the rule hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules and Regulations in 16.5 NMAC: Part 1 General Provisions, Part 7 Dentists Temporary License, and Part 21 Dental Hygienist Temporary License

You can contact the board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87504, call (505) 476-4680 or copies of the proposed rules are available on the Dental board's website: www.RLD.state.nm.us/Dental under Rules and Laws. 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 July 15, 2010. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language

interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4680 at least two weeks prior to the meeting or as soon as possible.

Kathy Ortiz, Board Administrator
PO Box 25101- Santa Fe, New Mexico 87504

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, July 8, 2010, beginning at 9:00 a.m., at **Western New Mexico University, Global Resource Center Auditorium, Corner of 12th Street/Kentucky Street, Silver City, NM 88061**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; General Public Comments (Comments Limited to 3 Minute); Reservation of Two Elk Licenses for Non-Profit, Wish-Granting Organizations; Habitat Stamp Program Extension; Final Approval of 2011 Habitat Stamp Program Projects and Presentation of a Prospective Modified Planning Process for Future Projects; Draft Biennial Review Presentation; Request for Approval to Fund Several Capital Infrastructure Projects Using Bond Interest and Retirement Funding (BIRF) in Fiscal Year 11; Budget Status, Revenue Review, and Initial Fiscal Year 2012 Budget Preparation; Update on the Progress of the Department's Response to the Joint Memorial Requesting the Department of Game and Fish to Study the Consolidation of Various Hunting and Fishing Licenses and Stamps; and Closed Executive Session pursuant to Section 10-15-1, NMSA, 1978.

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

- * Adoption of Proposed Amendments to the Following Rules (Group B) - Elk (19.31.14, NMAC), Barbary Sheep, Oryx, and Persian Ibex (19.31.12, NMAC), Bighorn Sheep (19.31.17, NMAC), Migratory Game Bird (19.31.6, NMAC), and Open Gate (19.34.7, NMAC); and
- * Adoption of the Importation of Live Non-Domestic Animals, Birds and Fish (19.35.7, NMAC), and Game and Fish Licenses/Permits Rules (19.30.9, NMAC).

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of

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

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

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m. on July 29, 2010 in the South Park Conference Room, 2055 S. Pacheco, Ste. 500-590, Santa Fe, New Mexico.

The subject of the hearing is Anesthesia Services: The Human Services Department, Medical Assistance Division (MAD), is proposing a change to the Medicaid anesthesia provider reimbursement. Along with these proposed changes in benefits, the entire rule, 8.310.5 NMAC, *Anesthesia Services*, was reviewed for clarity resulting in additional changes in the wording but not otherwise affecting the benefits of the program.

If implemented as proposed, Medicaid anesthesia services rules will closely parallel the Medicare methodology for payment. MAD will then implement the anesthesia schedule to be 105% of the Medicare 2007 schedule. To implement the Medicaid fee schedule, MAD will use: (1) the Current Procedural Terminology (CPT) anesthesia procedure codes rather than the surgical procedure codes currently used; (2) Medicare base units; and (3) 105% of the Medicare 2007 fee schedule conversion factor for pricing base and time units. The conversion factor used will be \$16.55.

Other changes in the rule being proposed at this time include the following:

- * Replacing outdated word usage, such as Medicaid with MAD, the Medical

Assistance Division;

* Providing more instruction on the eligibility of providers and their responsibilities;

* Directing providers to enroll and follow a managed care or coordinated care contractor's instructions for billing and authorization of services;

* Requiring documentation of complications and emergency conditions for payment based on additional units and reimbursement;

* Adding language to align MAD rules with Medicare reimbursement practices including eliminating separate payment for qualifying circumstances and physical status modifier.

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

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

Copies of the Human Services Register and the attached corresponding proposed rules 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, Long -Term Services and Support Bureau, PO Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing for July 29, 2010 at 1:00 pm 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 21st birthday.

* Subsection C of 8.321.2.11 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.

* 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 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 WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC MEETING AND HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.7.4 NMAC - UTILITY OPERATOR CERTIFICATION REGULATIONS

The New Mexico Water Quality Commission will hold a public meeting beginning on August 10, 2010 at 9:00 a.m. in room 317 at the State Capitol Building, at the corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico 87501. Following the meeting a hearing will be held to consider proposed amendments to the Utility Operator Certification Regulations, 20.7.4 NMAC.

The proponent of the proposed amendments is the Surface Water Quality Bureau of the New Mexico Environment Department. The proposed amendments are to Sections 20.7.4.13(C) and 20.7.4.14 of the Utility Operator Certification Regulations (20.7.4 NMAC). The proposed amendments to Sections 20.7.4.13(C) change the classification criteria from "Population Served" to "Type of Analysis Performed by Laboratory Technicians." This proposed amendment changes in the method used for determining a wastewater system's required certification level for the system's wastewater laboratory technicians from a simple population-based standard to one based on the complexity and difficulty of the laboratory analyses that are required to be performed by the system's laboratory technicians. The second proposed amendment would alter the "Lesser Included Certifications" in Section 20.7.4.14 and would affect the certification requirements for the wastewater operator, levels 2, 3, and 4.

Formatting and minor technical changes to the proposed amendments may occur. In addition, the Commission may make other amendments as necessary to accomplish the

purpose of providing health and safety in response to public comments and evidence presented at the hearing.

Persons wishing more information or a copy of the proposed amendments may contact Mike Coffman, NMED Surface Water Quality Bureau, 1190 St Francis Dr, PO Box 5469, Santa Fe NM 87502, (505) 222-9575, mike.coffman@state.nm.us.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 (1993), and the Guidelines for Water Quality Control Commission Regulation Hearings, which are available at <http://www.nmenv.state.nm.us/wqcc/WQCC1993Guidlines.pdf> and other specific procedures that may apply. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings also may be obtained from Joyce Medina, Commission Administrator, NMED Boards and Commissions, 1190 St. Francis Drive, Suite N2153, Santa Fe, New Mexico 87502, Tel (505) 827-2425, Fax (505) 827-2836, or at Joyce.Medina@state.nm.us. All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and argument orally and in writing, to introduce exhibits, and to examine witnesses. Please note the following rules apply to technical testimony.

Technical Testimony: For persons desiring 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 July 26, 2010. 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 in writing of each technical witness;
4. include the text of any recommended modifications to the proposed regulatory change; and
5. identify and attach all exhibits to be offered by the person.

Participation by the General Public: Any member of the 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 on the day of the hearing. A member of the public may submit a written non-technical statement for the record in lieu of oral testimony at any time before the close of the hearing.

If any person requires assistance, an interpreter or auxiliary aid to participate in

this process, please contact Judy Bentley at least ten days before the hearing date at NMED, Personnel Service Bureau, Room N-4071, 1190 St. Francis Dr., PO Box 5469, Santa Fe, NM 87502 or by telephone at (505) 827-9872. TDY users please access Ms. Bentley's number through the New Mexico Relay Network at 1-800-659-8331

**End of Notices and Proposed
Rules Section**

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Adopted Rules

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

The New Mexico Board of Acupuncture and Oriental Medicine repeals its rule entitled Expanded Practice Formulary, 16.2.20 NMAC (filed 10/29/2009) and replaces it with 16.2.20 NMAC entitled Expanded Practice Formulary, effective 06/15/2010. This is an emergency filing that is necessary due to the courts reversing and setting aside the language filed on November 28, 2009.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS PART 20 EXPANDED PRACTICE FORMULARY

16.2.20.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.
[16.2.20.1 NMAC - Rp/E, 16.2.20.1 NMAC, 06/15/2010]

16.2.20.2 SCOPE: All doctors of oriental medicine who are certified for expanded practice, or who are enrolled in an educational course, or who are applicants for certification for expanded practice, as well as all educational courses.
[16.2.20.2 NMAC - Rp/E, 16.2.20.2 NMAC, 06/15/2010]

16.2.20.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-8.1 NMSA 1978.
[16.2.20.3 NMAC - Rp/E, 16.2.20.3 NMAC, 06/15/2010]

16.2.20.4 DURATION: Permanent.
[16.2.20.4 NMAC - Rp/E, 16.2.20.4 NMAC, 06/15/2010]

16.2.20.5 EFFECTIVE DATE: June 15, 2010 unless a later date is cited at the end of a section.
[16.2.20.5 NMAC - Rp/E, 16.2.20.5 NMAC, 06/15/2010]

16.2.20.6 OBJECTIVE: This part lists the formulary for each of the

following expanded practice certification categories: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.

[16.2.20.6 NMAC - Rp/E, 16.2.20.6 NMAC, 06/15/2010]

16.2.20.7 DEFINITIONS: [RESERVED]

16.2.20.8 EXPANDED PRACTICE FORMULARIES GENERAL PROVISIONS: The following general provisions shall apply to the expanded practice general formulary and each specific formulary for each specific expanded practice category that follows in this rule:

A. drugs, dangerous drugs and controlled substances are defined in the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act;

B. all substances from threatened or endangered species, as determined by the convention on the international trade in endangered species of wild fauna and flora and the U.S. fish and wildlife service (<http://endangered.fws.gov/>), shall be automatically eliminated from expanded practice formularies;

C. definitions from the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act apply to the appropriate terms in the expanded practice formularies;

D. a doctor of oriental medicine shall comply with all federal and state laws that pertain to obtaining, possessing, prescribing, compounding, administering and dispensing any drug;

E. a substance shall only be approved for use if procured in compliance with all federal and state laws; the various expanded practice formularies do not supersede such laws; and

F. the following drugs, dangerous drugs and controlled substances are authorized in the modes of administration that are specified except as limited or restricted by federal or state law:

(1) **basic injection certification and prescriptive authority:** shall include topical vapocoolants the intradermal intramuscular, and subcutaneous injection of: homeopathic medicines; dextrose; enzymes except urokinase; hyaluronic acid; minerals; sarapin; sodium chloride; sterile water; and vitamins;

(2) **injection certification and prescriptive authority:**

(a) all substances from basic injection module; and

(b) all non-epidural, non

intrathecal injection of: alcohol, amino acids, autologous oxygenated blood and appropriate anticoagulant, bee venom, beta glucans, collagenase, dextrose, dimethyl sulfoxide, gammaglobulin, glucose, glucosamine, glycerin, hyaluronidase, methylsulfonylmethane, phenol, phosphatidylcholine, procaine, sodium hyaluronate, sodium morrhuate;

(3) **intravenous certification and prescriptive authority:** amino acids, calcium ethylenediaminetetraacetic acid, dextrose, glutathione, lactated ringers, minerals, phosphatidylcholine, sodium bicarbonate sodium chloride, sodium morrhuate, sterile water, water soluble vitamins, autologous oxygenated blood infusion including ultraviolet radiation of blood with appropriate anticoagulant except that authority is not provided for total parenteral nutrition;

(4) **non-injectable bioidentical hormone certification and prescriptive authority:** 7-keto dehydroepiandrosterone (7 keto DHEA), cortisone, dehydroepiandrosterone (DHEA), dihydrotestosterone, estradiol (E2), estriol (E3), estrone (E1), hydrocortisone, pregnenolone, progesterone, testosterone, tetraiodothyronine (T4), levothyroxine, thyroxine (T4), & triiodothyronine (T3) combination, triiodothyronine, liothyronine (T3), desiccated thyroid;

G. applicable to any of the four certifications above: subcutaneous epinephrine, inhaled oxygen, and additives necessary to stabilize, preserve or balance pH of approved substances.

[16.2.20.8 NMAC - Rp/E, 16.2.20.8 NMAC, 06/15/2010]

History of 16.2.20 NMAC:

History of Repealed Material:

16.2.20 NMAC, Expanded Practice Formulary (filed 10/29/2009) repealed 06/15/2010.

Other History:

16.2.20 NMAC, Expanded Practice Formulary (filed 10/29/2009) was replaced by 16.2.20 NMAC, Expanded Practice Formulary, effective 06/15/2010. This was an emergency filing that was necessary due to the courts reversing and setting aside the language filed on 11/28/2009.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.1 NMAC Section 7 effective 06/15/10. This amendment is necessary due to the courts reversing and setting aside the language filed on November 28, 2009.

16.2.1.7 DEFINITIONS:

A. The definitions in Subsection B of 16.2.1.7 NMAC (Part 1 of the rules) are in addition to those in the act.

B. The following definitions apply to the rules and the act.

(1) "Act" is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.

(2) "Animal acupuncture" is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act (61-14-1. to 61-14-20.) and the rules of the New Mexico board of veterinary medicine. (16.25.9.15 NMAC)

(3) "Applicant" is a person who has submitted to the board an application for licensure as a doctor of oriental medicine.

(4) "Applicant for temporary licensure" is a person who has submitted to the board an application for temporary licensure as a doctor of oriental medicine.

(5) "Auricular detoxification specialist supervisor" is a doctor of oriental medicine registered with the board under the provisions of [16.2.16.18 NMAC] Section 18 of 16.2.16 NMAC (Part 16 of the rules).

(6) "Auricular detoxification specialist training program" is a training program approved by the board under the provisions of [16.2.16.26 NMAC] Section 26 of 16.2.16 NMAC (Part 16 of the rules) to train certified auricular detoxification specialists and auricular detoxification supervisors.

(7) "Auricular detoxification specialist training program trainer" is a member of the staff of an auricular detoxification specialist training program who, though not necessarily licensed or certified by the state, shall be deemed to be a certified auricular detoxification specialist only for the purposes of and only for the duration of the auricular detoxification specialist training program.

~~[(8)] "Authorized substances" are the specific substances defined in the four certification in 16.2.20 NMAC that are authorized according to 61-14A-8.1 of the act for prescription, administration, compounding and dispensing by a doctor of oriental medicine certified for a specific~~

~~category of expanded practice as defined in 16.2.19 NMAC].~~

~~[(9)](8) "[Bioidentical hormones" means compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body.] "Bioidentical hormones" are hormones that are chemically identical to, or analogues of hormones found in living entities or that have substantially identical physiological functions as hormones found in living entities.~~

~~[(10)](9) "Biomedical diagnosis" is a diagnosis of a person's medical status based on the commonly agreed upon guidelines of conventional biomedicine as classified in the most current edition or revision of the international classification of diseases, [ninth] 9th revision, clinical modification (ICD-9-CM).~~

~~[(11)](10) "Biomedicine" is the application of the principles of the natural sciences to clinical medicine.~~

~~[(12)](11) "Certified auricular detoxification specialist" is a person certified by the board under the provisions of [16.2.16.10 NMAC] Section 10 of 16.2.16 NMAC (Part 16 of the rules) to perform auricular detoxification techniques, including acupuncture, only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. The title may be abbreviated as CADS.~~

~~[(13)](12) "Chief officer" is the board's chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.~~

~~[(14)](13) "Clinical skills examination" is a board approved, validated, objective practical examination that demonstrates the applicants entry level knowledge of and competency and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine and of biomedicine.~~

~~[(15)](14) "Clinical experience" is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year of clinical experience shall consist of not less than [500] five hundred (500) patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least [25] twenty-five (25) different patients within that year. One patient hour is defined as one clock hour spent in the practice of oriental medicine with patients.~~

~~[(16)](15) "Complainant" is the complaining party.~~

~~[(17)](16) "Complaint committee" is a board committee composed of the~~

complaint committee chairperson and the complaint manager.

~~[(18)](17) "Complaint committee chairperson" is a member of the board appointed by the board's chairperson.~~

~~[(19)](18) "Complaint manager" is the board's administrator or any member of the board appointed by the board's chairperson.~~

~~[(20)](19) "Department" is the state of New Mexico regulation and licensing department.~~

~~[(21)](20) "Doctor of oriental medicine" is a physician licensed to practice acupuncture and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.~~

~~[(22)] "Educational Course" is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded practice. An educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.]~~

~~[(23)](21) "Educational program" is a board approved complete formal program that has the goal of educating a person to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four (4) academic years and meets the requirements of Section 61-14A-14 of the act and 16.2.7 NMAC (Part 7 of the rules).~~

~~[(24)](22) "Expanded [practice] prescriptive authority" is authorized by Section [61-14-8.1] 61-14A-3.G.(4) and (5), and 61-14A08.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in [16.2.19 NMAC] Section 11 of 16.2.2 NMAC (Part 2 of the rules). Expanded [practice] prescriptive authority is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G.(2) of the act. Expanded prescriptive authority may be abbreviated as Rx2.~~

~~(23) "Extended prescriptive authority" is authorized by Section 61-14A-3.H(4) and (5), and 61-14A-8.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in Section 10 of 16.2.2 NMAC (Part 2 of the rules). Extended prescriptive authority is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G.(2) of the act. Extended prescriptive authority may be abbreviated as Rx1.~~

~~[(25)](24) "Extern" is a current applicant undergoing supervised clinical~~

training by an externship supervisor, and who has satisfied the application requirements for extern certification and who has received an extern certification issued by the board pursuant to 16.2.14 NMAC (Part 14 of the rules).

[(26)](25) "Externship" is the limited practice of oriental medicine in New Mexico by an extern supervised by an externship supervisor pursuant to 16.2.14 NMAC (Part 14 of the rules).

[(27)](26) "Externship supervisor" is a doctor of oriental medicine who has at least five years clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board's application requirements for an externship supervisor and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC (Part 14 of the rules).

[(28)](27) "Good cause" is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

[(29)](28) "Inactive licensee" means a licensee in good standing whose license is placed on inactive status by the board and is therefore considered an inactive license in compliance with 16.2.15 NMAC (Part 15 of the rules).

[(30)](29) "Licensee" is a doctor of oriental medicine licensed pursuant to the act.

[(31)](30) "Licensing candidate" is an applicant whose initial application for licensure as a doctor of oriental medicine has been approved by the board.

[(32)](31) "Licensure by endorsement" is a licensing procedure for the experienced practitioner who completed his or her initial education in acupuncture and oriental medicine prior to the establishment of current educational standards and who has demonstrated his or her competency through a combination of education, examination, authorized legal practice and clinical experience as defined in 16.2.17 NMAC (Part 17 of the rules). Completion of the licensure by endorsement process results in full licensure as a doctor of oriental medicine.

[(33)](32) "Limited temporary license" is a license issued under the provisions of [16.2.5-12 NMAC] Section 12 of 16.2.5 NMAC (Part 5 of the rules) for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including

the study of such techniques by a licensed, registered, certified or legally recognized healthcare [~~practitioners~~] practitioner from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

[(34)](33) "Live cell products" are living cells from glandular tissues and other tissues.

[(35)](34) "Natural substances" [~~are substances that exist in or are produced by nature and have not been substantially transformed in character or use~~] are physical matter including atoms, molecules, elements and compounds that exist in nature or are formed by natural forces, processes or entities including their constituents, preparations, concentrates, refinements, isolates, extracts, derivatives, byproducts, ligands and metabolites, and the synthetic chemical surrogates, isomers and analogues of these. A natural substance may be the crude substance, a prepared form that renders the crude substance clinically useful, a constituent derived from the crude substance, or a synthesized chemical surrogate, isomer or analogue of the constituent. Natural substances may be classified as drugs, dangerous drugs or controlled substances as these are defined in the New Mexico Drug Device and Cosmetic Act or the Controlled Substances Act.

[(36)](35) "NCA" is a notice of contemplated action.

[(37)](36) "Office" is the physical facility used for the practice of acupuncture and oriental medicine and auricular detoxification.

[(38)](37) "Oxidative medicine" is the understanding and evaluation of the oxidation and reduction biochemical functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body's oxidation and reduction function and health.

(38) "Post graduate educational program" is an educational program that meets the requirements of Section 61-14A-8.1 NMSA 1978 of the act and 16.2.2 NMAC (Part 2 of the board's rules).

(a) Extended prescriptive authority.

(b) Expanded prescriptive authority.

(39) "Protomorphogens" are extracts of glandular tissues.

(40) "Respondent" is the subject of the complaint.

(41) "Rules" are the rules, promulgated pursuant to the act, governing the implementation and administration of the act as set forth in 16.2 NMAC (Title 16 - Occupational and Professional Licensing, Chapter 2 - Acupuncture and Oriental Medicine).

(42) "Supervised clinical observation" is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(43) "Supervised clinical practice" is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(44) "Supervision" is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC (Part 7 of the rules). No more than four (4) students shall be under supervision for supervised clinical practice and no more than four (4) students shall be under supervision for supervised clinical observation by a qualified instructor at any time.

(45) "Temporary licensee" is a doctor of oriental medicine who holds a temporary license pursuant to the act, Section 61-14-12 [NMSA-1978] and 16.2.5 NMAC (Part 5 of the rules).

(46) "Treatment program" is an integrated program that may include medical and counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that is located at a fixed location or in a mobile unit and approved by the board under the provisions of [16.2.16-28 NMAC] Section 28 of 16.2.16 NMAC (Part 16 of the rules).

[11-3-81...7-1-96; N, 8-31-98; A, 2-17-00; 16.2.1.7 NMAC - Rn & A, 16 NMAC 2.1.7, 8-13-01; A, 4-4-02; A, 3-2-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A/E, 06-15-10]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.1 NMAC Sections 7 effective 06/15/2010. This is an emergency amendment adopted by the board on 06/11/10

16.2.1.7 DEFINITIONS:

A. The definitions in Subsection B of 16.2.1.7 NMAC (~~Part 1 of the rules~~) are in addition to those in the act.

B. The following definitions apply to the rules and the act.

(1) "Act" is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.

(2) "Animal acupuncture" is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act (61-14-1. to 61-14-20.) and the rules of the New Mexico board of veterinary medicine. (16.25.9.15 NMAC)

(3) "Applicant" is a person who has submitted to the board an application for licensure as a doctor of oriental medicine.

(4) "Applicant for temporary licensure" is a person who has submitted to the board an application for temporary licensure as a doctor of oriental medicine.

(5) "Auricular detoxification specialist supervisor" is a doctor of oriental medicine registered with the board under the provisions of [Section 18 of 16.2.16 NMAC (~~Part 16 of the rules~~)] 16.2.16.18 NMAC.

(6) "Auricular detoxification specialist training program" is a training program approved by the board under the provisions of [Section 26 of 16.2.16 NMAC (~~Part 16 of the rules~~)] 16.2.16.26 NMAC to train certified auricular detoxification specialists and auricular detoxification supervisors.

(7) "Auricular detoxification specialist training program trainer" is a member of the staff of an auricular detoxification specialist training program who, though not necessarily licensed or certified by the state, shall be deemed to be a certified auricular detoxification specialist only for the purposes of and only for the duration of the auricular detoxification specialist training program.

(8) "Authorized substances" are the specific substances defined in the four certification in 16.2.20 NMAC that are authorized according to 61-14A-8.1 of the act for prescription, administration, compounding and dispensing by a doctor of oriental medicine certified for a specific category of expanded practice as defined in

16.2.19 NMAC.

~~[(8)](9) "Bioidentical hormones" are hormones that are chemically identical to, or analogues of hormones found in living entities or that have substantially identical physiological functions as hormones found in living entities. "Bioidentical hormones" means compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body.~~

~~[(9)](10) "Biomedical diagnosis" is a diagnosis of a person's medical status based on the commonly agreed upon guidelines of conventional biomedicine as classified in the most current edition or revision of the international classification of diseases, [9th] ninth revision, clinical modification (ICD-9-CM).~~

~~[(10)](11) "Biomedicine" is the application of the principles of the natural sciences to clinical medicine.~~

~~[(11)](12) "Certified auricular detoxification specialist" is a person certified by the board under the provisions of [Section 10 of 16.2.16 NMAC (~~Part 16 of the rules~~)] 16.2.16.10 NMAC to perform auricular detoxification techniques, including acupuncture, only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. The title may be abbreviated as CADS.~~

~~[(12)](13) "Chief officer" is the board's chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.~~

~~[(13)](14) "Clinical skills examination" is a board approved, validated, objective practical examination that demonstrates the applicants entry level knowledge of and competency and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine and of biomedicine.~~

~~[(14)](15) "Clinical experience" is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year of clinical experience shall consist of not less than [five hundred (500)] 500 patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least [twenty-five (25)] 25 different patients within that year. One patient hour is defined as one clock hour spent in the practice of oriental medicine with patients.~~

~~[(15)](16) "Complainant" is the complaining party.~~

~~[(16)](17) "Complaint committee" is a board committee composed of the complaint committee chairperson and the~~

complaint manager.

~~[(17)](18) "Complaint committee chairperson" is a member of the board appointed by the board's chairperson.~~

~~[(18)](19) "Complaint manager" is the board's administrator or any member of the board appointed by the board's chairperson.~~

~~[(19)](20) "Department" is the state of New Mexico regulation and licensing department.~~

~~[(20)](21) "Doctor of oriental medicine" is a physician licensed to practice acupuncture and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.~~

~~(22) "Educational Course" is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded practice. An educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.~~

~~[(21)](23) "Educational program" is a board approved complete formal program that has the goal of educating a person to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four (4) academic years and meets the requirements of Section 61-14A-14 of the act and 16.2.7 NMAC (~~Part 7 of the rules~~).~~

~~[(22)](24) "Expanded [prescriptive authority] practice" is authorized by Section [61-14A-3.G.(4) and (5), and 61-14A-8.1] 61-14-8.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in [Section 11 of 16.2.2 NMAC (~~Part 2 of the rules~~)] 16.2.19 NMAC. Expanded [prescriptive authority] practice is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G.(2) of the act. [Expanded prescriptive authority may be abbreviated as Rx2.]~~

~~[(23)] "Extended prescriptive authority" is authorized by Section 61-14A-3.H(4) and (5), and 61-14A-8.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in Section 10 of 16.2.2 NMAC (Part 2 of the rules). Extended prescriptive authority is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G.(2) of the act. Extended prescriptive authority may be abbreviated as Rx1.]~~

~~[(24)](25) "Extern" is a current applicant undergoing supervised clinical training by an externship supervisor, and who~~

has satisfied the application requirements for extern certification and who has received an extern certification issued by the board pursuant to 16.2.14 NMAC [~~(Part 14 of the rules)~~].

~~[(25)](26)~~ “Externship” is the limited practice of oriental medicine in New Mexico by an extern supervised by an externship supervisor pursuant to 16.2.14 NMAC [~~(Part 14 of the rules)~~].

~~[(26)](27)~~ “Externship supervisor” is a doctor of oriental medicine who has at least five years clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board’s application requirements for an externship supervisor and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC [~~(Part 14 of the rules)~~].

~~[(27)](28)~~ “Good cause” is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

~~[(28)](29)~~ “Inactive licensee” means a licensee in good standing whose license is placed on inactive status by the board and is therefore considered an inactive license in compliance with 16.2.15 NMAC [~~(Part 15 of the rules)~~].

~~[(29)](30)~~ “Licensee” is a doctor of oriental medicine licensed pursuant to the act.

~~[(30)](31)~~ “Licensing candidate” is an applicant whose initial application for licensure as a doctor of oriental medicine has been approved by the board.

~~[(31)](32)~~ “Licensure by endorsement” is a licensing procedure for the experienced practitioner who completed his [~~or her~~] initial education in acupuncture and oriental medicine prior to the establishment of current educational standards and who has demonstrated his or her competency through a combination of education, examination, authorized legal practice and clinical experience as defined in 16.2.17 NMAC [~~(Part 17 of the rules)~~]. Completion of the licensure by endorsement process results in full licensure as a doctor of oriental medicine.

~~[(32)](33)~~ “Limited temporary license” is a license issued under the provisions of [~~Section 12 of 16.2.5 NMAC (Part 5 of the rules)~~] 16.2.5.12 NMAC for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by [~~a~~] licensed,

registered, certified or legally recognized healthcare [~~practitioner~~] practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

~~[(33)](34)~~ “Live cell products” are living cells from glandular tissues and other tissues.

~~[(34)](35)~~ “Natural substances” [~~are physical matter including atoms, molecules, elements and compounds that exist in nature or are formed by natural forces, processes or entities including their constituents, preparations, concentrates, refinements, isolates, extracts, derivatives, byproducts, ligands and metabolites, and the synthetic chemical surrogates, isomers and analogues of these. A natural substance may be the crude substance, a prepared form that renders the crude substance clinically useful, a constituent derived from the crude substance, or a synthesized chemical surrogate, isomer or analogue of the constituent. Natural substances may be classified as drugs, dangerous drugs or controlled substances as these are defined in the New Mexico Drug Device and Cosmetic Act or the Controlled Substances Act.~~] are substances that exist in or are produced by nature and have not been substantially transformed in character or use.

~~[(35)](36)~~ “NCA” is a notice of contemplated action.

~~[(36)](37)~~ “Office” is the physical facility used for the practice of acupuncture and oriental medicine and auricular detoxification.

~~[(37)](38)~~ “Oxidative medicine” is the understanding and evaluation of the oxidation and reduction biochemical functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body’s oxidation and reduction function and health.

~~[(38)~~ “Post graduate educational program” is an educational program that meets the requirements of Section 61-14A-8.1 NMSA 1978 of the act and 16.2.2 NMAC [~~(Part 2 of the board’s rules)~~].

~~—(a)—~~ Extended prescriptive authority:

~~—(b)—~~ Expanded prescriptive authority:

(39) “Protomorphogens” are extracts of glandular tissues.

(40) “Respondent” is the subject of the complaint.

(41) “Rules” are the rules,

promulgated pursuant to the act, governing the implementation and administration of the act as set forth in 16.2 NMAC [~~(Title 16 – Occupational and Professional Licensing, Chapter 2 – Acupuncture and Oriental Medicine)~~].

(42) “Supervised clinical observation” is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(43) “Supervised clinical practice” is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(44) “Supervision” is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC [~~(Part 7 of the rules)~~]. No more than four (4) students shall be under supervision for supervised clinical practice and no more than four [(4)] students shall be under supervision for supervised clinical observation by a qualified instructor at any time.

(45) “Temporary licensee” is a doctor of oriental medicine who holds a temporary license pursuant to the act, Section 61-14-12 NMSA 1978 and 16.2.5 NMAC [~~(Part 5 of the rules)~~].

(46) “Treatment program” is an integrated program that may include medical and counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that is located at a fixed location or in a mobile unit and approved by the board under the provisions of [~~Section 28 of 16.2.16 NMAC (Part 16 of the rules)~~] 16.2.16.28 NMAC.

[11-3-81...7-1-96; N, 8-31-98; A, 2-17-00; 16.2.1.7 NMAC - Rn & A, 16 NMAC 2.1.7, 8-13-01; A, 4-4-02; A, 3-2-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A/E, 06-15-10; A/E, 06-15-10]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.2 NMAC Section 13 effective 06/15/10. This amendment is necessary due to the courts reversing and setting aside the language filed on November 28, 2009.

**16.2.2.13 PREScriptive
AUTHORITY FORMULARY:** A doctor of oriental medicine is authorized to prescribe, dispense or administer only the drugs not listed by the designation Rx after a specific substance in Subsections A to L of this prescriptive authority formulary (16.2.2.13

NMAC) and is not authorized to prescribe the drug if it is classified as a dangerous drug or controlled substance or administer the drug by injection. A doctor of oriental medicine certified for extended prescriptive authority (Rx1) is authorized to prescribe, dispense or administer only the drugs listed in Subsections A to S of this prescriptive authority formulary (16.2.2.13 NMAC) and is only authorized to administer them in compliance with the techniques defined in 16.2.2.10 NMAC (Section 10 of Part 2 of the rules), except that injection of gerovital (buffered procaine) is not authorized and intravenous injection or infusion therapy is not authorized. A doctor of oriental medicine certified for expanded prescriptive authority (Rx2) is authorized to prescribe, dispense or administer all drugs listed in this prescriptive authority formulary (16.2.2.13 NMAC). Drugs, dangerous drugs and controlled substances are defined in the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act. All drugs listed in this prescriptive authority formulary that at any time have been classified as dangerous drugs or controlled substances, including those intended for injection are within the prescriptive authority of a doctor of oriental medicine certified for the appropriate extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority. A drug listed in this prescriptive authority formulary that at any time is classified as a schedule 1 controlled substance, as defined in the New Mexico Controlled Substances Act, is within the prescriptive authority of a doctor of oriental medicine certified for the appropriate extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority if at any time that drug is authorized for research or use by prescription or administration by a practitioner. This prescriptive authority formulary is an evolving document. All substances from threatened or endangered species as determined by the convention on the international trade in endangered species of wild fauna and flora (CITES at www.cites.org) and the US fish and wildlife service (<http://endangered.fws.gov/>) shall be automatically eliminated from this prescriptive authority formulary. Definitions from the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act apply to the appropriate terms in this prescriptive authority formulary. Doctors of oriental medicine must comply with all federal and state laws pertaining to the obtaining, possession, prescription, compounding, administration or dispensing of any drug, dangerous drug or controlled substance. Any substances for injection or infusion shall only be approved for use if procured from a manufacturer or compounding pharmacy compliant with all federal and

state laws. This prescriptive authority formulary does not supersede such laws. A doctor of oriental medicine certified for the extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority, when diagnosing and treating a patient, shall possess and apply the knowledge and use the skill and care ordinarily used by other similarly certified doctors of oriental medicine.

A. All herbal medicines from around the world.

B. All homeopathic medicines.

C. All vitamins including their surrogates, isomers and analogues. Doctors of oriental medicine certified for the extended prescriptive authority (Rx1) are authorized to inject these substances except that intravenous injection therapy is not authorized under the extended prescriptive authority (Rx1) certification. Doctors of oriental medicine certified for the expanded prescriptive authority (Rx2) are authorized to administer these substances through any means including intravenous therapy.

D. All minerals from the periodic table including the salts of calcium and magnesium such as ammoniates, anhydrides, ascorbates, aspartates, chlorides, citrates, gluconates, fumarates, iodinates, sulfates, etc., except the injection of gold.

E. All enzymes except urokinase.

F. All glandular products.

G. Natural substances. The authorized natural substances are:

(1) adenosine triphosphate (ATP)

(2) alcohols

(3) acetylcysteine (mucomist) Rx

(4) bee venom (apis)

(5) benzyl alcohol

(6) carbohydrates

(7) colchicine Rx

(8) cytokines

(9) dextrose

(10) EDTA

(a) ethylenediamine tetraacetic acid

(b) disodium ethylenediamine tetraacetic acid

(c) trisodium ethylenediamine tetraacetic acid

(11) fatty acids

(12) flavonoids

(13) fructose

(14) gamaglobulin

(15) glucose

(16) glucosamine

(17) glutathione

(18) glycerine

(19) haemaglobulin

(20) heparin Rx

(21) hyaluronic acid

(22) hydrochloric acid

(23) hydrogen peroxide

(24) lipids

(25) ozone

(26) phenol (carbolic acid) Rx

(27) proteins

(28) pumice

(29) sodium hyaluronate

(30) sodium morrhuate (extract of cod liver oil)

(31) sulfur compounds. Examples are:

(a) DMPS (dimercaptopropane-1-sulphonate)

(b) DMSO (dimethyl sulfoxide)

(c) DMSA (dimercaptosuccinic acid) Rx

(d) MSM (methylsulfonyl methane)

(32) tetrahydropalmatine (extract of corydalis)

(33) all natural substances from the traditional natural medicines of the world

(34) all substances in the natural medicines comprehensive database.

H. All protomorphogens.

I. All live cell products.

J. Gerovital.

K. All amino acids.

L. All dietary and nutritional supplements.

M. All cosmetics as defined in the New Mexico Drug Device and Cosmetic Act.

N. All biological products including therapeutic serum. Biological products and therapeutic serum are defined in the New Mexico Drug, Device and Cosmetic Act.

O. All over the counter drugs available without a prescription. Drugs are defined in the New Mexico Drug Device and Cosmetic Act.

P. Sterile water.

Q. Sterile saline.

R. Sarapin (or its generic).

S. Vapocoolants.

(1) Ethyl chloride

(2) Fluori-methane

T. Caffeine.

U. Procaine.

V. Oxygen.

W. Epinephrine.

X. Bioidentical hormones.

The authorized hormones are:

(1) adrenocortical hormones (adrenocorticosteroids; cortical hormones)

(a) androgens (17-ketosteroids, dehydroisoandrosterone, androstenedione, testosterone)

(b) estrogens

(c) glucocorticoids (hydrocortisone or cortisol, cortisone, corticosterone)

(d) mineralocorticoids (aldosterone, dehydroepiandrosterone DHEA)

(e) progesterone

(2) adrenomedullary hormones

(a) epinephrine

(b) norepinephrine

- (3) anterior pituitary hormones
- (4) sex hormones
- (a) androstenedione
- (b) androsterone
- (c) estradiol (E2)
- (d) estriol (E3)
- (e) estrone (E1)
- (f) progesterone
- (g) testosterone
- (5) thyroid hormones
- (a) 3, 5-diiodothyronine (T2)
- (b) calcitonin
- (c) monoiodothyronine (T1)
- (d) thyroxine; levothyroxine (T4)
- (e) triiodothyronine; liothyronine (T3).[RESERVED]

[16.2.2.13 NMAC - N, 02-15-05; Repealed, 11-28-09; A/E, 06/15/10]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is the repeal 16.2.2 NMAC Section 13 effective 06/15/10. This is an emergency amendment adopted by the board on 06/11/10

16.2.2.13 [PRESCRIPTIVE

AUTHORITY FORMULARY: A doctor of oriental medicine is authorized to prescribe, dispense or administer only the drugs not listed by the designation Rx after a specific substance in Subsections A to L of this prescriptive authority formulary (16.2.2.13 NMAC) and is not authorized to prescribe the drug if it is classified as a dangerous drug or controlled substance or administer the drug by injection. A doctor of oriental medicine certified for extended prescriptive authority (Rx1) is authorized to prescribe, dispense or administer only the drugs listed in Subsections A to S of this prescriptive authority formulary (16.2.2.13 NMAC) and is only authorized to administer them in compliance with the techniques defined in 16.2.2.10 NMAC (Section 10 of Part 2 of the rules), except that injection of gerovital (buffered procaine) is not authorized and intravenous injection or infusion therapy is not authorized. A doctor of oriental medicine certified for expanded prescriptive authority (Rx2) is authorized to prescribe, dispense or administer all drugs listed in this prescriptive authority formulary (16.2.2.13 NMAC). Drugs, dangerous drugs and controlled substances are defined in the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act. All drugs listed in this prescriptive authority formulary that at any time have been classified as dangerous drugs or controlled substances, including those intended for injection are within the prescriptive authority of a doctor of oriental medicine certified for the appropriate extended prescriptive

authority (Rx1) or expanded (Rx2) prescriptive authority. A drug listed in this prescriptive authority formulary that at any time is classified as a schedule 1 controlled substance, as defined in the New Mexico Controlled Substances Act, is within the prescriptive authority of a doctor of oriental medicine certified for the appropriate extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority if at any time that drug is authorized for research or use by prescription or administration by a practitioner. This prescriptive authority formulary is an evolving document. All substances from threatened or endangered species as determined by the convention on the international trade in endangered species of wild fauna and flora (CITES at www.cites.org) and the US fish and wildlife service (<http://endangered.fws.gov/>) shall be automatically eliminated from this prescriptive authority formulary. Definitions from the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act apply to the appropriate terms in this prescriptive authority formulary. Doctors of oriental medicine must comply with all federal and state laws pertaining to the obtaining, possession, prescription, compounding, administration or dispensing of any drug, dangerous drug or controlled substance. Any substances for injection or infusion shall only be approved for use if procured from a manufacturer or compounding pharmacy compliant with all federal and state laws. This prescriptive authority formulary does not supersede such laws. A doctor of oriental medicine certified for the extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority, when diagnosing and treating a patient, shall possess and apply the knowledge and use the skill and care ordinarily used by other similarly certified doctors of oriental medicine.

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(16) glucosamine

(17) glutathione

(18) glycerine

(19) haemaglobulin

(20) heparin Rx

(21) hyaluronic acid

(22) hydrochloric acid

(23) hydrogen peroxide

(24) lipids

(25) ozone

(26) phenol (carbolic acid) Rx

(27) proteins

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(2) adrenomedullary hormones

(a) epinephrine

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(3) anterior pituitary hormones

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(a) androstenedione

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(c) estradiol (E2)

(d) estriol (E3)

(e) estrone (E1)

(f) progesterone

(g) testosterone

(5) thyroid hormones

(a) 3, 5-diiodothyronine (T2)

(b) calcitonin

(c) monoiodothyronine (T1)

(d) thyroxine; levothyroxine (T4)

(e) triiodothyronine; liothyronine (T3); [RESERVED]

[16.2.2.13 NMAC - N, 02-15-05; Repealed, 11-28-09; A/E, 06-15-10; A/E, 06-15-10]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.9 NMAC Section 8 effective 06/15/10. This amendment is necessary due to the courts reversing and setting aside the language filed on November 28, 2009.

16.2.9.8 CONTINUING EDUCATION:

A. A doctor of oriental medicine shall complete continuing education in oriental medicine equivalent to that required by the national certification commission for acupuncture and oriental medicine (NCCAOM). A doctor of oriental medicine shall submit to the board at the time of license renewal either of the following:

(1) proof of continuing NCCAOM recertification in oriental medicine, acupuncture or Chinese herbology; or

(2) proof of completion of 15 hours annually, or every four years, of 60 hours of NCCAOM approved continuing education courses.

[B.] A doctor of oriental medicine who is a board approved examiner, examiner supervisor, or examiner trainer, for the clinical skills examination shall be granted continuing education credit for a licensed D.O.M. in oriental medicine, for time spent functioning as an examiner or training to be an examiner. This also applies to an observing board member if they have completed the training. Limited to six hours per year.]

[E]B. The board shall annually audit a random 10 percent of continuing education documentation to determine the validity of the documentation.

[D]C. A doctor of oriental medicine who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

[E]D. A doctor of oriental medicine shall maintain an understanding of the current act and rules and shall complete, with a score of 90 percent correct answers, an open book jurisprudence examination covering the act and the rules that contains at least 10 questions and shall submit this to the board at the time of license renewal.

[16.2.9.8 NMAC - Rp 16 NMAC 2.9.8, 12-1-01; A, 10-1-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A/E, 06-15-10]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.9 NMAC Sections 8 effective 06/15/2010. This is an emergency amendment adopted by the board on 06/11/10

16.2.9.8 CONTINUING EDUCATION:

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[B]C. The board shall annually audit a random 10 percent of continuing education documentation to determine the validity of the documentation.

[E]D. A doctor of oriental medicine who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

[D]E. A doctor of oriental medicine shall maintain an understanding of the current act and rules and shall complete, with a score of 90 percent correct answers, an open book jurisprudence examination covering the act and the rules that contains at least 10 questions and shall submit this to the board at the time of license renewal.

[16.2.9.8 NMAC - Rp 16 NMAC 2.9.8, 12-1-01; A, 10-1-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A/E, 06-15-10; A/E, 06-15-10]

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT
EARLY CHILDHOOD SERVICES
DIVISION**

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs, filed February 1, 2005 is repealed effective June 30, 2010 and replaced by 8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs, effective June 30, 2010.

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT
EARLY CHILDHOOD SERVICES
DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 16 CHILD CARE
LICENSING
PART 2 CHILD CARE
CENTERS, OUT OF SCHOOL TIME
PROGRAMS, FAMILY CHILD CARE
HOMES, AND OTHER EARLY CARE
AND EDUCATION PROGRAMS**

8.16.2.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD).
[8.16.2.1 NMAC - Rp, 8.16.2.1 NMAC, 06/30/10]

8.16.2.2 SCOPE: All child care centers, out of school time programs, family child care homes, and other early care and education programs within the state of New Mexico.
[8.16.2.2 NMAC - Rp, 8.16.2.2 NMAC, 06/30/10]

8.16.2.3 STATUTORY AUTHORITY: The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated by the secretary of the New Mexico children, youth and families department, by authority of the Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, and Sections 24-1-2 (D), 24-1-3 (I) and 24-1-5 of the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, as amended.
[8.16.2.3 NMAC - Rp, 8.16.2.3 NMAC, 06/30/10]

8.16.2.4 DURATION: Permanent.
[8.16.2.4 NMAC - Rp, 8.16.2.4 NMAC,

06/30/10]

8.16.2.5 EFFECTIVE DATE: June 30, 2010 unless a later date is cited at the end of section.
[8.16.2.5 NMAC - Rp, 8.16.2.5 NMAC, 06/30/10]

8.16.2.6 OBJECTIVE: The objective of 8.16.2 NMAC is to establish standards and procedures for the licensing of facilities and providers who provide child care to children within New Mexico. These standards and procedures are intended to: establish minimum requirements for licensing facilities providing non-residential care to children in order to protect the health, safety, and development of the children; monitor facility compliance with these regulations through surveys to identify any areas that could be dangerous or harmful to the children or staff members; monitor and survey out of school time programs; and encourage the establishment and maintenance of child care centers, homes and facilities for children that provide a humane, safe, and developmentally appropriate environment. These regulations apply during all hours of operation for child care centers, homes and out of school time programs.

[8.16.2.6 NMAC - Rp, 8.16.2.6 NMAC, 06/30/10]

8.16.2.7 DEFINITIONS:

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

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

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

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

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

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

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

E. "Assessment of children's progress" means children's progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child's behavior or skills in given situations).

Children's progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

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

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

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

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

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

K. "Class A deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible, which results in death or serious physical or psychological harm; or a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a child.

L. "Class B deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

M. "Class C deficiency" means a violation or group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any child if the violation is not corrected.

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

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

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

Q. "Direct provider of care" means any individual who, as a result of employment or contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

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

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

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

U. "Exploitation" of a child consists of the act or process, performed intentionally, knowingly, or recklessly, of using a child's property for another person's profit, advantage or benefit without legal entitlement to do so.

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

W. "Family child care home" means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than 24 hours of any day for at least five but no more than six children. A family child care home intending to provide care for more than two but not to exceed four children under the age of two must be specifically licensed for this purpose. The licensee will reside in the home and be the primary care giver.

X. "Group child care home" means a home required to be licensed pursuant to these regulations, which provides care, services, and supervision for at least seven but not more than 12 children. The licensee will reside in the home and be the primary care giver.

Y. "Guidance" means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

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

AA. "Infant" means a child age six weeks to 12 months.

BB. "License" means a document issued by CYFD to a child care

facility licensed and governed by these regulations and granting the legal right to operate for a specified period of time, not to exceed one year.

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

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

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

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

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

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

II. "Notifiable diseases" means confirmed or suspected diseases/

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

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

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

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

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

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

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

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

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

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

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

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

UU. "Program administrator" means the person responsible for planning or implementing the care of

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

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

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

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

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

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

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

BBB. "Substitute" means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular caregiver, and who works less than an average of 40 hours per month in a six month period.

CCC. "Suspension" means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

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

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

FFF. "Substantiated

complaint" means a complaint determined to be factual, based on an investigation of events.

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

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

III. "Toddler" means a child age 12 months to 24 months.

JJJ. "U/L" means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

KKK. "Unattended" means a caregiver is not physically present with a child or children under care.

LLL. "Unsubstantiated complaint" means a complaint not determined to be factual based on an investigation of events.

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

NNN. "Volunteer" means a person who is not employed as a childcare provider, spends less than six hours per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members.

OOO. "Waiver" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority. [8.16.2.7 NMAC - Rp, 8.16.2.7 NMAC, 06/30/10]

8.16.2.8 R E L A T E D REGULATIONS AND CODES: Facilities subject to these regulations are also subject to the current versions of the following regulations and codes:

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

B. New Mexico health department regulations, Control of Communicable Disease in Health Facility Personnel, 7.4.4 NMAC.

C. New Mexico health department regulations, Governing Public Access to Information in the Department Records, 7.1.3 NMAC.

D. New Mexico department of health regulations, Health Facility Licensure Fees and Procedures, 7.1.7 NMAC.

E. New Mexico children, youth and families department regulations, Administrative Appeals, 8.8.4 NMAC.

F. New Mexico department of health regulations, Health Facility Sanctions and Civil Monetary Penalties, 7.1.8 NMAC.

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

H. New Mexico environment department, Food Service and Food Processing, 7.6.2 NMAC.

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

J. Latest edition adopted by the New Mexico state fire board of the International Fire Code.

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

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

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

N. Federal Americans with Disabilities Act (ADA).

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

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

Q. Any code, ordinance, or rule of a governing body, including but not limited to cities, towns, or counties having jurisdiction over the area in which the facility is situated. [8.16.2.8 NMAC - Rp, 8.16.2.8 NMAC, 06/30/10]

8.16.2.9 APPLICATION: These regulations apply to public or private facilities and homes that provide care, education, services, and supervision to children less than 24 hours of any day, come within the statutory definition of "health

facilities” set out in Section 24-1-2 (D) of the Public Health Act, Section 24-1-1 to 24-1-22 NMSA 1978 as amended, and are required to be licensed by the licensing authority. These regulations do not apply to any of the following:

A. Facilities providing child care for 24 hours on a continuous basis. Such facilities are covered by other regulations promulgated by the children, youth and families department that are available upon request from the licensing authority.

B. Child care facilities operated by the federal government or a tribal government.

C. Child care facilities operated by a public school system and governed by the local school board.

D. Private schools accredited or recognized by the New Mexico department of education, operated for educational purposes only for children age five years or older.

E. Child care facilities provided exclusively for children of parents who are simultaneously present in the same premises.

F. Summer religious schools held on a church, religious building or house of worship premises.

G. Summer camps, wilderness camps, and programs operated for recreational purposes only by recognized organizations such as churches, schools, and the boy and girl scouts, provided such camps and programs are not conducted in private residences.

H. Any individual who in their own home provides care, services and supervision to four or fewer nonresident children.

I. Parent’s day out programs held in a church, religious building or house of worship, or public building operating for no more than two days per week and no more than four hours per day. The program will be staffed by parents participating in the program, or by others who are members of the church or public affiliation.

[8.16.2.9 NMAC - Rp, 8.16.2.9 NMAC, 06/30/10]

8.16.2.10 LICENSING AUTHORITY (ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY):

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

[8.16.2.10 NMAC - Rp, 8.16.2.10 NMAC, 06/30/10]

8.16.2.11 LICENSING:

A. TYPES OF LICENSES:

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

(a) 1-star level requires meeting and maintaining licensing requirements at all times, except for the requirements outlined in the following items: Items (i), (ii) and (iii) of Subparagraph (a) of Paragraph (1) of Subsection A of 8.16.2.11 NMAC. 1-star level is designated for programs not receiving child care subsidy. All 1-star providers receiving subsidy and licensed at the time of publication of these rules shall have until July 1, 2012 to meet 2-star requirements included in the following sections of these regulations:

(i) for centers: Paragraph (16) of Subsection G of 8.16.2.22 NMAC, Paragraphs (5) through (10) of Subsection C of 8.16.2.24 NMAC, and Subsection D of 8.16.2.24 NMAC;

(ii) for licensed family and group child care homes: Paragraph (3) of Subsection E of 8.16.2.32 NMAC, Paragraph (13) of Subsection F of 8.16.2.32 NMAC, Paragraphs (4) through (9) of Subsection C of 8.16.2.34 NMAC, and Subsection D of 8.16.2.34 NMAC;

(iii) for licensed out of school time programs: Subparagraph (j) of Paragraph (1) of Subsection E of 8.16.2.43 NMAC, Paragraph (14) of Subsection F of 8.16.2.42 NMAC, Paragraphs (2) through (7) of Subsection B of 8.16.2.44 NMAC and Subsection C of 8.16.2.44 NMAC.

(b) 2-star level requires meeting and maintaining licensing requirements at all times.

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

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

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

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

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

(b) The licensing authority will not

issue more than two consecutive temporary licenses.

(c) After a second temporary license has been issued, a new application and the required application fee must be submitted within 30 days in order to renew the license for the remainder of that one year period.

(3) AMENDED LICENSE: A child care facility will submit a new notarized application to the licensing authority before modifying information required to be stated on the license. Examples of such modifications include dates, capacity, director and number of stars.

(a) A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director, submit an application (Fee \$20.00) and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and three years of experience. The temporary acting director’s appointment is valid for 90 days.

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

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

(4) PROVISIONAL 2-STAR LICENSE: Programs licensed and receiving child care subsidy after these regulations are promulgated will be given a provisional 2-star license for up to three months, pending observation by the licensing authority of the interactions between teachers and children in the classrooms.

(5) RENEWAL OF LICENSE:

(a) A licensee will submit a notarized renewal application, indicating the number of stars requested, on forms provided by the licensing authority, along with the required fee, at least 30 days before expiration of the current license. CYFD-approved nationally accredited centers, homes and out of school time programs will submit copies of their current accreditation

certificates along with their renewal application. Applications postmarked less than 30 days prior to the expiration date will be considered late and a twenty five dollar (\$25.00) late fee must be submitted with the renewal fee.

(b) The licensing authority will conduct an annual screen of the department's information database for center owners directly involved in the daily care of children, all directors, all licensed homecaregivers and any other adults over the age of 18 living in the licensed home. All licensed facilities must maintain an original background check eligibility letter for all current employees and applicable volunteers, including a signed statement annually by each staff person certifying that they would not be disqualified as a direct provider of care under the most current version of the Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC. This will include all adults and teenage children living in a family child care or group child care home operated in a private residence.

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

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

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

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

- (1) the owner of the child care facility changes;
- (2) the child care facility moves;
- (3) the licensee of the child care facility changes; or
- (4) the child care facility closes.

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

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

moves.

[8.16.2.11 NMAC - Rp, 8.16.2.11 NMAC, 06/30/10]

8.16.2.12 LICENSING ACTIONS AND ADMINISTRATIVE APPEALS:

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

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

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

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

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

(5) failure to timely obtain required background checks;

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

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

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

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

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

(11) loss of accreditation, regardless of reason, will result in a reduction in star status;

(12) possessing or knowingly

permitting non-prescription controlled substances or illegal drugs to be present or sold on the premises at any time, regardless of whether children are present; or

(13) making false statements or representations to the licensing authority with the intent to deceive, which the licensee knows, or should know to be false.

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

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

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

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

F. If the action is to take effect immediately, the department affords the licensee the opportunity for an administrative appeal within five working days. If the license is suspended pending the results of an investigation, the licensee may elect to postpone the hearing until the investigation has been completed.

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

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

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

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

(3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse

or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of 15 days.

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

(5) No later than the conclusion of the 15 day period, the department shall determine whether other action is warranted under this regulation.

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

I. The licensing authority may require a direct provider of care to undergo an additional background check if information shows any of the following:

(1) that the direct provider of care has pending charges for any criminal offense;

(2) that the direct provider of care has a pending or substantiated CYFD protective services or juvenile justice service referral;

(3) that the direct provider of care has any criminal history or history of a referral to CYFD protective services or juvenile justice services discovered after the most recent background check; or

(4) that the direct provider of care is the subject of an allegation of abuse and neglect in any licensed facility.

J. There shall be no right to administrative review for reduction in star level resulting from loss of, or failure to maintain, national accreditation status. The licensee shall be bound by the rules, regulations, policies and procedures implemented by the national accreditation body that governs its accreditation process.

K. The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. The licensing authority shall reduce the star level of the license to star level 2 until the licensee regains national accreditation status, or until the facility can be verified at a level higher than star level 2. Child care subsidies shall be adjusted to correspond with any reductions or increases to star level.

[8.16.2.12 NMAC - Rp, 8.16.2.12 NMAC, 06/30/10]

8.16.2.13 CIVIL MONETARY PENALTIES:

A. The following factors shall be considered by the licensing authority

when determining whether to impose civil monetary penalties:

(1) death or serious injury to a child;

(2) abuse, neglect or exploitation of a child;

(3) regulatory violations which immediately jeopardize the health and safety of a child;

(4) numerous violations, which combined, jeopardize the health and safety of a child;

(5) repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a child care facility;

(6) failure of a child care facility to correct violations found during previous surveys or visits;

(7) intentional misrepresentation regarding condition of the facility;

(8) effect of a civil monetary penalty on financial viability of the facility; or

(9) extenuating circumstances, which allow the licensing authority greater discretion to consider both mitigating and exacerbating circumstances not specifically defined.

B. An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency when the survey or investigation results in citation of regulatory violations comprising class A, class B, and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation.

C. The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

(1) Class A deficiency: not less than \$500 and not greater than \$5,000.

(2) Class B deficiency: not less than \$300 and not greater than \$3,000.

(3) Class C deficiency: not less than \$100 and not greater than \$500.

[8.16.2.13 NMAC - N, 06/30/10]

8.16.2.14 WAIVERS:

A. Programs, facilities or homes licensed under these regulations may request a waiver from any of the requirements of these regulations by applying, in writing, to the licensing authority for a waiver. The request should identify the regulatory requirement for which a waiver is requested, the reason for the waiver, and any action proposed to meet the intent of the regulation.

B. Requests for waivers

that involve construction of any type on a current licensed premise must be reviewed and approved by the licensing authority prior to the initiation of the construction.

C. Requests for waivers will be reviewed and approved or denied within 30 calendar days of receipt by the licensing authority.

[8.16.2.14 NMAC - Rp, 8.16.2.13 NMAC, 06/30/10]

8.16.2.15 VARIANCES - CURRENTLY LICENSED FACILITIES:

A. If a child care facility licensed on the date these regulations are promulgated provides the services prescribed but fails to meet all building requirements, the licensing authority will grant a variance, provided that the variances granted:

(1) will not create a hazard to the health, safety, or welfare of children and staff members; and

(2) is for building requirements that cannot be corrected without an unreasonable expense to the child care facility.

B. Variances granted will continue in force as long as the child care facility continues to provide services pursuant to these regulations and will not violate the criteria of Subsection A of this Section.

C. The licensing authority will grant a variance for those requirements contained in Section 8 Related Regulations and Codes if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them.

[8.16.2.15 NMAC - Rp, 8.16.2.14 NMAC, 06/30/10]

8.16.2.16 VARIANCES - NEW CHILD CARE FACILITY:

A new child care facility may be located in an existing building or a newly constructed building.

A. If opened in an existing building, the licensing authority may grant a variance for those building requirements the child care facility cannot meet provided any variance is not in conflict with existing building and fire codes.

B. A new child care facility opened in a newly constructed building will meet all requirements of these regulations.

C. The licensing authority will make all variances granted a permanent part of the child care facility file.

D. The licensing authority may grant a variance for those requirements contained in 8.16.2.8 NMAC Related Regulations and Codes if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a

waiver or variance from them.

[8.16.2.16 NMAC - Rp, 8.16.2.15 NMAC, 06/30/10]

8.16.2.17 SURVEYS FOR CENTERS, HOMES, AND PROGRAMS:

A. The licensing authority will conduct a survey at least twice a year in each child care facility, home, and program using these regulations as criteria. For purposes of this section, child care facility shall include both homes and programs. The licensing authority will conduct additional surveys or visit the child care facility additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate complaints.

B. Upon the completion of a survey, the licensing authority will discuss the findings with the licensee or their representative and will provide the child care facility with an official written report of the findings and a request for a plan or plans of correction, if appropriate.

C. The licensee, director, or operator, will submit within 10 working days after the date of the survey, a plan of correction to the licensing authority for deficiencies found during the survey. The plan of correction will be specific on how and when the child care facility will correct the deficiency or deficiencies.

D. The licensing authority may accept the plan of correction as written or require modifications of the plan.

E. By applying for either a new license or a license renewal, the licensee grants the licensing authority representative the right to enter the premises and survey the child care facility, including inspection and copying of child care facility records, both while the application is being processed and, if licensed, at any time during the licensure period.

F. The licensing authority may or may not announce a survey. At all times, a person who is knowledgeable in the daily operations, has access to all records and locked areas, and can represent the licensee or director for survey purposes will be present in the child care facility.

[8.16.2.17 NMAC - Rp, 8.16.2.16 NMAC, 06/30/10]

8.16.2.18 COMPLAINTS:

A. The licensing authority will process any complaint regarding any child care facility licensed or required to be licensed under these regulations. The investigatory authority of the licensing authority is limited to matters pertaining to these regulations.

B. A licensing authority representative receiving complaints will ask complainants to identify themselves and provide all information necessary to

document the complaint.

C. The licensing authority will investigate any complaint in which the health, safety, or welfare of a child could be in danger. The complaint will be reviewed and prioritized immediately according to the nature and severity of the complaint. The licensing authority follows established protocols and procedures for prioritizing, tracking, initiating and reporting of complaints and complaint investigations. Complaints will be investigated in a timely manner as follows:

(1) Priority 1 complaints: investigation will be initiated within 24 hours

(2) Priority 2 complaints: investigation will be initiated within three working days.

(3) Priority 3 complaints: investigation will be initiated within five working days.

(4) Initiation timeframes for investigations may be shortened based on the severity and nature of the complaint, but timeframes may not be extended.

D. The licensee shall cooperate in good faith with any investigation by the licensing authority. Obstruction of an investigation may subject the licensee to sanctions, up to revocation.

E. Action by the licensing authority:

(1) The licensing authority will provide a written letter on the results of the investigation to both the licensee of the child care facility that is the subject of the complaint and the complainant.

(2) If the licensing authority finds the complaint is unsubstantiated, it will be so designated and the licensing authority will take no further action.

(3) If the licensing authority finds that a complaint is substantiated, it will make the complaint part of the licensing authority's file on the child care facility. The following additional actions will, at the discretion of the licensing authority, be taken:

(a) the licensing authority will require the child care facility to submit and comply with a written plan of correction; or

(b) the licensing authority will sanction the child care facility administratively including, without limitation, suspension, revocation, or restriction of a license; or

(c) the licensing authority will file criminal charges or pursue civil remedies.

F. The licensing authority will report all cases of suspected child abuse and neglect to both children's protective services and the local law enforcement agency.

[8.16.2.18 NMAC - Rp, 8.16.2.17 NMAC, 06/30/10]

8.16.2.19

BACKGROUND

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

[8.16.2.19 NMAC - Rp 8.16.2.18 NMAC, 06/30/10]

8.16.2.20 CHILD CARE CENTER REGULATIONS:

A. **APPLICABILITY TO CHILD CARE CENTERS:** A center required to be licensed under regulations in 8.16.2.21 NMAC through 8.16.2.29 NMAC is one that provides care, education, services and supervision to children for less than 24 hours a day to children in a non-residential setting, and is not exempted from regulation under any of the exceptions listed in 8.16.2.9 NMAC.

B. **NEW OR INNOVATIVE PROGRAMS FOR PROVIDING CHILD CARE TO CHILDREN:** A new or innovative service for child care that is typically not governed by these regulations will be licensed if there is a substantiated need for the service and if it meets all requirements outlined in Paragraphs (1), (2) and (3) of Subsection C. New or innovative programs shall adhere to all basic licensing standards regulations except that the licensing authority may grant waiver(s) to the extent necessary to accommodate new and innovative services which may conflict with any regulations pertaining to curriculum and environment.

C. **SPECIAL REQUIREMENTS FOR NEW OR INNOVATIVE CHILD CARE CENTERS:** Applicants for new or innovative child-care services that do not fit under these regulations will submit a proposal to the licensing authority for review and approval. Applications shall be presented to the department for review. The proposal will include:

(1) an explanation of any special needs or modifications for the children who will be receiving these services;

(2) identification of those portions of the proposed program that would conflict with these regulations; and

(3) statement of how the proposed center will modify or provide alternative measures, policies and procedures that meet the intent of these regulations.

D. **SPECIAL REQUIREMENTS FOR CENTERS LOCATED ON OR NEAR THE PREMISES OF CORRECTIONAL FACILITIES:** Applicants for centers located on or near correctional facilities will submit a proposal to the licensing authority for review and

approval. The proposal will include:

(1) an explanation of security modifications that are deemed necessary to ensure the safety of the staff, parents, and children using the child care center; and

(2) statement of how the proposed center will modify or provide alternative measures, policies and procedures that meet the intent of these regulations if the proposed program is in conflict with these regulations. [8.16.2.20 NMAC - Rp, 8.16.2.19 NMAC, 06/30/10]

8.16.2.21 LICENSURE:

A. LICENSING REQUIREMENTS:

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

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

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

(a) a kitchen, if meals are prepared on site and served in the center;

(b) private water supply, if applicable;

(c) private waste or sewage disposal, if applicable; and

(d) a swimming pool, if applicable.

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

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

(i) main entry into the center is level or has a ramp to allow for wheelchair access;

(ii) building layout allows for access to the main activity area;

(iii) access to at least one bathroom is required to have a door clearance of 32 inches; the toilet unit also provides a 60-inch diameter turning radius;

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

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

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

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

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

B. CAPACITY OF CENTERS:

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

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

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

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

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

(c) Centers must post classroom capacities and ratios in an area of the room that is easily visible to parents, staff and visitors.

C. INCIDENT REPORTING REQUIREMENTS: The licensee will report to the appropriate

authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

(1) a lost or missing child;

(2) the death of a child;

(3) the abuse or neglect of a child;

(4) accidents, illness, injuries or anything else that requires medical care beyond on-site first aid;

(5) fire, flood, or other natural disaster that creates structural damages to a center or poses a health hazard;

(6) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

(7) any legal action against a center or staff members related to the care and custody of children; and

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

D. A center will notify parents or guardians in writing of any incident including, notifiable illnesses, that have threatened or could threaten the health or safety of children in the center. Incidents include, but are not limited to those listed in Subsection C of 8.16.2.21 NMAC.

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

[8.16.2.21 NMAC - Rp, 8.16.2.20 NMAC, 06/30/10]

8.16.2.22 ADMINISTRATIVE REQUIREMENTS:

A. ADMINISTRATION RECORDS: A licensee will display in a prominent place that is readily visible to parents, staff and visitors:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the center;

(2) the current child care regulations;

(3) dated weekly menus for meals

and snacks;

(4) the guidance policy; and,
(5) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

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

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

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

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

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

- (1) **GENERAL INFORMATION:**
 - (a) mission statement;
 - (b) philosophy statement;
 - (c) program information (location, license information, days and hours of operation, services offered);
 - (d) name of director and how he/she may be reached;
 - (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
 - (f) daily schedule;
 - (g) a statement supportive of family involvement that includes an open door policy to the classroom;
 - (h) appropriate dress for children, including request for extra change of clothes;
 - (i) celebrating holidays, birthdays and parties;
 - (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) **POLICIES AND PROCEDURES:**

- (a) enrollment procedures;
- (b) disenrollment procedures;

(c) fee payment procedures, including penalties for tardiness;

(d) notification of absence;

(e) fee credits, if any (e.g. for vacations, absences, etc.);

(f) field trip policies;

(g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(h) emergency procedures, safety policies, and disaster preparedness plan, which shall include steps for evacuation, relocation and reunification with parents, and individual plans for children with special needs;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure; and

(l) guidance policy

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

(1) **PERSONAL INFORMATION:**
(a) name of the child; date of birth, gender, home address, mailing address and telephone number;

(b) names of parents or guardians, parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

(d) date the child first attended the center and the date of the child's last day at the center;

(e) a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement;

(f) a record of any accidents, injuries or illnesses which require first aid or medical attention which must be reported to the parent or guardian;

(g) a record of observations of recent bruises, bites or signs of potential abuse or neglect, which must be reported to CYFD;

(h) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities. Authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

(i) a record of the time the child arrived and left the center and dates of attendance initialed by a parent, guardian, or

person authorized to pick up the child;

(j) an enrollment agreement form which must be signed by a parent or guardian with an outline of the services and the costs being provided by the facility; and

(k) a signed acknowledgment that the parent or guardian has read and understands the parent handbook.

(2) **EMERGENCY INFORMATION:**

(a) Information on any allergies or medical conditions suffered by the child.

(b) The name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached. Emergency contact numbers must be kept up to date at all times.

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

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

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

F. PERSONNEL RECORDS:

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

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

(e) documentation of a background check and employment history verification; if background check is in process then documentation showing that it is in process, such as a money order, shall be placed in file; all persons providing care are required to sign an annual statement that they have, or have never had, an arrest or substantiated referral to a child protective services agency; if the person has had an arrest or a substantiated referral, they must provide the CYFD with a written statement concerning the circumstances and disposition of the arrest or substantiated referral; an employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the Background Check and Employment History Verification provisions pursuant to

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

- (f) documentation of current first-aid and cardiopulmonary resuscitation training;
- (g) documentation of all appropriate training by date, time, hours and area of competency;
- (h) emergency contact number;
- (i) universal precaution acknowledgment form;
- (j) confidentiality form;
- (k) results of performance evaluations;
- (l) administrative actions or reprimands;

(m) written plan for ongoing professional development for each staff member, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals; and

- (n) signed acknowledgment that the staff have read and understand the personnel handbook;

(o) signed acknowledgment that all staff have reviewed and are aware of the center's disaster preparedness plan and evacuation plan, which shall include steps for evacuation, relocation and reunification with parents, and individual plans for children with special needs.

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

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

- (1) organizational chart;
- (2) job descriptions of all employees by title;
- (3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.
- (4) code of conduct;
- (5) training requirements, career lattice, professional development opportunities;
- (6) procedures and criteria for performance evaluations;
- (7) policies on absence from work;
- (8) grievance procedures;
- (9) procedures for resignation or termination;
- (10) copy of licensing regulations;
- (11) policy on parent involvement;
- (12) health policies related to both children and staff;
- (13) policy on sexual harassment;
- (14) child guidance policy;
- (15) confidentiality statement; and
- (16) plan for retention of qualified staff.

[8.16.2.22 NMAC - Rp, 8.16.2.21 NMAC, 06/30/10]

8.16.2.23 PERSONNEL AND STAFFING:A. **GENERAL PERSONNEL AND STAFFING REQUIREMENTS:**

- (1) All care givers will have the capability to care for and supervise children.
- (2) Care givers who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.
- (3) Clerical, cooking and maintenance personnel who also care for children and are included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Care givers counted in the staff/child ratios will not have as their primary responsibility cooking, clerical or cleaning duties while caring for children.

(4) Volunteers shall not be counted in the staff/child ratios or left alone with children unless they meet all requirements for staff members.

(5) Substitutes and part-time care givers counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements, professional development plan and evaluations. Substitutes, volunteers, and care givers routinely employed in a center but working 20 hours or fewer a week will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements and have professional development plans and evaluations. See Paragraph (2) of Subsection B of 8.16.2.23 NMAC for additional training requirements.

B. **STAFF QUALIFICATIONS AND TRAINING:**(1) **DIRECTOR QUALIFICATIONS:**

(a) Unless exempted under Subparagraph (b) below, a child care center will have a director who meets the requirements outlined in the table below.

<i>EDUCATION</i>	<i>EXPERIENCE</i>
<p>If have:</p> <ul style="list-style-type: none"> - New Mexico child development certificate - early childhood program administration certificate child development associate (CDA) certificate, - certified child care professional credential (CCP), - montessori teacher certification, - national administrator credential (NAC), one-year vocational certificate, or an associate of arts (AA) or applied science (AAS) degree in child development or early childhood education 	<p>Must also have:</p> <ul style="list-style-type: none"> - at least two years of experience in an early childhood growth and development setting - NAC recipients must also have the 45 hour course or equivalent within the first six months of hire and the two years of experience in an early childhood growth and development setting.

- a bachelor's degree or higher in early childhood education or a related field; related fields include: early childhood special education, family studies, family and consumer sciences, elementary education with early childhood endorsement or other degree with successful completion of courses in early childhood.	at least one year of experience in an early childhood growth and development setting.
- three program administrator courses to include the following: program management, curriculum for diverse learner's and their families, and professional relationships.	at least three years of experience in an early childhood growth and development setting

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

(2) TRAINING:

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

- (i) scope of services, activities, and the program offered by the center;
- (ii) emergency first aid procedures, recognition of childhood illness and indicators of child abuse;
- (iii) fire prevention measures and emergency evacuation plans;
- (iv) review of licensing regulations;
- (v) policies regarding guidance, child abuse reporting, and handling of complaints;
- (vi) review of written policies and procedures as defined in Subsection C of 8.16.2.22 NMAC;
- (vii) center/parental agreement;
- (viii) sanitation procedure;
- (ix) written goals of the program;
- (x) personnel handbook;
- (xi) parent handbook;
- (xii) names and ages of children;
- (xiii) names of parents;
- (xiv) tour of the facility; and
- (xv) introduction to other staff and parents.

(b) New staff members working directly with children regardless of the number of hours per week will complete the 45-hour entry level course or approved three-credit early care and education course or an equivalent approved by the department prior to or within six months of employment. Substitutes are exempt from this requirement.

(c) Each staff person working directly with children and more than 20 hours per week, including the director, is required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address first aid, CPR, infection control and at least three competency areas within one year and all seven areas within two years. The competency areas are 1) child growth, development, and learning; 2) health, safety, nutrition, and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism.

(d) Training must be provided by people who are registered on the New Mexico trainer registry.

(e) Training provided by center employees and directors shall count for no more than half of the required 24 hours of training each year.

(f) On-line training courses shall count for no more than 16 hours each year.

(g) Identical trainings shall not be repeated for the purpose of obtaining credit.

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

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

(j) A center will keep a training log on file with the employee's name, date of hire, and position. The log must include date of training, clock hours, competency area, source of training, and training certificate. A college credit hour in a field relevant to the competency areas listed above will be considered equivalent to a minimum of 15 clock hours. See Paragraph (5) of Subsection A of 8.16.2.23 NMAC for requirements for centers that operate less than 20 hours per week.

C. STAFFING REQUIREMENTS:

(1) A director is responsible for one center only. Directors who are responsible for more than one center on the date these regulations are promulgated shall continue in that capacity. The director or co-director must be on the site of the center for a minimum of 50% of the center's core hours of operation. See Paragraph (2) of Subsection F of 8.16.2.22 NMAC.

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

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

(4) A center will have a minimum of two staff members present at all times. If the center has less than seven children, the second caregiver may conduct other activities such as cooking, cleaning, or bookkeeping, etc. A center will keep a list of at least two people who can substitute for any staff member. The list will include the people's names, telephone numbers, background check, health certificates and record of orientation.

(5) Each room of the center and its premises shall be inspected at closing time on a daily basis to assure the center is secure, free of hazards, and that no child has been left unattended.

D. STAFF / CHILD RATIOS:

(1) Centers where children are grouped by age:

(a) Age in group: six weeks through 24 months. - Staffing: one adult for every six children or fraction of group thereof.

(b) Age in group: two years. - Staffing: one adult for every 10 children or fraction of group thereof.

(c) Age in group: three years. - Staffing: one adult for every 12 children or fraction of group thereof.

(d) Age in group: four years. B Staffing: one adult for every 12 children or fraction of group thereof.

(e) Age in group: five years. B Staffing: one adult for every 15 children or fraction of group thereof.

(f) Age in group: six years and older. B Staffing: one adult for every 15 children or fraction of group thereof.

(2) CENTERS WHERE AGE GROUPS ARE COMBINED

(a) Age in group: six weeks through 24 months. B Staffing: one adult to every six children or fraction of group thereof.

(b) Age in group: two through four years. B Staffing: one adult to every 12 children or fraction of group thereof.

(c) Age in group: three through five years. B Staffing: one adult to every 14 children or fraction thereof.

(d) Age in group: six years and older. B Staffing: one adult to every 15 children or fraction of group thereof.

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

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

(iii) If a center groups toddlers ages 18 to 24 months with children ages 24 through 35 months, the staff/child ratio shall be maintained at one staff per six children.

[8.16.2.23 NMAC - Rp, 8.16.2.22 NMAC, 06/30/10]

8.16.2.24 SERVICES AND CARE OF CHILDREN:

A. GUIDANCE:

(1) A center will have written policies and procedures clearly outlining

guidance practices. Centers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined.

(4) A center will not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment, or

(e) unsupervised separation.

B. NAPS OR REST PERIOD: A center will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(1) Children under the age of six years in the centers for more than five hours will have a rest period.

(2) A center will allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(3) Cribs, cots or mats will be spaced at least 30 inches apart to permit easy access by adults to each child without moving cribs, cots or mats.

(4) Each child will have an individual bed, cot, or mat clearly labeled to ensure each child uses the same items between washing.

(5) Cots or mats will have a nonabsorbent, cleanable surface. Mats will be at least three-fourths of an inch thick. Mats and cots shall be disinfected and linens will be laundered before being used by another child.

(6) The center will provide a crib for each infant and, when appropriate, for a toddler. See Paragraph (1) of Subsection G of 8.16.2.28 NMAC on crib safety. No child will be allowed to sleep in a playpen, car seat, stroller or swings. Children under the age of 12 months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician. Nothing shall be placed over the head or face of a child aged 12 months or younger when the child is laid down to sleep. Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from a parent or physician justifying the sleeping arrangement.

(7) Staff must be physically available to sleeping children at all times. Children must not be isolated for sleeping or napping in an unilluminated room unless attended by a caregiver.

(8) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping.

(9) Staff/child ratios shall be maintained at naptime.

C. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into functional identifiable learning areas, such as:

- (a) dramatic play;
- (b) creative art;
- (c) books;
- (d) blocks and accessories;
- (e) manipulatives;
- (f) music;
- (g) science;
- (h) math/number; and
- (i) sensory.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members and visitors.

(5) Noisy and quiet areas are arranged so that children's activities can be sustained without interruption.

(6) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(7) Learning areas are functional with adequate space and are logically placed. The environment is set up so children are not continually interrupting one another.

(8) Examples of children's individually expressed artwork are displayed in the environment.

(9) Floor surface is suitable for activities that will occur in each learning area.

(10) File and storage space is available for teacher/caregiver materials.

D. SOCIAL - EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Caregivers remain calm in stressful situations.

(2) Caregivers talk and actively listen to children and respond appropriately.

(3) Caregivers respond to children's questions and acknowledge their comments, concerns, emotions and feelings.

(4) Caregivers help children communicate their feelings by providing

them with language to express themselves.

(5) Caregivers make appropriate physical contact to comfort and support children in daily routines and interactions. When children are distressed, caregivers comfort them.

(6) Caregivers model appropriate social behaviors, interactions and empathy. Caregivers respond to children that are angry, hurt, or sad in a caring and sensitive manner.

(7) Caregivers are actively engaged with children.

E. EQUIPMENT AND PROGRAM:

(1) A child care center will provide activities that encourage children to be actively involved in the learning process and to experience a variety of developmentally appropriate activities and materials.

(2) A center will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

(3) Each child at a center will have a designated space for storage of clothing and personal belongings.

(4) A center will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A center will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(5) A center will provide children with toys and other materials that are safe and encourage the child's creativity, social interaction, and a balance of individual and group play.

(6) A center will post a daily activity schedule. A center will follow a consistent pattern for routine activities such as meals, snacks and rest.

(7) Children will not watch television, videotapes, or play video games for more than one hour a day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content.

(8) Children and family members shall be acknowledged upon arrival and departure.

(9) Full-time children shall have a minimum of 60 minutes of physical activity daily, preferably outside. Part-time children shall have a minimum of 30 minutes of physical activity daily, preferably outside.

(10) Equipment and program requirements apply during all hours of operation of the licensed facility.

F. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment will be safe and securely anchored.

(2) A center will enclose the outdoor play area with a fence at least four feet high and with at least one latched gate available for an emergency exit.

(3) A center will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

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

When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
Uncompressed Depths of Materials In Fall Zone						
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

(4) Playground equipment shall be inspected and inspections documented weekly.

(5) An outdoor play area for children under age two years will have an area protected from the general traffic where the children can crawl in safety.

(6) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

(7) Children shall be protected from the sun during outdoor play, as instructed by the child's parent or guardian.

G. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters the pool.

(2) If a center has a portable wading pool:

(a) a center will drain and fill the wading pool with fresh water daily and disinfect pool before and after each use;

(b) a center will empty a wading pool when it is not in use and remove it from areas accessible to children;

(c) a center will not use a portable wading pool placed on concrete or asphalt.

(3) If a center has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children;

(c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.

(4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of caregivers, lifeguards or volunteers	Number of children
0-23 mon	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

[8.16.2.24 NMAC - Rp, 8.16.2.23 NMAC, 06/30/10]

8.16.2.25 FOOD SERVICE:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the center will conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

(1) A center will provide a child a meal or snack at least every three hours except when the child is sleeping at night.

(2) A center will serve, if necessary, a child a therapeutic or special diet with written prescription/diet orders from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the center staff.

(3) A center shall make water freely available to children.

(4) A center that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA's current dietary guidelines for Americans, to include the following. Parents of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.

(a) Only 100-percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than 100-percent juice or artificially flavored drinks for meals or snacks is prohibited. 100-percent fruit or vegetable juice may be diluted with water.

(b) Only whole, pasteurized fluid milk shall be served to children between 12 and 24 months of age; reduced fat, low fat, or skim milk may be served to children who are two years and older.

(c) A wide variety of fruits and vegetables shall be served, with a preference for fresh or frozen fruits and vegetables over canned.

(5) A center shall vary snacks each day and shall include a selection of two different food group components from the four food group components.

C. MENUS:

(1) Menus shall include a variety of foods. The same menu will not be served twice in one week.

(2) Posted menus shall be followed. Substitutions shall be of equivalent nutritional value and shall be recorded on the posted menu.

(3) Menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, caregivers and children.

D. KITCHENS: Centers shall comply with current New Mexico environment department requirements regarding food service.

(1) A center will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A center will serve food promptly and refrigerate immediately after use.

(4) A center will protect food and drink by properly storing items in an airtight container or by tightly wrapping them. A center will label and date all leftover food.

(5) If food is brought from the child's home, a center will label it with the child's name and refrigerate if necessary. A center will label and refrigerate bottles of infant formula or breast milk.

(6) A center's refrigerators and separate freezers will have working internal thermometers and keep food requiring refrigeration, including formula, at 41 degrees (fahrenheit) or below, and frozen food at 0 degrees (fahrenheit) or below.

(7) A center will protect all food from insects, rodents and other vermin.

(8) A center will discard any leftover milk or formula, rinse bottles after use and disinfect bottles before reuse.

(9) A center will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize using four tablespoons of household bleach to one gallon of cool water or a bleach-equivalent product approved by CYFD. Disposable plates and cups and plastic utensils of food-grade, medium weight may be used for single service, but styrofoam cups may not be used.

(10) A center will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(11) A center shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A center will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and disinfect the areas before and after use.

(2) Staff/child ratios must be maintained at meal times.

(3) Adults must sit with the children at meal and snack times to assist toddlers with eating, drinking, and self-feeding.

(4) Time allowed for meals shall enable the children to eat at reasonable rate.

(5) A center will provide sanitary cups or glasses or a drinking fountain for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A center will not allow children to share drinking or eating utensils.
[8.16.2.25 NMAC - Rp, 8.16.2.24 NMAC, 06/30/10]

8.16.2.26 HEALTH AND SAFETY REQUIREMENTS:

A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(a) after using a toilet, assisting a child with toilet use, or changing a diaper;

(b) before and after caring for a sick child;

(c) before any food service activity, including setting the table;

(d) before and after eating;

(e) before and after feeding a child; and

(f) after handling pets or animals or items used by animals such as water and food bowls.

(2) A center will label with the child's name and store separately any item used for an individual child's personal hygiene.

(3) If a center promotes tooth brushing activities, the center will store toothbrushes so that they do not drip on other toothbrushes and so that they are separate from one another, with bristles exposed to the air to dry, labeled and not in contact with any other surface.

B. FIRST AID REQUIREMENTS:

(1) A center will have on duty at all times one staff member or caregiver currently certified in first aid and cardiopulmonary resuscitation (CPR).

(2) A center will keep a first-aid kit and a first-aid manual together in the center in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum, band aids, gauze pads, adhesive tape, scissors, soap, nonporous gloves, and a thermometer.

(3) A center will treat blood spills cautiously and promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A center will clean contaminated surfaces first with hot soapy water then with a disinfecting solution effective against HIV and hepatitis B.

C. MEDICATION:

(1) All staff and children's medications must be labeled. A center will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Facilities will give medication only with written permission from a parent or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the center. A center will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep and sign a written record of the dosage, date and time a child is given medication with the signature of the staff who administered the medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The center shall not administer expired medication.
[8.16.2.26 NMAC - Rp, 8.16.2.25 NMAC, 06/30/10]

8.16.2.27 ILLNESS:

A. Children or staff members absent due to any notifiable disease will not return to the center without a signed statement from a physician.

B. A center will separate and constantly observe a child who becomes sick at the center and promptly notify a parent or guardian of the child's illness.

C. A center will send a child home when:

(1) the child's oral temperature is 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 degrees (fahrenheit) or greater and the child shows signs of illness or behavior changes; or

(2) a caregiver observes signs of contagious disease or severe illness.

D. The center will have a cot or mat available for sick children and it

will be disinfected thoroughly after each use.
[8.16.2.27 NMAC - Rp, 8.16.2.26 NMAC, 06/30/10]

8.16.2.28 OTHER:

A. TRANSPORTATION:

(1) When a center provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

(2) A center will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

(a) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag.

(b) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

(c) Children five years of age through six years of age, regardless of weight, or children who weigh less than sixty pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(d) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

(3) Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

(4) Vehicles operated by the center to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees fahrenheit. If the outside air temperature falls below 50 degrees fahrenheit the center will ensure the vehicle is heated.

(5) A center will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The center will ensure children do not cross a street unsupervised after leaving the vehicle.

(6) No one will smoke in a vehicle

used for transporting children.

(7) A second adult will accompany the driver of the vehicle when a center transports five or more children under age five years.

(8) Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

B. FIELD TRIPS:

(1) A center will ensure the children's safety on field trips and excursions. See Subparagraph (h) of Paragraph (1) of Subsection E of 8.16.2.22 NMAC for requirements for permission slips.

(2) Children will not go to a private residence unless accompanied by two adults.

C. PETS:

(1) A center will inform parents or guardians in writing before pets are allowed in the center.

(2) A center will not allow pets in the kitchen, food serving, food storage areas, bathrooms, or infant room.

(3) A center will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the center.

(4) A center will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(5) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(6) A staff member must be physically present during the handling of all pets or other animals.

D. CARE AND SERVICES FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If a child is suspected of having a disability, at the center's discretion, staff must inform parents of possible resources for referral and assistance. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

E. INFANTS AND

TODDLERS:

(1) A center will not admit any child under the age of six weeks except with the written approval of a licensed physician.

(2) A center will care for children under age two years in rooms separate from those used by older children. Children age six weeks to 12 months may be in the same room with children age 13 to 24 months, when they are physically separated from the older children. A center may group toddlers ages 18 to 24 months with children ages 24 through 35 months.

(3) Throughout the day, a caregiver will give each infant and toddler physical contact and attention. A caregiver will hold, talk to, sing to and take inside and outside walks with the child. A caregiver will respond immediately to all cries of infants and to the cries of all children within two minutes.

(4) A caregiver will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(5) Infants shall not be allowed to be confined to one area for prolonged periods of time unless the infant is content and responsive.

(6) Each infant shall be allowed to form and observe his/her own pattern of feeding, sleeping and waking periods.

(7) A center will arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.

(8) Infants shall either be held or fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted.

(9) Foods served will meet the nutritional needs of the infant or toddler. Foods will be developmentally appropriate for each infant served.

(10) A center shall provide an evacuation crib.

F. DIAPERING AND TOILETING:

(1) A caregiver will plan toilet training with a parent so the toilet routine is consistent. A center will not attempt to toilet train a child who is not developmentally ready.

(2) A center will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single-use gloves when changing a diaper and wash their hands after changing a diaper.

(3) A center will have a change of clothes on hand, including dry, clean clothing and diapers sufficient to meet the needs of each child. A center will label diapers and diapering supplies for each child

and store them properly. Diaper bags will be inaccessible to children. Soiled diapers will be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

(4) A caregiver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change.

G. EQUIPMENT:

(1) Cribs will meet federal standards and be kept in good repair. The center will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs. Stacking cribs is prohibited.

(2) Toys and equipment must be safe, durable, and easy to clean, non-toxic and disinfected daily. Toys that are mouthed by infants and toddlers will be cleaned after mouthing by one child before other children do the same.

(3) A center will not use accordion-style baby gates.

H. NIGHT CARE:

(1) A center that provides night care will have 50 square feet of activity area per child for night care.

(2) Staff will be awake and immediately available to children who need attention during the night.

(3) The beds and cots provided for children shall be completely furnished with mattress, waterproof mattress protectors, sheets under and over the child, blanket, pillow and pillowcase.

(4) Linens shall be changed immediately in case of soiling.

(5) The same menu shall not be used for lunch and supper.

I. ACCREDITED CENTERS: Accredited centers must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to continue to receive augmented child care reimbursement rates. The licensing authority may, at its option, notify the center's accrediting body of the center's failure to meet and maintain licensing standards.

[8.16.2.28 NMAC - Rp, 8.16.2.27 NMAC, 06/30/10]

8.16.2.29 BUILDING, GROUNDS AND SAFETY REQUIREMENTS:

A. HOUSEKEEPING:

(1) A center will keep the premises, including furniture, fixtures, floors, drinking fountains, toys and equipment clean, safe, disinfected and in good repair. The center and premises will be free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food

storage or preparation areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will be durable, constructed of materials that will not absorb liquids and have tight fitting lids.

B. PEST CONTROL:

(1) All licensed child care centers must use a New Mexico licensed applicator whenever applying pesticides on the center's buildings or grounds.

(2) The licensed applicator may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

C. MECHANICAL SYSTEMS:

(1) A center will maintain comfortable temperatures (68 degrees through 82 degrees fahrenheit) in all rooms used by children. A center may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a center exceeds the 82 degrees fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A center must maintain all heating and cooling equipment so that it is in good working order.

(3) A center will not use un-vented heaters, open flame heaters or portable heaters. A center will install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees fahrenheit, fireplaces, fireplace inserts and wood stoves.

(4) A center will provide fresh air and control odors by either mechanical or natural ventilation. If a center uses a window for ventilation, it will have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Water coming from a faucet will be below 110 degrees (fahrenheit). A center will install a tempering valve ahead of all domestic water-heater piping.

D. WATER AND WASTE: All food preparation areas, sinks, washrooms, laundries, bathrooms and any self-contained area for infants and toddlers in diapers will have hot and cold running water pressure.

E. LIGHTING

LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas will have sufficient glare-free lighting with shatterproof or shielded bulbs.

(2) A center will have emergency lighting that turns on automatically when electrical service is disrupted.

(3) Use of electrical cords and outlets:

(a) A center will use U/L approved equipment only and will properly maintain this equipment.

(b) All electrical outlets within reach of children will be safety outlets or will have protective covers.

(c) The use of multi-prong or gang plugs is prohibited. Surge protectors are not gang plugs under these regulations.

F. EXITS AND WINDOWS:

(1) When an activity area does not have a door directly to the outside, at least one window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be 24 inches. The minimum net clear opening width dimension must be 20 inches, and the finished sill height must not be more than 44 inches above the floor.

(2) There must be at least two exits remote from each other in each activity area of the center.

(a) All exits must be marked, including fire exits, by signs having letters at least six inches high whose principal strokes are at least three-fourths of an inch wide.

(b) When illuminated exit signs are installed they must be maintained in operable condition.

(3) Exit ways must be kept free from obstructions at all times.

(4) Activity areas for children must have windows or skylight area of at least one-twentieth of the floor area.

G. TOILET AND BATHING FACILITIES:

(1) A center will have one sink with hot and cold running water in any self-contained room for infants and one toilet and one sink for a self-contained toddler room or a combination toddler/infant room. This sink will not be used for food preparation. The toilet designated for the self-contained toddler room or combination toddler/infant room shall be used exclusively by these children.

(2) All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children. A center will not use a common towel or wash cloth.

(3) All closets and bathroom locks must have an outside release. A center will enclose all bathrooms. Bathrooms must be accessible and functional.

(4) Toilets and lavatories must be provided in the following ratios:

(a) one toilet and one lavatory for one to 12 children;

(b) two toilets and two lavatories for 13 through 25 children;

(c) one toilet and one lavatory for each additional 15 children or fraction thereof;

(d) when a center's capacity exceeds 30 children a separate toilet room must be provided for staff.

H. SAFETY COMPLIANCE:

(1) A center will conduct at least one fire drill each month.

(2) A center will:

(a) hold the drills at different times of the day;

(b) use the fire alarm or detector system; and

(c) emphasize an orderly rather than a speedy evacuation;

(d) a center will keep a record of the fire drills with the date, time, number of adults and children participating, and any problems encountered during the fire drill on file for at least 12 months;

(e) a center shall request an annual fire inspection from the fire authority having jurisdiction over the center; if the policy of the fire authority having jurisdiction does not provide for an annual inspection of the center, the center must document the date the request was made and to whom; a copy of the latest inspection must be posted in the center;

(f) a center will post an evacuation plan in each room used by children;

(g) a center will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone; a center will not use a pay phone to fulfill this requirement; if cordless phones are used, emergency numbers shall be posted on the phone itself; facilities shall post the center's telephone number and address in a conspicuous location next to the emergency phone numbers; a center shall have at least one corded phone or cell phone for use in the case of a power outage;

(h) a center must be equipped with an approved, manually operated alarm system or other continuously sounding alarm approved in writing by the fire authority having jurisdiction;

(i) a center must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement;

(j) a center must have a minimum of two 2A10BC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the center; and

(k) fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting must be properly maintained and inspected on a least yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection E of 8.16.2.29 NMAC for emergency lighting requirements.

I. S M O K I N G , FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A center will prohibit smoking in all areas, including vehicles, and will not allow any alcoholic beverages, firearms, or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited. [8.16.2.29 NMAC - Rp, 8.16.2.28 NMAC, 06/30/10]

8.16.2.30 FAMILY CHILD CARE HOME REGULATIONS: APPLICABILITY: A private dwelling required to be licensed under regulations in 8.16.2.31 NMAC through 8.16.2.39 NMAC which meets one of the following criteria.

A. Family day care home - A private dwelling required to be licensed pursuant to these regulations which provides care, services, and supervision to at least five but no more than six children for a period of less than 24 hours of any day. The licensee will reside in the home and be the primary caregiver. A family day care home intending to provide care for more than two but not to exceed four children under the age of two must be specifically licensed for this purpose.

B. Group day care home - A private dwelling or other building on the premises required to be licensed pursuant to these regulations which provides care, services, and supervision for at least seven but not more than 12 children for a period of less than 24 hours of any day. The licensee will reside in the home and be the primary caregiver. A group day care home intending to provide care for more than two but not to exceed four children under the age of two must be specifically licensed for this purpose. [8.16.2.30 NMAC - Rp, 8.16.2.29 NMAC, 06/30/10]

8.16.2.31 LICENSURE:

A. LICENSING REQUIREMENTS:

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received

within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A home will submit a new application to the licensing authority before changing anything required to be stated on the license such as dates, capacity, operator, address, etc.

(3) **BACKGROUND CHECK:** In addition to the basic requirements at 8.16.2.18 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's Background Check and Employment History Verification provisions (8.8.3 NMAC), regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff, volunteers, and prospective staff and volunteers, and all adults residing in the home as per the requirements outlined in the department's most current version of the Background Check and Employment History Verification provisions. All requirements of the current Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

(4) **ZONING AND OTHER APPROVALS:** An applicant will have:

(a) current written zoning approval from the appropriate city, county or state authority;

(b) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority if applicable;

(c) current written approval from the New Mexico environment department or other environmental health authority for: 1. Private water supply, if applicable; 2. Private waste or sewage disposal, if applicable; and 3. A swimming pool, if applicable.

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

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

B. CAPACITY OF A HOME:

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

(2) The licensing authority will count all children in the care of the licensed home, including the caregiver's own children under the age of six, in the capacity of a home, even if the children are on a field

trip or other outing outside the home. The licensed capacity must not be exceeded by the presence of school age children.

(3) A home may be licensed for up to 12 children.

(4) A home licensed as a family day care home under these regulations providing care for a maximum capacity of six children may care for up to four children under the age of two providing a second caregiver is present in the home and the home is licensed to provide such care. A home licensed as a group day care home under these regulations providing care for a maximum of 12 children may care for up to four children under age two providing a second caregiver is present in the home and the home is licensed to provide such care.

(5) A home must have 35 square feet of activity and sleeping space per child, excluding bathrooms, kitchens, halls and other built-in fixtures and offsets, with total capacity limited to no more than 12 children. A home must have at least one bathroom with a toilet and sink. For a home licensed for no more than six children, one activity room will be measured. For a home licensed for 12 children, no more than two rooms will be measured.

(6) The home will have an outdoor play area, which must be fenced in.

C. NOTIFICATIONS:

(1) **INCIDENT REPORTS:** The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

(a) a lost or missing child;

(b) the death of a child;

(c) the abuse or neglect of a child;

(d) accidents, illness, injuries,

or anything else that requires medical care beyond on-site first aid;

(e) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;

(f) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; or,

(g) any legal action against a home or staff members related to the care and custody of children.

(2) A home will notify parents or guardians in writing of any incident, including notifiable illnesses, that will or could threaten the health or safety of

children in the home. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.31 NMAC.

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

[8.16.2.31 NMAC - Rp, 8.16.2.30 NMAC, 06/30/10]

8.16.2.32 ADMINISTRATIVE REQUIREMENTS:

A. **ADMINISTRATIVE RECORDS:** A licensee will post the child care home license in an area readily visible to parents and visitors. The licensee will also keep on file:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the home;

(2) the current child care regulations;

(3) the guidance policy;

(4) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; and

(5) an up to date disaster preparedness plan approved annually by the licensing authority; the department will provide guidance on developing these plans.

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

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

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

(1) **GENERAL INFORMATION:**

(a) mission statement;

(b) philosophy statement;

(c) program information (location, license information, days and hours of operation, services offered);

(d) name of licensee and how he/she may be reached;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open door policy to the family or group child care home;

(h) appropriate dress for children, including request for extra change of clothes;

(i) celebrating holidays, birthdays

and parties;

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) fee payment procedures, including penalties for tardiness;

(d) notification of absence;

(e) fee credits, if any (e.g. for vacations, absences, etc.);

(f) field trip policies;

(g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(h) emergency procedures, safety policies, and disaster preparedness plan, which shall include steps for evacuation, relocation and reunification with parents, and individual plans for children with special needs;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure; and

(l) guidance policy.

D. **CHILDREN'S RECORDS:** A home will maintain a complete record for each child, including drop-ins, completed before the child is admitted and kept at the home for 12 months after the child's last day of attendance. Records will contain at least:

(1) **PERSONAL INFORMATION:**

(a) name of the child, date of birth, gender, home address, mailing address and telephone number;

(b) names of the parents or guardians, the parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

(d) date the child first attended the home and the date of the child's last day at the home;

(e) a copy of the child's up-to-date immunization record or a public health division-approved exemption from the requirement;

(f) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or potential signs of abuse or neglect, both of which must be reported to a parent or guardian;

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

site activities. Authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

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

(i) an enrollment agreement must be signed by a parent or guardian with an outline of the services and the costs being provided by the home; and

(j) a signed acknowledgement that the parent or guardian has read and understands the parent handbook.

(2) EMERGENCY INFORMATION:

(a) information on any allergies or medical conditions suffered by the child;

(b) the name and telephone number of two people to contact in the local area in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times.

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

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

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

E. **PERSONNEL RECORDS:** A home will keep the following records on file and make them available to the licensing authority.

(1) Documentation of a background check and employment history verification for all care givers and all adults living in the home. All persons providing care are required to sign a statement that they have or have never had an arrest or substantiated referral to a child protective services agency. If the person has had an arrest or a substantiated referral, they must provide the licensing authority with a written statement concerning the circumstances and disposition of the arrest or substantiated referral. An employer will not allow any employee or any other adult living in the home to be involved in an incident which would disqualify that employee under the department's most current version of the Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children.

(2) A record of the time the second care givers arrived at and left work, to include breaks and lunch.

(3) A written plan for ongoing professional development for each staff member, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals. Family child care homes who do not have employees are exempted from this requirement.

F. PERSONNEL HANDBOOK: The provider will give each non-resident employee a personnel handbook that covers all matters relating to employment and includes the following critical contents:

- (1) job descriptions of all employees by title
- (2) benefits, if provided, including vacation days, sick leave, professional development days, health insurance, break times, etc.;
- (3) yearly calendar, including meetings, holidays, professional development, etc.;
- (4) code of conduct;
- (5) training requirements, professional development opportunities;
- (6) procedures and criteria for performance evaluations;
- (7) policies on absence from work;
- (8) procedures for resignation or termination;
- (9) copy of licensing regulations;
- (10) policy on parent involvement;
- (11) health policies related to both children and staff;
- (12) policy on sexual harassment; and
- (13) plan for retention of qualified staff.

[8.16.2.32 NMAC - Rp, 8.16.2.31 NMAC, 06/30/10]

8.16.2.33 PERSONNEL AND STAFFING REQUIREMENTS:

A. GENERAL PERSONNEL AND STAFFING REQUIREMENTS:

- (1) All care givers will have the capability to care for and supervise children.
- (2) Care givers who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.
- (3) Substitutes, volunteers, and part-time care givers counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes and care givers routinely employed in a home but working 20 hours or less a week will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements.

B. STAFF QUALIFICATIONS AND TRAINING:

- (1) A home will keep a training log on file including the date of the training,

name of caregiver, hours earned, subject/competency area, source of training, and training certificates.

(2) Care givers working for a home will receive at least 12 documented hours of training during each year, including six hours in child growth and development and three hours in health, safety, nutrition, and infection control. The three remaining training hours must be within the seven competency areas. The competency areas are: 1) child growth, development and learning; 2) health, safety, nutrition and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism. A caregiver cannot count more than three hours in first aid or CPR training toward the total hours required. For this purpose, a year begins and ends at the anniversary date of employment. Training must be provided by people who are registered on the New Mexico trainer registry. See Paragraph (3) of Subsection A of 8.16.2.33 NMAC for requirements for part-time employees. On-line training courses shall count for no more than 16 hours each year. Identical trainings shall not be repeated for the purpose of obtaining credit.

(3) Infant and toddler care givers must have at least two hours of training in infant and toddler care within six months of starting work. The two hours will count toward the 12-hour requirement in paragraph (2).

(4) The primary caregiver will complete the 45-hour entry level course or approved 3-credit early care and education course or an equivalent approved by the department prior to or within six months of employment.

(5) A home must have at least one person on duty at all times who is certified in first aid and cardio-pulmonary resuscitation (CPR).

C. STAFFING REQUIREMENTS:

(1) A home licensed to provide care for six or fewer children will have at least one caregiver in the home at all times. A home licensed to provide care for more than two children under the age of two will have at least two caregivers in the home at all times.

(2) A home licensed for seven to 12 children will have at least two care givers at the home when more than six children are present or when more than two children under the age of two are present.

(3) Children will never be left unattended. A caregiver will be with the children at all times whether activities are inside or outside of the home. Providers will be onsite, available and responsive to children during all hours of operation.

[8.16.2.33 NMAC - Rp, 8.16.2.32 NMAC, 06/30/10]

8.16.2.34 SERVICES AND CARE OF CHILDREN:

A. GUIDANCE:

(1) A home will have written policies and procedures clearly outlining guidance practices. Care-givers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined.

(4) A home will not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; and

(e) unsupervised separation.

B. NAPS OR REST PERIOD:

(1) A home will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(2) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(3) Each child will have an individual bed, cot, mat or linens.

(4) Cribs, cots or mats will be spaced at least 30 inches apart to permit easy access by adults to each child. Cots or mats will have a nonabsorbent, cleanable surface. Mats will be at least three-fourths of an inch thick. Mats and cots shall be disinfected and linens must be laundered before being used by another child.

(5) The home will provide a crib for each infant and, when appropriate, for a toddler. No child will be allowed to sleep in a playpen, car seat, stroller or swing. Children under the age of 12 months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician. Nothing shall be draped or placed over the head or face of a child age 12 months or younger when the child is laid down to sleep. Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from a parent or physician

Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches
For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.						

(4) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

(5) Children shall be protected from the sun during outdoor play, as instructed by the child's parent or guardian.

G. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters a pool.

(2) If a home has a portable wading pool:

(a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children;

(c) a home will not use a portable wading pool placed on concrete or asphalt.

(3) If a home has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and the number of adults present will be increased to ensure adequate safety for the ages, abilities and type of water hazard in use.

(4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of caregivers, lifeguards or volunteers	Number of children
0-23 mon	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

[8.16.2.34 NMAC - Rp, 8.16.2.33 NMAC, 06/30/10]

8.16.2.35 FOOD SERVICE:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the home will conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

(1) A home will provide a child a meal or snack at least every three hours except when the child is sleeping at night.

(2) A home will serve if necessary a child a therapeutic or special diet with a written prescription/diet order from a physician or a registered or licensed dietician. Diet orders must be complete and descriptive, and not subject to interpretation by the care givers.

(3) A home shall make water freely available to children.

(4) A home that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA's current dietary guidelines for Americans, to include the following. Parents of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.

(a) Only 100-percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than 100-percent juice or artificially flavored drinks for meals or snacks is prohibited. 100-percent fruit or vegetable juice may be diluted with water.

(b) Only whole, pasteurized fluid milk shall be served to children between 12 and 24 months of age; reduced fat, low fat, or skim milk may be served to children who are two years and older.

(c) A wide variety of fruits and vegetables shall be served, with a preference for fresh or frozen fruits and vegetables over canned.

(5) A home will vary snacks each day and will include a selection of two different food group components from the four food group components.

C. MENUS: Weekly menus must be dated and posted in an area easily visible to parents.

D. KITCHENS:

(1) A home will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A home will serve food promptly and refrigerate immediately after use. Foods served will meet the nutritional needs of the infant or toddler. Foods will have the proper texture and consistency for each infant served.

(4) A home will protect food and drink by properly storing items in an airtight container or by tightly wrapping them. A home will label and date all leftover food.

(5) If food is brought from the child's home, a home will label it with the child's name and refrigerate if necessary. A home will label and refrigerate bottles of infant formula or breast milk. Labeling is not necessary if only one child is using bottles.

(6) A home will keep food requiring refrigeration, including formula, at 41 degrees (fahrenheit) or below, and frozen food at 0 degrees (fahrenheit) or below.

(7) Refrigerators and separate freezers will have working internal thermometers.

(8) A home will protect all food from insects, rodents and other vermin.

(9) A home will discard any leftover milk or formula, rinse bottles after use and disinfect bottles before reuse.

(10) A home will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize using four tablespoons of household bleach to one gallon of cool water or a bleach-equivalent product approved by CYFD.

(11) A home will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(12) A home shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A home will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served. Areas will be disinfected before and after each use.

(2) A home will provide sanitary cups or glasses or a drinking fountain for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A home will not allow children to share drinking or eating utensils.

(3) Time allowed for meals shall enable children to eat at a reasonable rate. [8.16.2.35 NMAC - Rp, 8.16.2.34 NMAC, 06/30/10]

8.16.2.36 HEALTH AND SAFETY REQUIREMENTS:

A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(a) after using a toilet, assisting a child with toilet use, or changing a diaper;

(b) before and after caring for a sick child;

(c) before any food service activity, including setting the table;

(d) before and after eating or feeding a child; and

(e) after handling pets or animals or items used by animals such as water and food bowls.

(2) A home will label with the child's name and store separately any item used for an individual child's personal hygiene.

B. FIRST AID REQUIREMENTS:

(1) A home will keep a first-aid kit and a first-aid manual together in the home in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum: band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

(2) A home will treat blood spills cautiously and promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A home will clean contaminated surfaces first with hot soapy water then with a disinfecting solution, which is effective against HIV and hepatitis B.

C. MEDICATION:

(1) A home will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Homes will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the home. A home will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep and sign a written record of the dosage, date and time a child is given

medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The home shall not administer expired medication.

D. ILLNESS AND NOTIFIABLE DISEASES:

(1) Children or staff members absent due to any notifiable disease will not return to the home without a signed statement from a physician.

(2) A home will separate and constantly observe a child who becomes sick at the home and promptly notify a parent or guardian of the child's illness.

(3) A home will send a child home when:

(a) the child's oral temperature is 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 degrees (fahrenheit) or greater and the child shows signs of illness or behavior changes; or

(b) the caregiver observes signs of contagious disease or severe illness.

[8.16.2.36 NMAC - Rp, 8.16.2.35 NMAC, 06/30/10]

8.16.2.37 OTHER:

A. TRANSPORTATION:

(1) When a home provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

(2) A home will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows:

(a) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag.

(b) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

(c) Children five years of age through six years of age, regardless of weight, or children who weigh less than sixty pounds, regardless of age, shall be properly secured in either a child booster seat or an

appropriate child passenger restraint device that meets federal standards.

(d) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

(3) Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

(4) A home will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The home will ensure children do not cross a street unsupervised after leaving the vehicle.

(5) No one will smoke in a vehicle used for transporting children.

(6) Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility.

B. FIELD TRIPS:

(1) A home will ensure the children's safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection D of 8.16.2.32 NMAC for information on permission slips.

(2) Children will not go to a private residence other than the licensed home unless accompanied by two adults.

C. PETS:

(1) A home will inform parents or guardians in writing before pets are in the home.

(2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the home.

(3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(5) A caregiver must be physically present during the handling of all pets or other animals.

[8.16.2.37 NMAC - Rp, 8.16.2.36 NMAC, 06/30/10]

8.16.2.38 SPECIAL REQUIREMENTS:

A. INFANTS AND TODDLERS:

(1) A home will not admit any child under the age of six weeks except with the written approval of a licensed physician.

(2) Throughout the day, a

caregiver will give each infant and toddler physical contact and attention. A caregiver will hold, talk to, sing to and take inside and outside walks with the child. A caregiver will respond immediately to all cries of infants and to the cries of all children within two minutes.

(3) A caregiver will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(4) Infants shall not be allowed to be confined to one area for prolonged periods of time unless the infant is content and responsive.

(5) A home will arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.

(6) Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sipper cups by young children throughout the day or night shall not be permitted.

(7) Each infant shall be allowed to form and observe his/her own pattern of feeding, sleeping, and waking periods.

(8) Food served shall meet the nutritional needs of the infant or toddler. Foods shall be developmentally appropriate for each infant served.

B. DIAPERING AND TOILETING:

(1) A caregiver will plan toilet training with a parent so the toilet routine is consistent. A home will not attempt to toilet train a child who is not developmentally ready.

(2) A home will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single use gloves when changing a diaper and wash their hands after changing a diaper.

(3) A home will have a supply of dry, clean clothing and diapers sufficient to meet the needs of the child. A home will label diapers and diapering supplies for each child and store them separately. Diaper bags will be inaccessible to children.

(4) A care giver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change. Soiled diapers shall be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

C. EQUIPMENT:

(1) Cribs will meet federal standards and be kept in good repair. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs.

(2) A home will not use accordion-style baby gates.

(3) Toys and equipment must be safe, durable, and easy to clean, non-toxic and disinfected daily.

D. NIGHT CARE: In addition to all other requirements, a home providing night care will have a care giver onsite, physically available and responsive to children who need attention during the night.

E. ACCREDITED HOMES: Accredited homes must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to continue to receive augmented child care reimbursement rates. The licensing authority may, at its option, notify the home's accrediting body of the home's failure to meet and maintain licensing standards.

[8.16.2.38 NMAC - Rp, 8.16.2.37 NMAC, 06/30/10]

8.16.2.39 BUILDING, GROUND AND SAFETY REQUIREMENTS:

A. HOUSEKEEPING:

(1) A caregiver will keep the premises, including furniture, fixtures, toys and equipment clean, safe, disinfected and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will have a tight fitting lid, be durable and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed child care homes must use a New Mexico licensed pest applicator whenever applying pesticides on the home's buildings and grounds.

(2) The pest control company may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides and insecticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

C. MECHANICAL SYSTEMS:

(1) A home will maintain comfortable temperatures (68 degrees through 82 degrees fahrenheit) in all rooms used by children. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a center exceeds the 82 degrees fahrenheit in the summer months because of evaporative cooler

temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A home will not use unvented heaters, open flame heaters or portable heaters. A home will install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees (fahrenheit), fireplaces, fireplace inserts and wood stoves.

(3) A home must maintain all heating and cooling equipment so that it is in good working order.

(4) A home will provide fresh air and control odors by either mechanical or natural ventilation. If a home uses a window for ventilation, it will have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Water coming from a faucet will be below 110 degrees (fahrenheit). A home will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) A home will use U/L approved equipment only and will properly maintain this equipment.

(2) All electrical outlets within reach of children will be safety outlets or will have protective covers.

(3) The use of multi-prong or gang plugs is not allowed. Surge protectors are not gang plugs under these regulations.

(4) Providers shall keep window curtains open during daylight hours to provide natural light, except as follows:

- (a) during naptime and
- (b) where closing the window curtain helps control excessive heat.

E. EXITS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be useable for an emergency exit.

F. TOILET AND BATHING FACILITIES:

(1) All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children. A home will not use a common towel or wash cloth.

(2) All closets and bathroom locks must have an outside release. A home will enclose all bathrooms.

G. SAFETY COMPLIANCE:

(1) A home will have an operating smoke detector in each child-activity room

and in each room in which a child sleeps.

(2) A home will have a 2A10BC extinguisher mounted in the kitchen in a visible and easily accessible place. A professional will inspect each fire extinguisher once a year and fire extinguishers will have official tags noting the date of inspection.

(3) A home will conduct at least one fire drill each month, will hold the drills at different times of the day and will keep a record of the fire drills with the date, time, number of adults and children participating, and any problems.

(4) A home will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone.

H. S M O K I N G , FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A home will prohibit smoking and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. A home will unload all guns, such as pellet or BB guns, rifles and handguns, and keep them in a locked area inaccessible to children. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

[8.16.2.39 NMAC - Rp, 8.16.2.38 NMAC, 06/30/10]

8.16.2.40 REGULATIONS FOR PROGRAMS OFFERING ONLY OUT OF SCHOOL TIME CARE:

APPLICABILITY: A child care program required to be licensed under 8.16.2.41 NMAC through 8.16.2.47 NMAC of this regulation provides a variety of developmentally appropriate activities that are both educational and recreational at a specific site, usually a school, on a regular basis before or after school or when school is not in regular session to children age five to 18 years, and not exempted from regulation under any of the exceptions listed in 8.16.2.9 NMAC.

[8.16.2.40 NMAC - Rp 8.16.2.39 NMAC, 06/30/10]

8.16.2.41 LICENSURE:

A. LICENSING REQUIREMENTS:

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension

will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A program will submit a new application to the licensing authority before changing anything that is stated on the license such as dates, capacity, director, address, etc.

(3) **BACKGROUND CHECK:** The licensing authority will provide a copy of the most current version of the department's Background Check and Employment History Verification provisions (8.8.3 NMAC), regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff, volunteers, and prospective staff and volunteers, and all adults residing in the home as per the requirements of the most current version of the department's Background Check and Employment History Verification provisions. All requirements of the current Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

(4) **ZONING, BUILDING AND OTHER APPROVALS:** An applicant will use the approvals provided to the schools and community centers as long as the approvals are current according to the applicable department's requirements. Acceptable documents will be provided to the licensing authority before licensure. Otherwise, an applicant will have:

(a) current written zoning approval from the appropriate city, county or state authority;

(b) current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;

(c) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; and

(d) current written approval from the New Mexico environment department or other environmental health authority for:

(i) a kitchen, if meals are prepared and served on site in the program;

(ii) private water supply, if applicable;

(iii) private waste or sewage disposal, if applicable; and,

(iv) a swimming pool, if applicable.

(5) **ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW FACILITIES:** Accessibility for individuals with disabilities is provided in all new facilities and will include the following.

(a) Main entry into the facility is

level or has a ramp to allow for wheelchair access.

(b) Building layout allows for access to the main activity area.

(c) Access to at least one bathroom is required to have a door clearance of 32 inches. The toilet unit also provides a 60-inch diameter turning radius.

(d) If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise.

(e) Ramps exceeding a six-inch rise are provided with handrails.

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

(6) SCHEDULE: All applications for a new license will include a description of the programs proposed activities and schedule.

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

B. CAPACITY OF A PROGRAM:

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

(2) The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site.

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

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

(b) A program must have an outdoor activity space.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members and visitors.

C. NOTIFICATIONS:

(1) INCIDENT REPORTS: The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

- (a) a lost or missing child;
- (b) the death of a child;
- (c) the abuse or neglect of a child;

(d) accidents, illness, injuries or anything else that requires medical care beyond on-site first aid;

(e) fire, flood, or other natural disaster that creates structural damages to a program or poses a health hazard;

(f) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; or

(g) any legal action against a program or staff members related to the care and custody of children.

(2) A program will notify parents and guardians in writing of any incident, including notifiable illnesses that has or could threaten the health or safety of children in the program. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.41 NMAC.

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

[8.16.2.41 NMAC - Rp, 8.16.2.40 NMAC, 06/30/10]

8.16.2.42 ADMINISTRATIVE REQUIREMENTS:

A. ADMINISTRATION RECORDS: A licensee shall display in a prominent place that is readily visible to parents, staff and visitors:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the program;

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

(5) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

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

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

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

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

(c) program information (location,

license information, days and hours of operation, services offered);

(d) name of director and how he/she may be reached;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open door policy to the classroom;

(h) appropriate dress for children, including request for extra change of clothes;

(i) celebrating holidays, birthdays and parties;

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) fee payment procedures, including penalties for tardiness;

(d) notification of absence;

(e) fee credits, if any (e.g. for vacations, absences, etc.);

(f) field trip policies;

(g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(h) emergency procedures and safety policies;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure;

(l) guidance policy; and

(m) an up to date emergency evacuation and disaster preparedness plan approved annually by the licensing authority; the department shall provide guidance on developing these plans.

D. CHILDREN'S RECORDS: A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will be kept at the program, unless otherwise indicated in the list below, for 12 months after the child's last day of attendance. Records will contain at least:

(1) PERSONAL INFORMATION:

(a) name of the child; date of birth, gender, home address, mailing address and telephone number;

(b) names of the parents or guardians, the parents or guardian's current places of employment, addresses, and pager, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified

at pick up;

(d) date the child first attended the program and the date of the child's last day at the program;

(e) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or signs of abuse or neglect, both of which must be reported to a parent or guardian; these records may be kept at a central location;

(f) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

(g) a record of the time the child arrived and left the program and dates of attendance initiated by a parent, guardian, or person authorized to pick up the child; and

(h) an enrollment agreement; this form will be signed by a parent or guardian with an outline of the services and the costs; these forms may be kept at a central location.

(2) EMERGENCY INFORMATION:

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

(b) the name and telephone number of a physician or emergency medical facility authorized by a parent or guardian to contact in case of illness or emergency;

(c) a document giving a program permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian;

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

E. PERSONNEL RECORDS:

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct contact with the children. A program will keep the file for one year after the caregiver's last day of employment. Unless otherwise indicated, a licensee may keep the items listed below in a central location. Records will contain at least the following:

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

(e) documentation of a background check and employment history verification;

all persons providing care are required to annually sign a statement that they have or have never had an arrest or substantiated referral to a child protective services agency; if the person has had an arrest or a substantiated referral, they must provide the licensing authority with a written statement concerning the circumstances; an employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children; documentation of a background check for all current employees must be kept on-site;

(f) documentation of first-aid and cardiopulmonary resuscitation training; this documentation must be kept on-site for all current employees;

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

(h) emergency contact number;

(i) universal precaution acknowledgement; and

(j) a written plan for ongoing professional development for each staff member, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals.

(2) A program will maintain current work schedules and daily sign in sheets for the director, all staff and all care givers and keep the records on file for at least 12 months. The record will include the time the employee arrived at and left work and include breaks and lunch.

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

(1) organizational chart;

(2) job descriptions of all employees by title;

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

(4) code of conduct;

(5) training requirements

(6) procedures and criteria for performance evaluations;

(7) policies on absence from work;

(8) grievance procedures;

(9) procedures for resignation or termination;

(10) copy of licensing regulations;

(11) policy on parent involvement;

(12) health policies related to both children and staff;

(13) policy on sexual harassment;

and

(14) plan for retention of qualified

staff.

[8.16.2.42 NMAC - Rp, 8.16.2.41 NMAC, 06/30/10]

8.16.2.43 PERSONNEL AND STAFFING:

A. PERSONNEL AND STAFFING REQUIREMENTS GENERAL:

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

(2) Care givers (staff members) who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

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

(4) Substitutes, volunteers and part-time care givers counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes and care givers routinely employed in a facility but working 20 hours or fewer a week will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements. See Paragraph (3) of Subsection C of 8.16.2.43 NMAC for additional training requirements.

B. STAFF QUALIFICATIONS:

(1) Unless exempted under Paragraph (3) below, an out of school time program will have an administrator/director who is at least 21 years old and has proof of a current copy of:

(a) a child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC) or an associate of arts or applied science degree in child development or early childhood education and at least two years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

(b) a bachelor's degree or higher in early childhood education or a related field with at least one year of experience in an early childhood growth and development setting or a school-age child care growth and development setting; early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(2) Every site of an out of school time program will have a site director who has at least a high school diploma or GED and proof of at least three years of experience working with children.

(3) Program administrators and site directors employed in a licensed

program on the date these regulations become effective but who are not qualified will continue to qualify in their positions as long as they continuously work as program administrators or site directors. Current program administrators and site directors having a break in employment of more than one year must meet the requirements.

C. TRAINING:

(1) The program administrator will develop and document an orientation and training plan for new staff members and will provide information on training opportunities. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following areas: a) scope of services and activities offered by the program; b) emergency first aid procedures; c) indicators of child abuse and neglect; d) fire prevention measures and emergency evacuation plan; e) review of licensing regulations; f) review of policies regarding guidance; g) child abuse and neglect reporting; h) handling of incidents and complaints; i) health and safety, including infection and injury prevention and control.

(2) A program will keep a training log on file with the employee's name, date of hire and position. The log must also include the date, hours of training, subject, training source and training certificate.

(3) All care givers are required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. Training shall be relevant to school age children. Identical trainings shall not be repeated for the purpose of obtaining credit. The competency areas are:

- (a) child growth, development, and learning;
- (b) health, safety, nutrition, and infection control;
- (c) family and community collaboration;
- (d) developmentally appropriate content;
- (e) learning environment and curriculum implementation;
- (f) assessment of children and programs; and
- (g) professionalism.

(4) Training must be provided by people who have education or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department.

(5) Program administrators may count hours in personnel and business training toward the training requirement.

D. STAFFING REQUIREMENTS:

(1) Each site will have a site

director. The site director or a designated co-director who meets the same qualifications as the site director will be on site 50 percent of the program's core hours of operation.

(2) A program will maintain staff/child ratios at all times. Children must never be left unattended whether inside or outside the facility.

(3) A program will have a minimum of two staff members present at all times. If the program has less than seven children, the second caregiver may be engaged in other duties.

(4) Each site will have one adult for every 15 children age five or older. [8.16.2.43 NMAC - Rp, 8.16.2.42 NMAC, 06/30/10]

8.16.2.44 SERVICES AND CARE OF CHILDREN:

A. GUIDANCE:

(1) A program will have written policies and procedures clearly outlining guidance practices. Facilities will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined.

(4) A program will not use the following disciplinary practices:

- (a) physical punishment of any type, including shaking, biting, hitting or putting anything on or over a child's mouth;
- (b) withdrawal of food, rest, bathroom access, or outdoor activities;
- (c) abusive or profane language, including yelling;
- (d) any form of public or private humiliation, including threats of physical punishment; or
- (e) unsupervised separation.

B. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into functional identifiable learning areas, such as:

- (a) dramatic play;
- (b) creative art;
- (c) books;
- (d) blocks and accessories;
- (e) manipulatives;
- (f) music;
- (g) science;
- (h) math/number; and
- (i) sensory.

(2) Noisy and quiet areas are arranged so that children's activities can be sustained without interruption.

(3) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures.

Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(4) Learning areas are functional with adequate space and are logically placed. The environment is set up so children are not continually interrupting one another.

(5) Examples of children's individually expressed artwork are displayed in the environment.

(6) Floor surface is suitable for activities that will occur in each learning area.

(7) File and storage space is available for teacher/caregiver materials.

C. SOCIAL - EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Caregivers remain calm in stressful situations.

(2) Caregivers talk and actively listen to children and respond appropriately.

(3) Caregivers respond to children's questions and acknowledge their comments, concerns, emotions and feelings.

(4) Caregivers help children communicate their feelings by providing them with language to express themselves.

(5) Caregivers make appropriate physical contact to comfort and support children in daily routines and interactions. When children are distressed, caregivers comfort them.

(6) Caregivers model appropriate social behaviors, interactions and empathy. Caregivers respond to children that are angry, hurt, or sad in a caring and sensitive manner.

(7) Caregivers are actively engaged with children.

D. EQUIPMENT AND PROGRAM:

(1) A program will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

(2) Each child at a program will have a designated space for storage of clothing and personal belongings.

(3) A program will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A program will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(4) A program will provide children with toys, educational materials, equipment and other materials and activities that are safe, developmentally appropriate, and encourage the child's educational progress, creativity, social interaction, and a balance of individual and group activity. Program staff must be onsite, available and

responsive to children during all hours of operation.

(5) A program will post a daily activity schedule. A program will follow a consistent pattern for routine activities such as meals, snacks and rest.

(6) Children will not watch television, video tapes or play video games for more than one hour a day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content.

(7) Children and family members shall be acknowledged upon arrival and departure.

(8) Equipment and program requirements apply during all hours of program operation.

E. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment will be safe and securely anchored.

(2) A program will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

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

When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
Uncompressed Depths of Materials In Fall Zone						
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

(3) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

F. ENVIRONMENT:

(1) Environment is organized into identifiable learning centers/spaces.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members, and visitors.

G. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters the pool.

(2) If a program has a portable wading pool:

(a) a program will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a program will empty a wading pool when it is not in use and remove it from areas accessible to children;

(c) a program will not use a portable wading pool placed on concrete or asphalt.

(3) If a program has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.

(4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of caregivers, lifeguards or volunteers	Number of children
0-23 mon	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

[8.16.2.44 NMAC - Rp, 8.16.2.43 NMAC, 06/30/10]

8.16.2.45

FOOD SERVICE:

A. MEAL PATTERN
REQUIREMENTS: All foods prepared by the program will conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND
SNACKS:

(1) A program will provide a child a meal or snack at least every three hours.

(2) A program will serve a child a therapeutic or special diet with a written prescription/diet order from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the program staff.

(3) A program will serve snacks each day and will include a selection of two different food group components from the four food group components.

(4) A program shall serve only 100-percent fruit or vegetable juice. The use of fruit drinks that contain less than 100% juice or artificially flavored drinks for meals or snacks is prohibited. 100-percent fruit or vegetable juice may be diluted with water.

(5) A program shall serve a wide variety of fruits and vegetables, with a preference for fresh or frozen fruits and vegetables over canned.

(6) A program shall make water freely available to children.

(7) Menus shall contain a variety of foods. The same menu must not be served twice in one week.

C. KITCHENS:

(1) A program will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A program will serve food promptly and refrigerate immediately after use.

(4) A program will discard any leftover milk.

(5) A program will keep food requiring refrigeration, at 41 degrees (fahrenheit) or below and frozen food at 0 degrees (fahrenheit) or below.

(6) Refrigerators and separate freezers will have working internal thermometers.

(7) A program will protect food and drink by properly storing items in an airtight container or by tightly wrapping them. A program will label and date all leftover food.

(8) A program will protect all food from insects, rodents and other vermin.

(9) A program will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with

soapy water; 2) rinse with clean warm water; and 3) sanitize using four tablespoons of household bleach to one gallon of cool water or a bleach-equivalent product approved by CYFD.

(10) A program will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(11) A program will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and disinfect the areas before and after use.

(12) A program will provide sanitary cups or glasses or a drinking fountain for drinking water. A program will not allow children to share drinking or eating utensils.

(13) A program shall thoroughly sanitize food preparation surfaces before and after each use.

[8.16.2.45 NMAC - Rp, 8.16.2.44 NMAC, 06/30/10]

8.16.2.46 HEALTH AND SAFETY REQUIREMENTS:

A. **HYGIENE:** Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(1) after using a toilet;

(2) before and after caring for a sick child;

(3) before any food service activity, including setting the table;

(4) before and after eating; and

(5) after handling pets or animals or items used by animals such as water and food bowls.

B. **FIRST AID REQUIREMENTS:**

(1) A program will have on duty at all times one staff member or caregiver currently certified in first aid and cardiopulmonary resuscitation (CPR).

(2) A program will keep a first-aid kit and a first-aid manual together in the program in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, as a minimum, band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

(3) A program will treat blood spills cautiously and promptly decontaminate the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A program will clean contaminated surfaces first with hot soapy water then with a disinfecting solution which is effective against HIV and hepatitis B.

C. **MEDICATION:**

(1) A program will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Programs will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the program. A program will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep a written record of the dosage, date, and time a child is given medication with the signature of the staff who administered the medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of the information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The program shall not administer expired medication.

D. **ILLNESSES:**

(1) Children or staff members absent due to any notifiable disease will not return to the program without a signed statement from a physician.

(2) A program will separate and constantly observe a child who becomes sick at the program and promptly notify a parent or guardian of the child's illness.

(3) A program will send a child home when:

(a) the child's oral temperature is 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 degrees (fahrenheit) or greater and the child shows signs of illness or behavior changes; or

(b) a caregiver observes signs of contagious disease or severe illness.

(4) The program will have a cot or mat available for sick children and it will be cleaned and disinfected thoroughly after use.

[8.16.2.46 NMAC - Rp, 8.16.2.45 NMAC, 06/30/10]

8.16.2.47 OTHER:

A. **TRANSPORTATION:**

(1) All vehicles used for

transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

(2) A program will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The program will ensure children do not cross a street unsupervised after leaving the vehicle.

(3) No one will smoke in a vehicle used for transporting children.

(4) A program will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

(a) Children five years of age through six years of age, regardless of weight, or children who weigh less than sixty pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(b) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

(5) Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least weekly.

(6) Vehicles operated by the program to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees fahrenheit. If the outside air temperature falls below 50 degrees fahrenheit the program will ensure the vehicle is heated.

(7) Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

B. FIELD TRIPS:

(1) A program will ensure the children's safety on field trips and excursions. See Subparagraph (f) of Paragraph (1) of Subsection D of 8.16.2.42 NMAC for requirements concerning field trip permission slips.

(2) Children will not go to a private residence unless accompanied by two adults.

C. PETS:

(1) A program will inform parents or guardians in writing before pets are at the program site.

(2) A program will not allow pets in the kitchen, food serving, food storage areas, or bathrooms.

(3) A program will inoculate any

pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the program.

(4) A program will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(5) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(6) A staff member must be physically present during the handling of all pets or other animals.

D. HOUSEKEEPING:

(1) A program will keep the premises, including furniture, fixtures, toys and equipment clean, safe, disinfected, and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will be durable, and constructed of materials that will not absorb liquids.

E. PEST CONTROL:

(1) All licensed programs must use a New Mexico licensed applicator whenever applying pesticides in or on the program's buildings and grounds.

(2) The applicator may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

F. MECHANICAL SYSTEMS:

(1) A program will maintain comfortable temperatures (68 degrees fahrenheit through 82 degrees fahrenheit) in all rooms used by children. A program may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a program exceeds the 82 degrees fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A program must maintain all heating and cooling equipment so that it is in good working order.

(3) A program will not use unvented heaters, open flame heaters or portable heaters. A program will install

barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees (fahrenheit), fireplaces, fireplace inserts and wood stoves.

(4) A program will provide fresh air and control odors by either mechanical or natural ventilation. If a program uses a window for ventilation, it will have a screen. If a door is used for ventilation, it must have a screen door.

(5) Water coming from a faucet will be below 110 degrees (fahrenheit). A center will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

G. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas will have sufficient glare-free lighting with shatterproof or shielded bulbs.

(2) A program will have emergency lighting that turns on automatically when electrical service is disrupted.

(3) Use of electrical cords and outlets:

(a) A program will use U/L approved equipment only and will properly maintain this equipment.

(b) The use of multi-prong or gang plugs is prohibited. Surge protectors are not gang plugs under these regulations.

H. EXITS AND WINDOWS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be 24 inches. The minimum net clear opening width dimension must be 20 inches, and the finished sill height must not be more than 44 inches above the floor.

(1) There must be at least two exits remote from each other in each activity area of the program.

(2) Exit ways must be kept free from obstructions at all times.

I. TOILET AND BATHING FACILITIES:

(1) All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children. A program will not use a common towel or wash cloth.

(2) All toilets and sinks must be located within 100 feet of the licensed area. The staff member shall maintain a direct line of sight of the child until the child enters the bathroom and from the time the child leaves the bathroom until the child returns.

J. SAFE T Y

COMPLIANCE:

(1) A program will conduct at least one fire drill each month. A program will:

(a) hold the drills at different times of the day;

(b) use the fire alarm, detector system or a simulated fire alarm;

(c) emphasize an orderly evacuation rather than speedy; and

(d) a program will keep on file a record of the fire drills with the date, time, number of adults and children participating, and any problems encountered during the fire drill; records will be kept for one year.

(2) A program shall request an annual fire inspection from the fire authority having jurisdiction. If the policy of the fire authority having jurisdiction does not provide for an annual inspection of the program, the program must document the date the request was made and to whom. A copy of the latest inspection must be posted in the program.

(3) A program will post evacuation plans for each room used by children in the appropriate room.

(4) A program will keep a working telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. A pay phone will not fulfill this requirement. If cordless phones are used, emergency numbers shall be posted on the phone itself. Facilities shall post the center's telephone number and address in a conspicuous location next to the emergency phone numbers.

(5) A program must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement.

(6) A program must have a minimum of two 2A10BC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the center.

(7) Fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting must be properly maintained and inspected on at least a yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection G of 8.16.2.47 NMAC for emergency lighting requirements.

K. S M O K I N G , FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A program will prohibit smoking in all areas, including vehicles, and will not allow any alcoholic beverages, firearms or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

L. A C C R E D I T E D

PROGRAMS: Accredited programs must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to continue to receive augmented child care reimbursement rates. The licensing authority may, at its option, notify the program's accrediting body of the program's failure to meet and maintain licensing standards.

[8.16.2.47 NMAC - Rp, 8.16.2.46 NMAC, 06/30/10]

HISTORY OF 8.16.2 NMAC:

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

HSSD 76-8, Child Care Facilities, Licensing Rules, Regulations and Standards, 12-1-76 HED-82-4 (HSD), Regulations Governing Child Care Center Licensing, 8-11-82 HED-81-2 Regulations Governing Family Day Care Licensing, 6-16-81

HED 82-6 (HSD), Regulations Governing Family Day Care Licensing, 8-11-82

HED 87-1 (HSD), New Mexico Regulations Governing Facilities Providing Day/Night Care to Children, 6-16-87

HED 87-3 (HSD), New Mexico Regulations Governing Facilities Providing Day/Night Care to Children, 6-19-87.

HISTORY OF REPEALED MATERIAL:

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-99.

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-00.

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-01.

8.16.2 NMAC, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 11-01-02.

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 2-14-05.

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 6-30-10.

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT
EARLY CHILDHOOD SERVICES
DIVISION**

This is an amendment to 8.15.2 NMAC, Sections 7, 9 - 17, 19, 21 and 22, effective 6/30/10.

8.15.2.7 DEFINITIONS:

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

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

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

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

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

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

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

G. "Homeless" means an individual who lacks a fixed, regular, and adequate nighttime residence; and an individual who has a primary nighttime residence that is:

(1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) an institution that provides a temporary residence for individuals intended

to be institutionalized; or

(3) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

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

I. "Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

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

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

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

administration, and staff/child ratios.

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

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

N. "Overpayment" means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

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

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

(1) "In-home" care means care provided in the child's own home.

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

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

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

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

(6) "Out of school time care" means child care provided to a kindergartner or school age child up to age ~~[thirteen]~~ 13 immediately before ~~[and/or]~~ or immediately after a regularly scheduled school day ~~[and/or]~~ or when regular school is not in session.

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

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

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

T. "SNAP" means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

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

~~[T:] V.]~~ V.] "Suspension" means that the child care case is kept open, but benefits are not paid.

~~[U:] W.]~~ W.] "TANF" means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

~~[V:] X.]~~ X.] "Teen parent" means a biological parent under the age of 20 who is attending high school, ~~[or]~~ or working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

~~[W:] Y.]~~ Y.] "Termination" means the child care case is terminated due to cause.

~~[X:] Z.]~~ Z.] "Underpayment" means a payment made by the department for services provided which did not fully reimburse the client or provider.

~~[Y:] AA.]~~ AA.] "Unearned income" means income in the form of benefits such as TANF, workmen's compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, and grants which does not meet the definition of earned income.

~~[Z:] BB.]~~ BB.] "Waiting list" means a list of families who have applied for child care services during a period of lack of funding.

~~[AA:] CC.]~~ CC.] "Working" means employment of any type, including self-employment. For TANF recipients, this includes work experience ~~[and/or]~~ or community service or any other activity that meets the TANF work activity requirements.

~~[BB:] DD.]~~ DD.] "CACFP" means the child and adult care food program, administered by the children, youth and families department.

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC,

02/14/05; A, 09/15/05; A, 08/31/06; A, 06/30/10]

8.15.2.9 PRIORITIES FOR ASSISTANCE: Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

A. Priority one ~~[and priority one A]~~: Clients receiving temporary assistance to needy families (TANF) benefits are considered priority one clients. ~~[Clients participating in the food stamp employment and training (E&T) program as determined and administered by the human services department (HSD) are considered priority one A clients.]~~

(1) Participation exemption: The human services department grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the verification of the TANF participant's inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

(a) the unavailability of appropriate child care within a reasonable distance from the individual's home or work site, or;

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements, or;

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2) A person who applies for participation exemption for any ~~[and/or]~~ or all of the above reasons is referred to the children, youth & families department training and technical assistance (T&TA) contractor for that area. The T&TA assists the client with location of child care. The final validation/verification of a client's inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with the human services department (HSD). HSD is responsible for providing notice of the approval ~~[and/or]~~ or denial of a participation exemption.

B. Priority one A: Clients participating in the supplemental nutrition assistance program (SNAP) as determined and administered by the human services department (HSD) are considered priority one A clients.

~~[B.]~~ C. Priority one B: Child care assistance for income eligible families whose income is at or below 100% of the federal poverty level. If the number

of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority one B for children with special needs and for teen parents. If budget availability permits, the department reserves the right to transfer priority one B families whose income exceeds 100% of the federal poverty level but is at or below 200% of the federal poverty level to the priority four category.

~~[E.]~~ D. Priority two: Child care assistance for a consecutive 12-month period for families transitioning off TANF. Clients must have received TANF for at least one ~~[(+)]~~ month in the past ~~[twelve (+2)]~~ 12 months in order to qualify for priority two. Only clients whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their ~~[twelve (+2)]~~ 12 consecutive month period of eligibility for priority two child care.

~~[D.]~~ E. Priority three: No new families will be enrolled in priority three. This category will be eliminated through attrition as priority three families become ineligible for any reason including but not limited to: income exceeding 200% of the federal poverty level; failure to re-certify in a timely manner; ~~[and/or]~~ or loss of employment which results in loss of benefits.

~~[E.]~~ F. Priority four: Child care assistance for families whose income is above 100% of the federal poverty level but at or below 200% of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a six month block of time subject to the availability of funds and renewable subject to the availability of funds. Exceptions to the six month certification period are included in 8.15.2.12 NMAC. The department reserves the right to expand the eligibility requirement up to 200% of the federal poverty level based on budget availability. Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority four for children with special needs, ~~[and for]~~ teen parents and homeless families.

~~[F.]~~ G. CPS child care: In addition to these priorities, the department pays for protective services child care (CPS) as determined by the protective services of the department.

[8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 02/14/05; A, 09/15/05; A, 06/30/10]

8.15.2.10 APPLICATION PROCESS: ~~[Clients apply for child care assistance benefits by presenting the~~

~~following documents to establish eligibility in person, or by mail, at the local child care office:]~~

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person, or by mail, at the local child care office. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation.

~~[A.]~~ (1) a completed signed application form;

~~[B.]~~ (2) current proof of earned income or participation in the temporary assistance to needy families (TANF) program or the ~~[food stamp employment and/or training (E&T)]~~ supplemental nutrition assistance program; social security numbers may be used to establish TANF participation or receipt of child care support;

~~[C.]~~ (3) school schedule, if applicable;

~~[D.]~~ (4) birth certificates for all applicant children;

~~[E.]~~ (5) proof of unearned income;

~~[F.]~~ (6) proof of residency; and

~~[G.]~~ (7) the name, address, phone number, and social security number of the provider selected to care for the children;

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

(1) the client is utilizing child care services;

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

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

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 02/14/05; A, 08/31/06; A, 06/30/10]

8.15.2.11 ELIGIBILITY REQUIREMENTS: Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

A. The household: The household includes biological parents, stepparents, and legal guardians living in the household, thereby constituting an economic unit, and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, ~~[and/or]~~ and are applying for child care benefits on behalf of the children.

B. Allowed exclusions from the household for co-pay calculation

only: Excluded from the household for co-pay calculation purposes only are grandparents or legal guardians who have taken custody/guardianship of children due to circumstances such as but not limited to death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents [and/or] or legal guardians in this situation are required to qualify for child care assistance as per Subsection D below and, upon qualification, have the required co-pay waived.

C. Adult dependent children: ~~[Eighteen—(18)]~~ 18 year old dependent children must be attending school to be counted in the household. Incidental money earned by dependent children is not to be counted as household income.

D. Household income: Income eligibility for benefits is determined by the number of members in the household and the total countable gross earned and unearned income.

E. Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable). These include, but are not limited to: income from employment by working for others or from self-employment; child support payments; alimony payments; veterans administration (VA) payments except VA payments for educational purposes and disability; union payments; unemployment or workman's compensation; ~~[social security benefits for dependent children;]~~ railroad retirement benefits; pensions; ~~[work study income;]~~ TANF benefits, including diversionary payments; royalties; ~~[cash gifts;]~~ and income from rental property; overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

F. Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of a dependent child who is under 18 and in school; food stamps, military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency status beginning September 11, 2001;" third party payments; energy assistance benefits; foster care payments; adoption subsidies; supplemental security income (SSI); social security benefits for dependent children; VA payments for educational purposes and disability; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or Americorp; Work Investment Act (WIA) payments made to

dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; work study income; overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts.

G. Verification of income: Clients applying for child care assistance benefits are required to verify income by providing current proof of income for all members of the household who receive income. Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined.

H. Residency requirement: A recipient of child care assistance or a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

I. Citizenship: A recipient of child care assistance must be a citizen of the United States; or a qualified alien as determined by applicable federal laws. If a child is determined to be a citizen of the United States or a qualified alien, as approved by the New Mexico human services department, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship ~~[and/or] or~~ alien status of the child's parent or parents.

J. Age requirement: Child care benefits are paid for children between the ages of six ~~[(6)]~~ weeks up to the month in which the child turns 13 years old.

K. Teen parent: A teen parent who is attending a high school or a GED program or attending any other job skills training ~~[and/or] or~~ educational programs directly related to enhancing employment opportunities is prioritized relative to budget availability.

L. Failure to use authorized child care: If authorized child care has not been used for 10 consecutive scheduled days without a reason such as illness, sudden death, or family medical emergency, child care assistance services may be terminated. ~~[The department notifies the client and requests contact within fourteen (14) calendar days of the mailing date of the notification. If there is no contact by the final day of the expiration of the fourteen (14) calendar day notice, the case will be closed. The provider will be issued a fourteen (14) calendar day notice of the date of the closure and payment will be made through the final day of the expiration~~

~~of the provider's fourteen (14) calendar day notice, if the provider has reported the non-attendance in a timely manner.] The provider or the client shall notify the department within three business days after the tenth day of non-attendance. Upon receiving notice from the provider or the client within the prescribed timeframe, the department shall issue a 14 calendar day notice to the client stating when the client's case will be closed and shall simultaneously issue a 14 calendar day notice to the provider stating when the last date of payment will be made. Providers shall be paid through the final day of expiration of the provider's 14 calendar day notice, if the provider has reported non-attendance within the prescribed three-day timeframe. If the department is not notified within this three day timeframe, the provider shall be paid through the tenth day of non-attendance and no further. The client's case will be closed on the final day of expiration of the 14 calendar day notice if the client does not respond to the 14 calendar day notice.~~ Clients in cyclical employment are exempted.

M. Work/education requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity. Work, educational or community service activities must be approved by HSD for ~~[food stamp E&F]~~ SNAP clients. Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses. Child care benefits for clients who are preparing for the acquisition of a GED shall be limited to one year.

N. Special supervision: Child care benefits may be provided to children between the ages of ~~[thirteen and eighteen]~~ 13 and 18 who are under the supervision of a court of law, or who are determined by a medical professional to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, or who are physically or mentally incapable of caring for themselves. Children with special needs are prioritized relative to budget availability.

O. Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-k, school or other programs.

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 02/14/05; A, 06/30/10]

8.15.2.12 RECERTIFICATION: Clients must recertify for services at least once every ~~[six (6) months and must provide~~

continued proof of eligibility] six months except as follows: High school students may recertify upon the completion of the school year; and clients who have continuously received child care assistance for at least two years, who have been employed at the same location for at least two years, and who have not had frequent changes to their case may recertify every 12 months. All clients shall provide continued proof of eligibility. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, ~~[and/or]~~ or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification. [8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 02/14/05; A, 06/30/10]

8.15.2.13 CLIENT RESPONSIBILITIES: Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training program. Using child care for recreational or other purposes is considered fraud and sanctions may be imposed, including recoupment.

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for child protective services (CPS) and qualified grandparents or legal guardians as defined in Subsection B of 8.15.2.11 NMAC. Co-payments are based upon the size and income of the household.

B. Co-payments for each additional child are determined at one half of the co-payment for the previous child.

C. Co-payments for children in part-time care are determined based upon the block of time that the child is in care.

D. Clients pay co-payments directly to their child care provider and must remain current in their payments. A client who does not pay co-payments may be subject to sanctions.

E. The co-payment for a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

[E:] E. In-home providers: Parents who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent

who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent.

[F:] G. Notification of changes: Clients must notify the department of changes ~~[in income or other factors affecting the receipt of child care benefits, and report any change(s) in circumstances that affect benefits] that affect the need for care, which include but are not limited to loss of employment, no longer attending school, no longer participating in a work requirement, or household members moving in or out,~~ within 14 calendar days of the change; ~~including increase in earnings, losing or changing employment, increase or decrease in work hours, change in school or training status, change in address or residency status, or household composition].~~ Priority one clients whose TANF cases are closed by the human services department at the time of their TANF recertification, must contact the department immediately. Clients who do not comply with this requirement may be sanctioned, and may be subject to the recoupment process.

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 02/14/05; A, 06/30/10]

8.15.2.14 C A S E SUSPENSIONS: Clients who are engaged in cyclical educational programs or cyclical employment, such as students, public school employees, and school bus drivers may request temporary suspension, not to exceed three months per occurrence, of the use of child care assistance benefits without losing eligibility for benefits. Pregnant women in the third trimester of their pregnancy or whose doctor determines that continued employment before birth jeopardizes the mother or the unborn child's health may request suspension of their case. A client may request suspension of a case for maternity leave after the birth or adoption of a child for up to three months. The case may be suspended for longer than three months if there are documented medical complications for either the mother or the child. In addition, a case may be suspended for up to three months for a medically documented condition. A case may also be suspended with child care benefits being paid to client or additional household member for up to 30 calendar days in a situation of lost employment or graduation from high school or undergraduate school, providing the client is making a bona fide effort to secure [new] employment, and the client reports the change in a timely manner. Case suspensions due to lost employment or graduation are not to exceed two occurrences per calendar year. [8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 02/14/05; A, 06/30/10]

8.15.2.15 PROVIDER REQUIREMENTS: Child care providers must abide by all department regulations and provide child care paid for by the department to clients only while such clients are working, attending school or participating in a training program or participating in a TANF or ~~[food stamp E&T program]~~ SNAP approved activity/component. Child care provided for recreational or other purposes, or at times other than those outlined in the child care agreement, are paid for by the client. Knowingly accepting payment from the department for child care provided for recreational and other purposes is considered fraud and sanctions may be imposed.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are ineligible. ~~[All registered homes receiving child care assistance subsidies who register after July 1, 2006 must complete, within six months of registration, an 18-hour course or an equivalent approved by the department. The 18-hour course]~~ If registered home providers complete the 18-hour course, it will count toward the [6-hour] six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP. [Beginning July 1, 2006, all licensed providers receiving child care assistance subsidies must have a 2-Star level at the time of their renewal.] Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands. ~~[First time registered home providers have up to a 45 consecutive calendar day grace period in which to comply with the registration requirement. A 45 calendar day grace period is issued one time only.]~~ A child protective services screen will be conducted on all new registered providers ~~[and at their annual registration renewal].~~ Evidence of a substantiated referral for child abuse ~~[and/or]~~ or neglect for a provider, a second caregiver, or any persons age 18 or over residing in the provider's home ~~[and/or]~~ or working in a licensed child care center/home will result in the ineligibility of that provider to receive payments under the child care assistance program. The only exception is when a custodial parent has a substantiated referral but resides with the child care provider who does not have a substantiated referral.

B. Child care providers collect required co-payments from clients and provide child care according to the terms outlined in the child care agreement.

C. New child care providers must participate in at least one orientation session within the first six months of becoming a child care vendor for the department. Providers are notified of this requirement. ~~[Providers who do not comply with this requirement are not paid past this six-month grace period and are provided notice that payment may be suspended until this requirement is met.]~~

D. Child care providers must notify the department within three business days after the tenth day of non-attendance if the child is disenrolled or is absent for 10 consecutive scheduled days. Absences totaling ~~[ten]~~ 10 or more consecutive scheduled days must be approved by the client's caseworker. Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided by Subsection L of 8.15.2.11 NMAC.

E. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate.

(1) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(2) Providers may charge a registration/educational fee for materials and supplies only to a child care assistance family comparable to but not to exceed that charged to private pay families.

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

F. Under emergency circumstances, when CYFD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend ~~[and/or]~~ or terminate assistance payments to a licensed or registered provider.

[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 02/14/05; A, 09/15/05; A, 06/30/10]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

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

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

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

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

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

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

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

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 02/14/05; A, 08/31/06; A, 06/30/10]

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

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

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

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

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

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

- E. Out of school time care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (part time 1).
- F. Out of school time care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (full time).
- G. Out of school time care provided for 5 hours or less per week are paid at the 25% rate (part time 3) regardless of provider type.
- H. Monthly reimbursement rates

Licensed child care centers								
Full time		Part time 1		Part time 2		Part time 3		
Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural	
Infant	\$476.37	\$418.75	\$357.28	\$314.06	\$238.19	\$209.38	\$119.09	\$104.69
Toddler	\$425.72	\$389.63	\$319.29	\$292.22	\$212.86	\$194.81	\$106.43	\$97.41
Pre-school	\$395.01	\$363.02	\$296.26	\$272.27	\$197.51	\$181.51	\$98.75	\$90.76
School age	\$345.64	\$332.96	\$259.23	\$249.72	\$172.82	\$166.48	\$86.41	\$83.24
Licensed group homes (capacity: 7-12)								
Full time		Part time 1		Part time 2		Part time 3		
Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural	
Infant	\$379.01	\$355.96	\$284.26	\$266.97	\$189.51	\$177.98	\$94.75	\$88.99
Toddler	\$343.93	\$336.23	\$257.95	\$252.17	\$171.97	\$168.12	\$85.98	\$84.06
Pre-school	\$338.08	\$330.81	\$253.56	\$248.10	\$169.04	\$165.40	\$84.52	\$82.70
School age	\$333.53	\$323.53	\$250.15	\$242.65	\$166.77	\$161.77	\$83.38	\$80.88
Licensed family homes (capacity: 6 or less)								
Full time		Part time 1		Part time 2		Part time 3		
Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural	
Infant	\$365.20	\$342.60	\$273.90	\$256.95	\$182.60	\$171.30	\$91.30	\$85.65
Toddler	\$325.08	\$320.04	\$243.81	\$240.03	\$162.54	\$160.02	\$81.27	\$80.01
Pre-school	\$324.17	\$317.09	\$243.13	\$237.81	\$162.09	\$158.54	\$81.04	\$79.27
School age	\$319.28	\$309.64	\$239.46	\$232.23	\$159.64	\$154.82	\$79.82	\$77.41
Registered homes and in-home child care								
Full time		Part time 1		Part time 2		Part time 3		
Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural	
Infant	\$278.74	\$258.00	\$209.06	\$193.50	\$139.37	\$129.00	\$69.69	\$64.50
Toddler	\$264.00	\$217.69	\$198.00	\$163.27	\$132.00	\$108.85	\$66.00	\$54.42
Pre-school	\$242.00	\$220.00	\$181.50	\$165.00	\$121.00	\$110.00	\$60.50	\$55.00
School age	\$242.00	\$198.00	\$181.50	\$148.50	\$121.00	\$99.00	\$60.50	\$49.50

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

J. Providers holding national accreditation status receive an additional [~~\$120.00~~] \$132.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited

reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

K. The department pays a differential rate to providers achieving higher star levels as follows: 2-Star at \$45.00 per month per child for full time care above the base reimbursement rate; 3-Star at \$70.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$104.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$132.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

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

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

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

M. If a significant change occurs in the client's circumstances, ~~[(for example, an increase or decrease in income, or a change in work schedule)]~~ (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

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

O. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six to 12 month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06; A/E, 8/15/07; A, 06/30/10]

8.15.2.19 OVER PAYMENT AND RECOUPMENT: If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the ~~[family]~~ early childhood services director deems otherwise in exceptional circumstances. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, usually not to exceed four months. The department arranges with the client or provider to make regular payments over the agreed-upon payment period or establishes a schedule of deductions from future payments issued over the agreed-upon payment period. Failure to make regular payments may result in sanctions including termination of benefits ~~[and/or]~~ or referral of the account to a collection agency ~~[and/or]~~ or legal action.

[8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 02/14/05; A, 06/30/10]

8.15.2.21 SANCTIONS: ~~[Sanctions may be imposed on clients/providers for failing to meet programmatic requirements which affect benefits and result in an overpayment. Sanctions are imposed according to the severity of the infraction as determined by the department and as detailed below.] If a client or provider fails to meet programmatic requirements that affect benefits and result in an overpayment, sanctions may be imposed according to the severity of the infraction as determined by the department and detailed below.~~

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

B. Providers or clients who fail to report in a timely manner that a child is not in attendance for ~~[ten]~~ 10 consecutive, scheduled days will have the payment recoupment process initiated.

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

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

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

[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 02/14/05; A, 08/31/06; A, 06/30/10]

8.15.2.22 FAIR HEARINGS: Clients who have been denied benefits, whose benefits have been reduced, suspended, or terminated, or who have been sanctioned or disqualified from the program, or providers who have been sanctioned, disqualified from the program, had assistance payments suspended or terminated, or from whom a payment recoupment is being sought may request a fair hearing. The request

for a fair hearing must be made in writing within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

A. The department reviews the request for hearing and determines if the matter can be resolved without proceeding to a fair hearing. If the matter cannot be resolved without a fair hearing, the department conducts the fair hearing within 60 calendar days of receipt of the letter requesting the hearing and notifies the claimant of the date of the hearing no less than 14 calendar days prior to the hearing. The location of the hearing must be easily accessible to the claimant. Conducting the fair hearing by telephone is permitted. The claimant may request a change of date, provided that the 60 calendar day time limit is not exceeded.

B. The department appoints a hearing officer. The department is not responsible or liable for a claimant's travel costs, legal costs, or any other costs associated with the claimant's request for a fair hearing.

C. The hearing officer reviews all of the relevant information and makes a final decision within 30 calendar days of the hearing. The final decision is binding upon the department and claimant and implemented within 14 calendar days of the hearing decision. The claimant is notified in writing of the hearing officer's decision within 14 calendar days of the hearing decision.

D. At the claimant's option the case may remain open at the same benefit level until disposition. If the decision is in favor of the department, the claimant is responsible for repayment of all monies received to which the claimant was not entitled, unless the hearing decision provides otherwise or the [family] early childhood services director authorizes otherwise in exceptional circumstances. The fair hearing process is not intended as a means to extend the time for receipt of child care assistance payments to which the recipient is not otherwise entitled, and therefore exceptional circumstances must be explicitly stated.

E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF and [E&F] SNAP. Eligibility for TANF and [food stamp E&F program] SNAP is determined by the New Mexico human services department. If TANF and [E&F] SNAP benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.

[8.15.2.22 NMAC - Rp, 8.15.2.22 NMAC, 02/14/05; A, 06/30/10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.1 NMAC Sections 5, 7 and 15, effective 07-19-10.

16.5.1.5 EFFECTIVE DATE: September 30, 1996, unless a different date is cited at the end of a section [or Paragraph]. [9-30-96; 16.5.1.5 NMAC - Rn, 16 NMAC 5.1.5, 12-14-00; A, 07/19/10]

16.5.1.7 DEFINITIONS:

A. "Act" means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

B. "Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

C. "Diagnosis" means the identification or determination of the nature or cause of disease or condition.

D. "Impaired Act" means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11, NMSA 1978.

E. "Jurisprudence exam" means the examination given over the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.

F. "Licensee" means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.

G. "Provider" means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.

H. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous eleven months or will examine that patient within 30 days of giving authorization.

I. "WREB" means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

J. "CRDTS" means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

K. "NERB/ADEX" means the north east regional board of dental

examiners, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

L. "SRTA" means the southern regional testing agency a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

[K]M. "Written authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

[E]N. "Professional background service" means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

[N]O. "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in 61-5A-5 G, NMSA 1978.

[3-11-89, 5-31-95, 9-30-96, 12-15-97; 16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12-14-00; A, 06-14-01; A, 03-29-02; A, 03-06-05; A, 07-16-07; A, 07-17-08; A, 07/19/10]

16.5.1.15 GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION:

A. Approved courses and providers. The following providers and courses are approved for continuing education credits. Professional training programs used by dental assistants for certification preparation in expanded functions are considered to be "approved training programs." The credit hours for approved training programs may also be used to meet continuing education requirements[-] such as:

(1) scientific meetings or sessions sponsored or recognized by a local, state, regional, national, or international dental, dental hygiene, dental assisting or medical related professional organization;

(2) any dental related course sponsored by an institution accredited by the United States department of education;

(3) courses that are primarily in relationship to maximizing income, billing, or marketing in the dental or dental hygiene practice shall be limited to eight hours per triennial period;

(4) courses presented by approved study clubs as further defined in Subsection B of 16.5.1.15 NMAC;

(5) self-study as further defined in Subsection C of 16.5.1.15 NMAC;

(6) original presentation by a licensee who has submitted to the board an outline, date, place, and sponsor of the presentation; a maximum of eight hours will be allowed each triennial period in this category; [and]

(7) any course not sponsored by a recognized provider may be approved by the secretary-treasurer or delegate of the board; the application for approval must include the course outline, date, location, hours, names and qualifications of presenters;

(8) alternative medicine courses will be allowed a maximum of eight hours each triennial renewal period.

B. Approved study clubs. The board may approve study clubs which meet the following criteria:

(1) composed of not less than five licensees with elected officers, written bylaws, and regular meetings;

(2) organized for the purpose of scientific study; [and]

(3) the approved club must keep records of continuing education information or material presented, the number of hours, and the members in attendance; films, cassettes, or similar media produced or distributed by approved providers may be used; guest speakers may also be used to present educational material.

C. Allowable self-study.

(1) A self study course of instruction designed to directly enhance the licensee's or certificate holder's knowledge, skill, or competence in providing care to the dental consumers.

(2) Each course must include a post study course examination, which must be completed and returned for grading by the course provider.

(3) The hours of credit must be listed on the certificate [;and].

(4) A maximum of thirty credits per triennial period will be allowed in the category of self-study.

(5) A license or certificate holder who has not previously taken the board's take-home jurisprudence exam shall be granted 3 hours of continuing education credit for successfully passing the exam with a score of 75% or above, one time only. There will be a \$25 fee for the exam to cover the cost of handling.

(6) Basic life support (BLS) or cardiac pulmonary resuscitation (CPR) is not allowed thru a self-study course, a hands on course is required.

D. Credit hours.

(1) One hour of credit will be granted for every hour of contact instruction. This credit shall apply to either academic or

clinical instruction. Eight hours shall be the maximum number of continuing education credits granted in a single day.

(2) Courses which are presented in institutions of higher education for the purpose of receiving a degree, advanced degree or certificate will earn the licensee or certificate holder ten hours for every semester credit hour assigned a course as specified in the catalogue of the institution presenting the course.

E. Courses not allowed. Courses dealing largely with money management, personal finances or personal business matters, and courses in basic educational or cultural subjects that are not taught in direct relationship to dental care may not be used to fulfill continuing education requirements.

F. Verification of course attendance. The following documents, or combination of documents, may be used to verify attendance/participation in the required continuing education:

(1) course certificate with the course title, content, presenter, sponsor and units/hours;

(2) pamphlet of course with same information as requested on certificate along with canceled check;

(3) course attendance sheet submitted from the sponsor;

(4) course code or statement of attendance from presenter or sponsor of licensee attendance;

(5) for out of state courses and meetings when certificates [and] or sign-in sheets are not available, the licensee may provide a copy of the registration form, with a copy of courses in printed form which were offered, identify the ones attended, along with information regarding travel and lodging accommodations for the meeting.

[11-21-75, 5-21-93, 5-31-95; 3-11-89, 9-30-96, 12-15-97, 1-1-99; 16.5.1.15 NMAC - Rn & A, 16 NMAC 5.1.15, 12-14-00; A, 07/19/10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.3 NMAC Section 8, effective 07-19-10.

16.5.3.8 ADVERSE EVENTS AND INCIDENTS WHICH MUST BE REPORTED:

As a condition of licensure, any licensee who seeks or holds an active license, or temporary license in New Mexico, or a retired licensee who seeks to reactivate their license within [5] three years after retirement, must report the following adverse events and incidents in a written report to the board office within thirty days of that event or incident:

A. conviction of a felony or

misdemeanor, other than a traffic violation;

B. any payment in settlement of a claim, or satisfaction of judgment, in a dental malpractice action personally or by a third party;

C. any professional review action in which membership status in a health care facility is revoked or suspended; or

D. discipline by any other state licensing authority;

E. any known morbidity or mortality arising as a direct result of examination, prescription, diagnosis or treatment by a licensee which results in hospitalization or treatment of the patient by emergency personnel.

[5/31/95, 12/15/97; 16.5.3.8 NMAC - Rn, 16 NMAC 5.3.8, 04/17/06; A, 07/19/10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.6 NMAC, Sections 8, 9 and 10, effective 07-19-10.

16.5.6.8 PREREQUISITE REQUIREMENTS FOR GENERAL PRACTICE LICENSE:

Each applicant for a license to practice dentistry by examination must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12 A;

B. successfully completed the dental national board examination as defined in 61-5A-12 A;

C. passed a WREB [or], CRDTS, NERB/ADEX, or SRTA clinical examination; the results of the WREB [or], CRDTS, NERB/ADEX, or SRTA exam are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to WREB [or], CRDTS, NERB/ADEX, or SRTA for examination, and

(2) WREB [or], CRDTS, NERB/ADEX, or SRTA results must be sent directly to the board office; and

D. completed the jurisprudence exam with a score of at least 75 percent; the applicant shall schedule the exam through the board office;

E. the board requires a level III background status report from a board designated professional background service for new graduates, and a level II background status report from a board designated professional background service for an applicant who has been in practice with experience; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-14-73, 5-31-95, 9-30-96, 12-15-97;

16.5.6.8 NMAC - Rn & A, 16 NMAC 5.6.8, 06-14-01; A, 3-29-02, A, 07/16/07; A, 07/19/10]

16.5.6.9 PREREQUISITE REQUIREMENTS FOR SPECIALTY LICENSE:

Each applicant for a license to practice a dental specialty by examination must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12 A; and

B. a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in 61-5A-12[~~B~~]E in one of the following specialty areas:

- (1) dental public health,
- (2) endodontics,
- (3) oral and maxillofacial surgery,
- (4) orthodontics and dento-facial orthopedics,
- (5) oral pathology,
- (6) pediatric dentistry,
- (7) periodontology, or
- (8) prosthodontics.

C. successfully completed the dental national board examination as defined in [Section] 61-5A-12 A;

D. passed a WREB [or], CRDTS, NERB/ADEX, or SRTA specialty examination; the results of the WREB [or], CRDTS, NERB/ADEX, or SRTA exam are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to WREB [or], CRDTS, NERB/ADEX, or SRTA for examination; and

(2) WREB [or], CRDTS, NERB/ADEX, or SRTA results must be sent directly to the board office;

E. an applicant in any specialty defined above for which there is no WREB [or], CRDTS, NERB/ADEX, or SRTA specialty examination may substitute diplomat status for the examination; ~~and~~

F. completed the jurisprudence exam with a score of at least 75 percent; the applicant shall schedule the exam through the board office; ~~and~~

G. the board requires a level II background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-16-94, 5-31-95, 12-15-97, 02-14-00; 16.5.6.9 NMAC - Rn & A, 16 NMAC 5.6.9, 06-14-01; A, 3-29-02; A, 07/16/07; A, 07/19/10]

16.5.6.10 DOCUMENTATION

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

A. completed application signed and notarized with a passport quality photo taken within 6 months; applications are valid for 1 year from the date of receipt;

B. official transcripts and/or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. a copy of WREB [or], CRDTS, NERB/ADEX, or SRTA score card or certificate from the appropriate specialty board;

D. copy of national board examination certificate or score card;

E. proof of having taken a course in infection control technique or graduation from dental school within the past twelve months;

F. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; cannot be a self-study course;

[G. — repeated]

[H]G. the board will obtain verification of applicant status from the national practitioners data bank and the American association of dental examiners clearinghouse; and

[H]H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

[H]I. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

[K]J. verification of licensure in all states where the applicant holds or has held a license in good standing to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form;

[E]K. in addition to the documentation required above, an applicant for licensure in a specialty area must request official transcripts from the residency program and/or postgraduate training program to be sent directly to the board

office from the accredited program.

[3-16-94, 5-31-95, 9-30-96, 12-15-97, 8-16-99; 16.5.6.10 NMAC - Rn & A, 16 NMAC 5.6.10, 06-14-01; A, 3-29-02; A, 07/16/07; A, 07/19/10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.8 NMAC Sections 5 and 10, effective 07-19-10.

16.5.8.5 EFFECTIVE DATE: September 30, 1996, unless a [different] later date is cited at the end of a section [or Paragraph].

[9-30-96; 16.5.8.5 NMAC - Rn, 16 NMAC 5.8.5, 12-14-00; A, 07-19-10]

16.5.8.10 DOCUMENTATION REQUIREMENTS: Each applicant for licensure by credentials must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within 6 months; applications are valid for 1 year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. copy of national board examination certificate or scorecard;

D. proof of having taken a course in infection control technique within the past twelve months;

E. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; cannot be a self-study course;

F. the board will obtain verification of applicant status from the national practitioner's data bank and the American association of dental examiners clearinghouse;

G. verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form;

H. a level II status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered

by the board;

I. the board may deny, stipulate or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentist and Hygienist Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

J. proof of sixty (60) hours of continuing education during the thirty-six (36) months prior to licensure in compliance with [Section] 16.5.1.15 NMAC of these rules;

K. dentists employed in uniform service practice shall furnish:

(1) a copy of the most recent commissioned officers effectiveness report, or equivalent, issued by the uniformed service dental service, and

(2) a certified letter from the clinic commander attesting to past record and any actions taken on applicant's uniform service credentials;

L. applicants for specialty license must submit official transcripts from the residency program and/or postgraduate training program, sent directly to the board office from the accredited program;

M. certificate of diplomat status from the specialty board, if applicable, submitted directly to the board office; and

N. supplemental information may be requested by the board. [3-16-94, 8-15-96, 9-30-96, 12-15-97, 1-1-99, 8-16-99, 2-14-00; 16.5.8.10 NMAC - Rn, 16 NMAC 5.8.10, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-19-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.10 NMAC Section 9, effective 07-19-10.

16.5.10.9 C O U R S E S REQUIRED: Continuing education coursework must contribute directly to the practice of dentistry and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal.

A. Proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association or the American red cross; cannot be a self-study course.

B. Infection control. As further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.

C. Education requirements: Any dentist holding enteral anxiolysis (minimal sedation), CSI, CSII, deep sedation and permit at large (AAL) are required to

have a minimum of five hours of continuing education for the permit renewal (every six years) in medical emergencies, air way management, pharmacology, or anesthesia related topics.

[5/21/93...9/30/96; 16.5.10.9 NMAC - Rn & A, 16 NMAC 5.10.9, 04/17/06; A, 07/16/07; A, 07/19/10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.12 NMAC Sections 10 and 11, effective 07-19-10.

16.5.12.10 REINSTATEMENT FROM RETIREMENT STATUS:

A licensee whose license has been placed in retirement status may request reinstatement of the retired license within three years of the date of retirement as indicated in [section] 16.5.12.8 NMAC [of this part]. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) twenty hours of approved continuing education courses related to the clinical practice of dentistry, per year of retirement; at least twenty of these hours must be in the twelve months previous to the request;

(2) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; cannot be a self-study course;

(3) proof of infection control course within the past twelve months; and

(4) sixty hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA), and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other

health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of retirement and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from retirement status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in retirement status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of a retired license is not requested after three years of retirement, and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico.

[16.5.12.10 NMAC - Rn, 16.5.12.9 NMAC & A, 03-06-05; A, 04-17-06; A, 07-16-07; A, 07-19-10]

16.5.12.11 REINSTATEMENT FROM INACTIVE STATUS:

A licensee whose license has been placed in inactive status may request reinstatement to active license status within nine years of the date of inactivation as indicated in [Section] 16.5.12.8 NMAC [of this part]. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee and proof of the following continuing education courses:

(1) twenty hours of approved continuing education courses related to the clinical practice of dentistry, per year of inactivation; at least twenty of these hours must be in the twelve months previous to the request;

(2) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; cannot be a self-study course;

(3) proof of infection control course within the past twelve months;

(4) proof of medical emergency course during the past twelve months; and

(5) sixty hours of continuing

education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA); and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of inactivation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from inactive status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in inactive status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of an inactive license is not requested after nine years of inactivation, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico or six years if the licensee signs affidavit foregoing three years for retirement as defined in [Subsection E of] 16.5.12.8 NMAC.

[16.5.12.11 NMAC - N, 03-06-05; A, 04-17-06; A, 07-16-07; A, 07-19-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.16 NMAC Sections 5 and 10, effective 07-19-10.

16.5.16.5 EFFECTIVE DATE: September 30, 1996, unless a [different] later date is cited at the end of a section [or Paragraph].
[9-30-96; 16.5.16.5 NMAC - Rn, 16 NMAC 5.16.5, 12-14-00; A, 07-19-10]

16.5.16.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action:

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

(2) failure to refer a patient, after emergency treatment, to his regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copies of that patient's records and x-rays;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience;

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a dentist to comply with the following advertising guidelines:

(a) shall not advertise in a false, fraudulent, or misleading manner;

(b) shall include in the advertisement the dentist's name, address and telephone number;

(c) shall not advertise a practice specialty in a false, fraudulent or misleading manner; and

(d) shall not include a specialty in any advertisement unless the dentist [has completed an ADA accredited residency program in the specialty advertised or] is licensed by the board to practice the specialty;

(7) failure to use appropriate infection control techniques and sterilization procedures;

(8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another dentist licensed or applying for licensure by the board;

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a dental partnership, association, HMO

or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;

(10) prescribe, dispense or administer drugs outside the scope of dental practice;

(11) charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

(12) sexual misconduct;

(13) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American dental association;

(14) the use of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;

(15) employing abusive billing practices;

(16) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(17) violation of any order of the board, including any probation order;

(18) injudicious prescribing, administration, or dispensing of any drug or medicine;

(19) failure to report to the board the surrender of a license to practice in another state or surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(20) negligent supervision of a dental hygienist or dental assistant;

(21) cheating on an examination for licensure; or

(22) failure to comply with the terms of a signed collaborative practice agreement;

(23) failure of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care under part 17 of these rules;

(24) assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(25) failure to make available to patients a method to contact the treating dentist or other licensed dentist or emergency agency, when the dentist is not available for patient emergencies;

(26) conviction of either a misdemeanor ~~(exclusive of traffic tickets)~~ or a felony punishable by incarceration.

[9-13-69, 10-21-70, 4-11-81, 3-9-89, 3-11-89, 10-16-92, 5-31-95, 6-4-96, 2-14-00; 16.5.16.10 NMAC - Rn & A, 16 NMAC

5.16.10, 12-14-00; A, 07-16-07; A, 07-19-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.17 NMAC Sections 8 and 12, effective 07-19-10.

16.5.17.8 CERTIFICATION FOR THE COLLABORATIVE PRACTICE OF DENTAL HYGIENE:

The board, based on the recommendation of the dental hygienists committee, will certify qualified dental hygienists for collaborative practice.

A. Prerequisite requirements for certification. Each applicant for certification as a collaborative practice dental hygienist must possess the following qualifications:

(1) possess a current New Mexico dental hygiene license in good standing; and

(2) have been engaged in the active practice of dental hygiene as defined in 61-5A-4(B) of the act for not less than:

(a) 2400 hours of active practice for the past eighteen months; or

(b) a total of 3,000 hours of active practice and has been engaged in active practice for two of the past three years;

(3) meet the educational criteria for licensure in Section 61-5A 13 (A) of the act; and

(4) have 15 hours of continuing education in clinical dental hygiene in the twelve (12) months prior to certification, which includes courses in infection control and medical emergencies.

B. Documentation requirements. Each applicant for certification as a collaborative practice dental hygiene must submit a completed application, the required fees and following documentation:

(1) verification of a current active license;

(2) proof of the active practice of dental hygiene as defined in ~~[paragraph (2) Subsection A of]~~ 16.5.17.8 NMAC of this part; this proof may be in the form of notarized letters from employers, supervisors of dental clinics of one of the uniformed services of the United States, or faculty administrators of accredited schools; if this documentation cannot be obtained, the applicant may request to provide other proof of the required hours to the committee for consideration;

(3) ~~[copy of proof of current]~~ basic life support[;] (BLS) or cardiac pulmonary resuscitation (CPR): proof of current certification accepted by the American heart association or the American red cross; cannot be a self-study course;

(4) proof of 15 hours of continuing

education related to the clinical practice of dental hygiene; and

(5) a copy of a signed collaborative practice agreement between a dental hygienist and a consulting dentist.

C. Renewal requirements. Each dental hygienist certified for collaborative practice shall:

(1) submit a completed renewal application for certification for collaborative practice, along with the triennial renewal application for their license, accompanied by the required fees as defined in 16.5.18 NMAC;

(2) complete 60 hours of continuing education every triennial renewal period; if the initial certification period is less than three years, the required continuing education will be prorated at 20 hours per full year of certification; 60 hours to include:

(a) basic life support: proof of current certification accepted by the American heart association or the American red cross; ~~and~~ cannot be a self-study course;

(b) infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

(c) medical emergencies: as for new certification defined in Paragraph (4) of Subsection A of 16.5.17.8 NMAC;

(3) submit a current list of all consulting dentists to the board with each renewal application; and

(4) submit a copy of the signed collaborative practice agreement(s) and protocols between a dental hygienist and a consulting dentist per renewal period.

[2-14-00; 16.5.17.8 NMAC - Rn, 16 NMAC 5.17.8, 12-14-00; A, 04-16-08; A, 07-19-10]

16.5.17.12 COLLABORATIVE DENTAL HYGIENE PRACTICE AND LIMITATIONS:

A. A collaborative practice dental hygienist may have more than one consulting dentist.

B. A dentist shall have a consulting agreement with no more than three collaborative practice dental hygienists. The board may grant exception to this limitation for public health settings on a case-by-case basis.

C. The collaborative practice dental hygienist may own and manage a dental hygiene practice, or enter into a contractual arrangement, in any location or setting in New Mexico.

D. The committee, through the board, may take any disciplinary action allowed by the Uniform Licensing Act, against a dental hygienist certified in collaborative practice.

E. A collaborative practice dental hygienist shall not:

(1) administer local anesthesia except under the indirect supervision of a

dentist; and only if certified to do so by the board;

(2) administer a drug or medication, except those directly indicated as dental topical therapeutic or preventive agents; other therapeutic agents may only be dispensed if the collaborative practice dental hygienist holds a class C clinic license; any drugs dispensed as a class C clinic (as designated and defined by the New Mexico board of pharmacy) must be on the specific individual authorization of a dentist:

(a) all non-controlled substance medications requiring a prescription or order from the dentist may only be dispensed for immediate use in the collaborative practice dental hygienist office, and only on the specific order or protocol from the consulting dentist; a log of these dispensing shall be kept and a copy of this log shall be sent to the corresponding consulting dentist every 6 months; collaborative practice dental hygienists may not dispense or administer any controlled substance;

(b) prescription drugs, which are kept in bulk at the collaborative practice dental hygienist's office, to be dispensed or used by the collaborative practice dental hygienist as in ~~[Paragraph (2) of Subsection F]~~ 16.5.17.12 NMAC, must be purchased on an order or prescription by a consulting dentist;

(3) diagnose dental disease, but may advise the patient of suspected pathology and periodontal status;

(4) perform oral hygiene procedures on any patient identified as having a significant health risk from the procedures; unless the patients' current health history has been reviewed by the patient's dentist of record or the consulting dentist; or for patients who reside in residential or long term care facilities, the patient's dentist or physician;

(5) perform treatments requiring the diagnosis of a dentist without a prescription/order from the consulting dentist; such treatments include but are not limited to, root ~~[planning]~~ planing, sealant application, administration of therapeutic agents and other services defined in Section 61-5A-4(B) as within the scope of dental hygiene practice but which require a dentist's diagnosis;

(6) modify the standard collaborative practice protocol without a prescription or order from the consulting dentist;

(7) take impressions for bleaching trays, deliver bleaching materials or provide systems of home bleaching, or provide instructions to patients on using bleaching materials unless it is authorized on a case by case basis by prescription from a consulting dentist;

(8) provide in office bleaching systems unless under indirect supervision of

a consulting dentist.

[2-14-00; 16.5.17.12 NMAC - Rn & A, 16 NMAC 5.17.12, 12-14-00; A, 06-14-01; A, 04-16-08; A, 07-19-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.19 NMAC Sections 8 and 9, effective 07-19-10.

16.5.19.8 PREREQUISITE REQUIREMENTS FOR LICENSE: Each applicant for licensure as a dental hygienist by examination must possess the following qualifications:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13 of the act;

B. passed the dental hygiene national board examination as defined in Section 61-5A-13 A;

C. passed the WREB [or]; CRDTS, NERB/ADEX or SRTA examination as defined in Subsections I, J, K, and L of 16.5.1.7 NMAC; the results of the WREB [or]; CRDTS, NERB/ADEX or SRTA exam are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to WREB [or]; CRDTS, NERB/ADEX or SRTA for examination, and

(2) WREB [or]; CRDTS, NERB/ADEX or SRTA results must be sent directly to the board office; and

D. passed the jurisprudence exam with a score of at least 75 percentile;

E. the committee requires a level III background status report from a board designated professional background service for new graduates, and a level II background status report from a board designated professional background service for any other applicant; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-14-73, 10-4-86, 3-7-88, 5-31-95; A, 12-15-97, A, 8-16-99; 16.5.19.8 NMAC - Rn & A, 16 NMAC 5.19.8, 12-30-02; A, 07-17-08; A, 07-19-10]

16.5.19.9 DOCUMENTATION REQUIREMENTS: Each applicant for a dental hygiene license by examination must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within six months affixed to the application; applications are valid for one year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. copy of WREB [or]; CRDTS, NERB/ADEX or SRTA certificate or score card;

D. copy of national board examination certificate or score card;

E. proof of having taken a course in infection control technique or graduation from dental hygiene school within the past 12 months;

F. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; cannot be a self-study course;

G. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form; and

H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the committee.

[3-14-73, 3-7-88, 10-4-86, 5-31-95, 9-30-96, 12-15-97; 16.5.19.9 NMAC - Rn & A, 16 NMAC 5.19.9, 12-30-02; A, 04-16-08; A, 07-17-08; A, 07-19-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.20 NMAC Section 9, effective 07-19-10.

16.5.20.9 DOCUMENTATION REQUIREMENTS: Each applicant for licensure by credentials must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within 6 months affixed to the application; applications are valid for 1 year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. copy of national board

examination certificate or score card;

D. proof of having taken a course in infection control technique within the past twelve months;

E. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; cannot be a self-study course;

F. proof of 15 hours of continuing education during the 12 months prior to application;

G. a status report must be received at the board office directly from a board designated professional background service; the results of the board designated professional background service background check must either indicate no negative findings or, if there are negative findings, those findings will be considered by the committee:

(1) the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

(2) supplemental information may be requested by the committee; and

H. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

[3-28-91, 5-31-95, 9-30-96, 8-16-99; 16.5.20.9 NMAC - Rn & A, 16 NMAC 5.20.9, 06-14-01; A, 04-16-08; A, 07-19-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.23 NMAC Section 9, effective 07-19-10.

16.5.23.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of dental hygiene and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal:

A. basic life support (BLS) or cardiac pulmonary resuscitation (CPR): proof of current certification accepted by the American heart association or the American red cross; cannot be a self-study course;

B. infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.

[11/21/75, 4/12/92, 5/21/93, 5/31/95,

9/30/96; 16.5.23.9 NMAC - Rn & A, 16 NMAC 5.23.9, 04/17/06; A, 04/16/08; A, 07/19/10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.25 NMAC Sections 10 and 11, effective 07-19-10.

16.5.25.10 REINSTATEMENT FROM RETIREMENT STATUS: A licensee whose license has been placed in retirement status may request reinstatement of the retired license within three years of the date of retirement as indicated in [Section] 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, a completed application, and proof of the following continuing education courses.

(1) There will be 10 CE hours/year of retirement, up to 30 hours, required for reinstatement.

(2) The requirements of the infection control hours and the basic life support hours taken in the past twelve months may be included toward these required hours:

(a) proof of infection control course within the past twelve months; ~~and~~

(b) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; ~~cannot be a self-study course;~~

(c) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

(3) Verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession. Verification must be sent directly to the board office from the other state boards, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. The request for reinstatement from retirement status, including a statement of the applicant's activities during the period of retirement and any existing impairments, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has

fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in retirement status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of a retired license is requested within three years of retirement and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in order to practice dental hygiene in New Mexico.

[16.5.25.10 NMAC - Rn, 16.5.25.9 NMAC, 03-06-05 & A, 03-06-05; A, 04-16-08; A, 07-19-10]

16.5.25.11 REINSTATEMENT FROM INACTIVE STATUS: A licensee whose license has been placed in inactive status may request reinstatement of the inactive license to active license status within nine years of the date of inactive status as indicated in [Section] 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) there will be 10 CE hours for each year of inactive status required for reinstatement; the hours may be accumulated at any time during the year(s) of inactivation; the requirements of the infection control hours and the basic life support hours, and medical emergency course taken in the past twelve months may be included toward these required hours;

(2) proof of infection control course within the past twelve months;

(3) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association or the American red cross; ~~cannot be a self-study course;~~

(4) proof of medical emergency course during the past twelve months;

(5) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as

any continuing education taken during the retirement period; and

(6) verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession; verification must be sent directly to the board office from the other states boards, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. The request for reinstatement from inactive status, including a statement of the applicant's activities during the period of inactivation and any existing impairment, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in inactive status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of an inactive license is not requested within nine years of inactivation, application for a new license must be made by examination or credentials in order to practice dental hygiene in New Mexico or the license must be permanently retired.

[16.5.25.11 NMAC - N, 03-06-05; A, 04-17-06; A, 04-16-08; A, 07-19-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.30 NMAC Sections 5 and 10, effective 07-19-10.

16.5.30.5 EFFECTIVE DATE: September 30, 1996, unless a [different] ~~later~~ date is cited at the end of a section [or Paragraph].

[9-30-96; 16.5.30.5 NMAC - Rn, 16 NMAC 5.30.5, 12-14-00; A, 07-19-10]

16.5.30.10 GUIDELINES: The committee shall define the following as guidelines for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in patient treatment.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental hygiene profession;

(2) failure to advise the patient in simple understandable terms of the treatment rendered, the expectations for success, and the responsibility the patient must assume;

(3) failure to inform dentist and/or patient of periodontal assessment;

(4) failure to provide patient education of oral health care regimens which assist in maintaining good oral health throughout life;

(5) sexual misconduct;

(6) failure to use appropriate infection control techniques and sterilization procedures;

(7) breach of ethical standards, an inquiry into which the committee will begin by reference to the code of ethics of the American dental hygienists' association;

(8) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(9) violation of any order of the committee or board, including any probation order;

(10) injudicious administration of any drug or medicine;

(11) failure to report to the committee or board the surrender of a license to practice in another state, in lieu of, and while under disciplinary investigation by that state;

(12) deliberate and willful failure to reveal, at the request of the committee, the incompetent, dishonest, or corrupt practices of a dentist or dental hygienist licensed or applying for licensure by the committee or board; and

(13) cheating on an examination for licensure;

(14) failure of a dental hygienist to comply with the following advertising guidelines:

(a) shall not advertise in a false, fraudulent, or misleading manner, and

(b) shall include in the advertisement the name of the hygienist, the name of the employer dentist(s), the practice address(es) and telephone number(s);

(15) failure of a collaborative practice dental hygienists to refer a patient for dental care; or

(16) failure of a collaborative practice dental hygienist to comply with the terms of a signed collaborative practice

agreement;

(17) failure of a collaborative practice dental hygienist to professionally and effectively communicate with a patients dentist of record, or consulting dentist, in a professional manner in regard to a shared patient's care under 16.5.17 NMAC of these rules;

(18) assisting a health professional, or be assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(19) conviction of either a misdemeanor or a felony punishable by incarceration.

[3-14-73, 4-10-81, 10-16-92, 5-31-95, 9-30-96, 1-1-99, 2-14-00; 16.5.30.10 NMAC - Rn & A, 16 NMAC 5.30.10 12-14-00; A, 07-19-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.33 NMAC Section 7, effective 07-19-10.

16.5.33.7 DEFINITIONS:

A. "Training program" means a course of study resulting in applicant eligibility for expanded function certification.

B. "DANB" means the dental assisting national board.

C. "Indirect supervision" means a licensee is present in the treatment facility while authorized treatments are being performed by a dental assistant.

D. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan and not physically present and in facilities as designated by rule of the board.

E. "Rubber cup coronal polishing" means the use of a rubber cup or a bristle brush to remove soft debris and stain from above the gingival margin.

F. "Limited certificate" means a radiographic certificate that limits the holder to take only extra oral dental films.

[10-21-70...5-31-95, 9-30-96, 2-14-00; 16.5.33.7 NMAC - Rn, 16 NMAC 5.33.7, 12-14-00; A, 3-29-02; A, 12-30-02; A, 07-19-10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.36 NMAC Section 9, effective 07-19-10.

16.5.36.9 C O U R S E S REQUIRED:

Continuing education coursework must contribute directly to the practice of dental assisting. The following courses are required for license renewal:

A. three hours of radiographic technique or safety and protection;

B. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

C. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association or the American red cross; cannot be a self-study course; dental assistants who provide prescribed administration of nitrous oxide, or who monitor the use of any analgesia or anesthesia shall have current basic life support certification.

[8/11/89, 5/21/93, 5/31/95, 9/30/96; 16.5.36.9 NMAC - Rn & A, 16 NMAC 5.36.9, 04/17/06; A, 07/16/07; A, 07/19/10]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.40 NMAC Section 10, effective 07-19-10.

16.5.40.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of dental assisting;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any renewal or reinstatement application;

E. cheating on an examination for expanded function certification;

F. performing any procedure which requires certification unless

so certified; and

G. ~~injurious~~ administration of any drug or medicine;

H. conviction of either a misdemeanor ~~[(exclusive of traffic tickets)]~~ or a felony punishable by incarceration.

[10/16/92, 8/15/95, 9/30/96; 16.5.40.10 NMAC - Rn, 16 NMAC 5.40.10, 04/17/06; A, 07/16/07; A, 07/19/10]

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed June 11, 1991 is repealed effective June 30, 2010 and replaced by 10.4.1 NMAC, General Provisions, 10.4.2 NMAC, Classification Plan, 10.4.3 NMAC, Compensation Plan, 10.4.4 NMAC, Appointment of Employees, 10.4.5 NMAC, Reduction in Force, 10.4.7 NMAC, Attendance and Leave, 10.4.8 NMAC, Employee Performance Evaluations, 10.4.9 NMAC, Disciplinary Actions, 10.4.10 NMAC, Appeals and Adjudication and 10.4.14 NMAC, Job Specifications, effective June 30, 2010.

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT CHAPTER 4 DISTRICT ATTORNEYS PART 1 GENERAL PROVISIONS

10.4.1.1 ISSUING AGENCY:
Administrative Office of the District Attorneys
[10.4.1.1 NMAC - N, 06/30/2010]

10.4.1.2 SCOPE: This part sets forth general provisions for implementation of the District Attorney Personnel and Compensation Act and rules as they apply to all employees in the offices of the district attorneys and the administrative office of the district attorneys, except where noted.
[10.4.1.2 NMAC - N, 06/30/2010]

10.4.1.3 STATUTORY AUTHORITY: This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys

to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration; and

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys.
[10.4.1.3 NMAC - N, 06/30/2010]

10.4.1.4 DURATION:
Permanent
[10.4.1.4 NMAC - N, 06/30/2010]

10.4.1.5 EFFECTIVE DATE:
June 30, 2010, unless a later date is cited at the end of a section.
[10.4.1.5 NMAC - N, 06/30/2010]

10.4.1.6 OBJECTIVE: To establish for all district attorneys a uniform, equitable and binding system of personnel administration.
[10.4.1.6 NMAC - N, 06/30/2010]

10.4.1.7 DEFINITIONS:
A. "Anniversary date" means the date (month/day) which begins and ends an appraisal cycle. It is determined by the date of appointment or re-employment into an employee's current position and shall change with a lateral transfer between two (2) district attorneys' offices or a change in class due to a promotion, demotion, position reclassification or any other personnel action which affects an employee's job class. When employees are placed on leave without pay, their anniversary dates may be extended by that same amount of time.

B. "Break in employment" means a period of separation of one (1) work day or more in which an employee is not officially on an agency's payroll.

C. "Bereavement leave"

is leave that is approved by the district attorney for the purpose of attending events surrounding the death of an immediate family member. Sick leave, annual leave, or administrative leave may be authorized for bereavement leave.

D. "Dismissal" means the involuntary separation from employment for disciplinary reasons.

E. "Immediate family" means an incumbent's spouse, children, step children, parent, step parent, brother, sister, step brother, step sister, aunt, uncle, niece, nephew, grandparent, grandchild, great grandparent, great grandchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

F. "Involuntary demotion" means the involuntary placement of an incumbent in a position with a lower salary range than their current position. It involves a reduction in pay, and it must be the result of employee misconduct, unsatisfactory performance, or other disciplinary reasons.

G. "Job evaluation" means the comprehensive review of the duties, responsibilities and qualifications of a position. It is not a review or evaluation of any person holding the position being reviewed. As a result of a job evaluation, a position may be reclassified to a different job class. The reclassification may result in a reduction, an increase, or no change in pay grade at all.

H. "Local public body" means an entity which is under the auspices of a county or city government, public schools, and public institutions of higher learning.

I. "Suspension" means an enforced leave of absence, with or without pay, for a period not to exceed thirty (30) work days for disciplinary reasons or pending investigation of charges made against a covered employee.

J. "Voluntary demotion" means the voluntary acceptance by an employee of placement in a position with a lower salary range. It may or may not entail a reduction in pay; and it may or may not be the result of a disciplinary reasons.

K. "Written reprimand" means a letter, memo or other written form of communication which serves to advise an employee of poor performance, inappropriate behavior, or other personnel rule violations, and it shall serve as a warning of more severe disciplinary action if the employee fails to take the appropriate action.

L. "Years of service" means the total years of employment within either the executive, judicial, or legislative branches of New Mexico state government or any local public body within New Mexico.
[10.4.1.7 NMAC - Rp, NMDAA 91-1.12.01, 06/30/2010]

10.4.1.8 COVERAGE OF SERVICE:**A. Covered employees.**

(1) Employees holding covered positions affected by the District Attorney Personnel and Compensation Act shall be recognized as covered employees if they have successfully completed the probationary period.

(2) Once an employee in a covered position attains covered status, they shall retain that status as long as they remain in, transfer to, or are promoted into a covered position without a break in employment. Nothing in the District Attorney Personnel and Compensation Act shall preclude the reclassification or reallocation of any position held by an employee.

B. At will employees.

(1) The positions of attorney, district office manager and special program director are at will positions that serve at the pleasure of the district attorney.

(2) Such at will employees shall have no property interest in the continued position and may be dismissed with or without cause.

C. Probationary employees.

(1) A probationary appointment is the placement of an applicant into a position designated as covered.

(2) A probationary period of one (1) year from the date of hire is required of all employees in covered positions. If leave without pay is taken during the probationary period, the probationary period may be extended by the number of days of leave taken within the applicable one (1) year period.

(3) Probationary employees may be terminated at any time by the district attorney.

(4) Probationary employees have no rights to utilize grievance procedures and the appeals provisions in this rule.

(5) The covered status of a probationer begins the day following the end of the probationary period.

(6) All probationary employees shall be evaluated prior to the end of their probationary period utilizing the approved performance appraisal form.

(7) The district attorney is responsible for taking action on the status of probationary employees prior to the end of the probationary period.

(8) An employee transfer to another district attorney's office will result in a new probationary period as defined in this subsection.

[10.4.1.8 NMAC - Rp, NMDAA 91-1.5.03, 06/30/2010]

10.4.1.9 ADMINISTRATION OF THE PLAN: The responsibility for administration of the classification plan

rests with the district attorneys and with the district attorney personnel review board.

A. District attorney personnel review board.

(1) The district attorney personnel review board ("board") shall consist of five (5) district attorneys including the president, vice-president and secretary-treasurer of the New Mexico district attorney's association and two (2) additional voting members, all elected annually by the district attorneys.

(2) Each board member shall be reimbursed as provided in the Per Diem and Mileage Act when traveling on board business directly related to the District Attorney Personnel and Compensation Act.

(3) As found in Section 7 of the District Attorney Personnel and Compensation Act (36-1A-7et seq. NMSA 1978), the board's responsibilities for the administration of the classification plan are as follows:

(a) The board shall recommend to the district attorneys, as a group, regulations necessary or appropriate to implement and administer the District Attorney Personnel and Compensation Act.

(b) The board shall determine the qualifications for each class specification or classification series; including required levels of education, experience, special skills and legal knowledge.

(c) The board shall recommend salary grades and pay ranges to which class specifications and job classifications are assigned, subject to legislative appropriations.

(d) The board shall hear appeals solely involving suspension, demotion or termination of a covered employee and render its final decision, unless the covered employee elects, under Section 10 of the District Attorney Personnel and Compensation Act, to have the appeal heard by the state personnel office-designated hearing officer.

(e) The board shall make periodic reviews of the personnel regulations, classification plan and compensation ranges that govern employees to ensure that all federal action, legislative mandates and other substantive changes are incorporated into the regulations in a timely fashion and make recommendations thereon to the district attorneys.

(f) The board shall consider other personnel matters as designated by the district attorneys and they shall have the authority to override all actions based on a justification provided on a case by case basis. A quorum of the board shall consist of at least three (3) members.

B. District attorneys as a group: The responsibilities of the district attorneys as a group shall be:

(1) the adoption and promulgation of regulations to effectuate the provisions of

the compensation plan for all employees;

(2) the conducting of periodic reviews of the regulations, classifications series and compensation ranges to ensure that applicable federal action, legislative mandates and other substantive changes are incorporated in the compensation plan in a timely fashion;

(3) the contracting of consultant services to reevaluate the classification and compensation plans to ensure their compatibility, subject to legislative appropriation, with classes covered by the Personnel Act and the judicial pay plan; and

(4) the preparation of an annual fiscal report specifying proposed changes, if any, to the compensation plan prior to each regular legislative session; before any proposed changes are implemented, they shall be reviewed by the legislative finance committee and approved by the department of finance and administration; competitive market compensation levels shall be reviewed at least every five (5) years and incorporated into the report; subsequent budget requests shall include this information.

C. Each district attorney.

(1) Primary responsibility for the day-to-day administration of the classification plan rests with each district attorney or their designee.

(2) Each district attorney shall submit position change requests and personnel action requests to the administrative office of the district attorneys for review. The administrative office of the district attorneys will forward reviewed requests to the department of finance and administration. These actions shall then be incorporated into a monthly personnel and classification report to be administered by the administrative office of the district attorneys and distributed to the district attorneys, the department of finance and administration and the legislative finance committee.

D. Administrative office of the district attorneys: The administrative office of the district attorneys shall ensure that the department of finance and administration and the legislative finance committee receive a table of organizational listing (TOOL) for all district attorney positions and employees. This monthly report shall include each employee's position number, name, title of authorized job, status, pay grade and salary and shall reflect any department of finance and administration-approved position changes or administrative office of the district attorneys-approved personnel actions.

[10.4.1.9 NMAC - Rp, NMDAA 91-1.1.03, 06/30/2010]

10.4.1.10 PERSONAL CONDUCT:

A. Employees of the district attorneys' offices and the administrative

office of the district attorneys shall conduct themselves in a manner which reflects the highest professional ethics. Employees shall be loyal and devote their full working days to their duties and the business of the district attorneys. Under no circumstances shall employees give rise to a conflict of interest or the appearance of a conflict of interest or act in such a way as to adversely affect any district attorneys' office or adversely affect the employee's ability to perform his/her duties.

B. Consumption of alcoholic beverages on the premises of any office is expressly prohibited. The use or possession of illegal drugs or other illegal substances at any time or place is expressly prohibited. This policy will be strictly enforced and employees found in violation will be subject to disciplinary action.

C. Any personal conduct which violates the civil or criminal law which adversely affects the interests of any district attorney's office or the person's ability to perform their duties is prohibited. [10.4.1.10 NMAC - N, 06/30/2010]

10.4.1.11 BUSINESS CONDUCT:

A. Employees will respect and protect the civil and legal rights of all persons. Employees having contact with victims or witnesses will serve each case with appropriate concern for the individual's welfare and with no goal of personal gain. Relationships with the public and colleagues will be of a professional nature and promote improvement of the respective office's quality of service. Statements critical of others or their agencies will be made only if these are verifiable and constructive in purpose, and made in a personal capacity. Employees will respect the importance of all elements of the criminal justice system and cultivate professional cooperation with each segment of that system. In any public statement, employees will clearly distinguish between those statements which are personal views and those which are authorized statements and positions taken on behalf of each respective office.

B. Employees will not discriminate against any prospective employee or other persons having business with the district attorneys on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity, national origin, religion, age or disability.

C. Undue familiarity or any sort of financial or business transactions with victims, witnesses, etc., or their immediate families, agents or close friends is strictly forbidden. Employees will conduct themselves in compliance with all laws and regulations so as to not subject their

profession, colleagues or office to criticism. No employees shall give or accept any gifts or gratuities or engage in any personal business with victims, witnesses, etc. or their immediate families, agents or close friends.

D. The actions of employees are to be in accordance with prescribed rules and regulations. Employees are expected to perform their assignments in a manner that reflects professional judgment, prudence and sincere interest in the business of the office. Employees shall maintain an attitude of courtesy and service to the public and colleagues.

E. Employees shall protect and conserve government property, including equipment, supplies and other property entrusted or issued to them. They shall not willfully damage or otherwise misuse government property, including vehicles, equipment, tools and instruments. [10.4.1.11 NMAC - N, 06/30/2010]

10.4.1.12 PERSONNEL INVESTIGATIONS:

A. Applicants may be subject to a background investigation prior to being hired by any district attorney's office or the administrative office of the district attorneys. Employees may be subject to an investigation or may be required to provide a statement or submit to a polygraph examination in any investigation concerning the provisions of this code or any other suspected misconduct. If an employee refuses to comply, they shall be subject to disciplinary action up to and including dismissal from employment or termination of their contract.

B. Employees may be required to submit to a drug or alcohol test. If the employee refuses to comply with the test requirements or examiner, or requirements necessary to conduct the test, they shall be subject to disciplinary action up to and including dismissal from employment. [10.4.1.12 NMAC - N, 06/30/2010]

10.4.1.13 OUTSIDE EMPLOYMENT - CONFLICT OF INTEREST:

A. Every employee who has a financial interest which they know, or have reason to know, may be affected by actions of their respective office shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the district attorney before entering employment and during the month of January every year thereafter.

B. Under no circumstances shall employees have a conflict of interest or the appearance of a conflict of interest. Such conflicts of interest include, but are not limited to, the following.

(1) No employee shall directly or indirectly acquire a financial interest in a

business which may be directly affected by any official act of the employee.

(2) An employee shall not engage directly or indirectly in a financial transaction as a result of, or primarily relying on information obtained through, their employment with a district attorney's office.

(3) No employee may directly or indirectly accept or give any compensation, gift, ban, entertainment, favor or service which would tend to give an appearance of impropriety or which might interfere in the discharge of official duties.

[10.4.1.13 NMAC - Rp, NMDAA 91-1.10.04, 06/30/2010]

10.4.1.14 DISCLOSURE OR MISUSE OF INFORMATION:

A. Employees shall not directly or indirectly use official information which is not available to the general public or contract with the state for the purpose of furthering a private interest or allow such use of official information obtained through or in connection with his or her employment.

B. Except as specifically authorized, employees shall not disclose official information which represents a matter of confidence or trust or any other official information of such character that its disclosure or use would be contrary to the best interest of the office. Information concerning another person's personal life, social history and private affairs is confidential information and shall not be the subject of casual conversation or gossip.

C. Official records of every district attorney's office are the property of that office and will be filed according to the existing rules. Employees shall not remove records or copies thereof from any district attorney's office without lawful authority.

[10.4.1.14 NMAC - N, 06/30/2010]

10.4.1.15 GRATUITY:

A. Employees shall not give or accept any favor or gratuity to or from any person, firm, corporation or other entity which would affect or appear to affect the person's judgment in the performance of their duties in an impartial manner, except in the case of an occasional non-pecuniary gift that is insignificant in value, a public award or a loan made in the ordinary course of business.

B. Supervisors shall not place themselves in positions of potential indebtedness to their subordinates. Supervisors will not permit persons subordinate to them to provide them with representation in grievance matters or lawsuits.

[10.4.1.15 NMAC - N, 06/30/2010]

10.4.1.16 POLITICAL ACTIVITIES:

A. Employees may engage

in the following activities as long as it is while they are on approved leave or not on duty:

- (1) serve as convention delegates;
- (2) attend political rallies;
- (3) sign nominating petitions and make voluntary contributions to political organizations; and

(4) serve as election officials or officers in political organizations.

B. Employees are prohibited from:

(1) engaging in political activity while on duty;

(2) distributing or displaying campaign materials (including buttons) and soliciting contributions for a political candidate or party while on duty;

(3) using official authority for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose;

(4) using office supplies, equipment or facilities in connection with any political activities;

(5) directly or indirectly coercing, attempting to coerce, commanding or ordering any employee to pay, lend or contribute anything of value to a party, committee, organization or person for a political purpose; and

(6) threatening to deny promotions to any employee who does not vote for certain candidates or requiring employees to contribute a percentage of their pay to a political fund or ordering employees to buy tickets to political fund-raising events.

[10.4.1.16 NMAC - Rp, NMDAA 91-1.10.01 - 10.02, 06/30/2010]

10.4.1.17 PUBLIC OFFICE:

A. Employees shall not hold any other public office during the employee's duty hours in the service. An employee may accept appointment to a state or local board or commission provided such participation does not create a conflict of interest, is consistent with existing statutes and court rules and does not interfere with an employee's assigned duties.

B. An employee may seek a full-time public office if the employee's absence does not interfere with the function of the office and the district attorney authorizes such absence. Otherwise, the employee shall resign to seek such public office.

C. The act of filing nomination papers or, where appropriate, the payment of a filing fee or the accepting of the nomination shall constitute the seeking of public office.

D. Being a local school board member or an elected or appointed member of any post-secondary educational institution shall not be construed to be holding political office.

[10.4.1.17 NMAC - Rp, NMDAA 91-1.12.03, 06/30/2010]

10.4.1.18 SEXUAL HARASSMENT: Employees shall refrain from sexual harassment of any other employee or any other person having business with the office. Examples of sexual harassment include, but are not limited to:

A. sexual innuendo or sexually oriented verbal abuse;

B. sexual jokes, sexist jokes, vulgar jokes or abusive sexual "teasing";

C. unwanted physical contact such as hugging, patting, stroking or grabbing body parts;

D. statements or acts of a sexual nature about a person's physical attributes or sexual activity;

E. displaying sexually suggestive pictures, objects or materials;

F. using disparaging, demeaning or sexist terms to refer to any person;

G. making obscene gestures or suggestive/insulting sounds;

H. indecent exposure; and

I. suggesting or demanding sexual favors or activity in relation to any condition of employment.

[10.4.1.18 NMAC - Rp, NMDAA 91-1.11.01 - 11.04, 06/30/2010]

10.4.1.19 ENFORCEMENT:

All employees of a district attorneys' office and of the administrative office of the district attorneys will familiarize themselves, as a part of their orientation training, with rules contained in Title 10, Chapter 4 of the New Mexico administrative code pertaining to district attorneys and with the specific internal policies and procedures set forth by each district attorney's office.

[10.4.1.19 NMAC - N, 06/30/2010]

HISTORY OF 10.4.1 NMAC:

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

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT**

**CHAPTER 4 DISTRICT
ATTORNEYS**

**PART 2 CLASSIFICATION
PLAN**

10.4.2.1 ISSUING AGENCY:
Administrative Office of the District Attorneys

[10.4.2.1 NMAC - N, 06/30/2010]

10.4.2.2 SCOPE: This part sets forth the rules for the establishment, maintenance and administration of the uniform classification plan applicable to all positions in the offices of the district attorneys.

[10.4.2.2 NMAC - Rp, NMDAA 91-1.1.01, 06/30/2010]

**10.4.2.3 STATUTORY
AUTHORITY:** This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (1) NMSA 1978 which requires the

promulgation of district attorney personnel rules governing a classification plan for all positions.

[10.4.2.3 NMAC - N, 06/30/2010]

10.4.2.4 DURATION:
Permanent

[10.4.2.4 NMAC - N, 06/30/2010]

10.4.2.5 EFFECTIVE DATE:
June 30, 2010, unless a later date is cited at the end of a section.

[10.4.2.5 NMAC - N, 06/30/2010]

10.4.2.6 OBJECTIVE: To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.2.6 NMAC - N, 06/30/2010]

10.4.2.7 DEFINITIONS:
[RESERVED]
[See 10.4.1.7 NMAC]

10.4.2.8 CLASS SPECIFICATIONS:

A. The district attorneys as a group shall be responsible for the overall coordination, review and maintenance of the classification plan pursuant to the provisions of the District Attorney Personnel and Compensation Act. The plan shall consist of, but not be limited to:

(1) all approved classes of positions;

(2) detailed class specifications; and

(3) the rules governing the administration of the plan.

B. Each approved class shall be defined by a class specification, assigned to an appropriate pay grade and class title as recommended by the board and adopted by the district attorneys as a group. No action shall be taken to fill any position until it has been classified in accordance with this classification plan.

C. Each class specification shall contain the duties and responsibilities characteristic of a class of positions. Each class shall also include the class title, supervision exercised and received, guidelines available, examples of work performed, working conditions and minimum qualifications or substitutions thereof that specify education, training, experience, knowledge, abilities and skills required for a position.

D. While the exact duties and responsibilities of positions may differ, all positions allocated to a class series shall be comparable as to kind of work, level of difficulty or responsibility and qualification requirements.

E. Each class specification shall include, but is not limited to, specific examples of work performed by employees

in the classification as a whole.

F. Any changes in the classification plan shall be effective in the first full pay period following implementation by the district attorneys. The decision of the district attorneys regarding such changes is final.

G. Notification of new or revised specifications or notification of abolished classes shall be furnished by the board to each district attorney's office, the department of finance and administration and the legislative finance committee.

[10.4.2.8 NMAC - Rp, NMDAA 91-1.1.02, 06/30/2010]

10.4.2.9 EXERCISE OF CLASSIFICATION AUTHORITY AND PROCEDURES:

A. Position classification assignment: Each position shall be assigned the classification that best represents the duties performed. Official classifications shall be used on all personnel payroll records and in the preparation of legislative and operating budgets.

B. Position classification requests: All requests for position reclassifications shall require the completion of a job analysis questionnaire form, available from the administrative office of the district attorneys, to be completed by the affected incumbent. Additional forms or correspondence may also be submitted as further written justification.

C. Position classification actions: Reclassification actions shall be approved by the board. All reclassification actions shall be reviewed by the legislative finance committee and approved for budgetary purposes by the department of finance and administration.

D. New class or class revision:

(1) If the board determines that a new class or class revision is necessary, the recommendation of the board shall be presented to the district attorneys as a group. Upon approval by the district attorneys as a group, the board will establish this class provided it has been reviewed by the legislative finance committee and approved for budgetary purposes by the department of finance and administration.

(2) When a position is new or reclassified, the pay shall be determined in accordance with the provisions of the pay plan established in these rules.

(3) The board, subject to the approval by the district attorneys as a group, may recommend deletion of unused classifications and revisions to class specifications, if the revision or deletion does not necessitate a classification study. Such a deletion or revision shall be reviewed by the legislative finance committee and approved for budgetary purposes by the department of

finance and administration.

(4) A respective district attorney may appeal a position classification decision by the board by stating the reasons for the appeal in writing to the board. The district attorneys as a group shall review the matter and issue a decision which is final and binding.

(5) When the district attorneys request a job analysis of one or more positions, the incumbent employee(s) shall be required to fill out the job analysis questionnaire form, available from the administrative office of the district attorneys, signed and reviewed by their supervisor and the respective district attorney.

(6) When the information on the job analysis questionnaire form, available from the administrative office of the district attorneys, appears to be insufficient, a job analysis shall be performed by the district attorney or their designee.

[10.4.2.9 NMAC - Rp, NMDAA 91-1.1.05, 06/30/2010]

HISTORY OF 10.4.2 NMAC:

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

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

**NEW MEXICO
ADMINISTRATIVE
OFFICE OF THE DISTRICT
ATTORNEYS**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 4 DISTRICT
ATTORNEYS
PART 3 COMPENSATION
PLAN**

10.4.3.1 ISSUING AGENCY:
Administrative Office of the District Attorneys

[10.4.3.1 NMAC - N, 06/30/2010]

10.4.3.2 SCOPE: This part sets forth the rules for the establishment, maintenance and administration of an equitable, uniform compensation plan

which shall be applicable to all positions in the offices of the district attorneys and the administrative office of the district attorneys. [10.4.3.2 NMAC - Rp, NMDAA 91-1.2.01, 06/30/2010]

10.4.3.3 STATUTORY AUTHORITY: This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (2) NMSA 1978 which requires the promulgation of district attorney personnel rules governing a compensation plan for all positions.

[10.4.3.3 NMAC - N, 06/30/2010]

10.4.3.4 DURATION: Permanent

[10.4.3.4 NMAC - N, 06/30/2010]

10.4.3.5 EFFECTIVE DATE: June 30, 2010, unless a later date is cited at the end of a section.

[10.4.3.5 NMAC - N, 06/30/2010]

10.4.3.6 OBJECTIVE: To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.3.6 NMAC - N, 06/30/2010]

10.4.3.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.3.8 ESTABLISHMENT OF COMPENSATION PLAN:

A. The compensation plan shall consist of the approved classification and salary schedule, the rules governing the administration of the personnel and compensation plan, approved job specifications and an employee performance appraisal form.

B. Based on an approved methodology of job measurement, each classification shall be assigned a salary range that reflects the job content, accountability, job context and salary comparability. All employees shall be paid in accordance with the rates shown in the official salary schedule.

C. The classification and salary schedule shall consist of, but not be limited to, classifications or class titles, salary ranges and the minimum, midpoint and maximum rates of pay for all classes.

[10.4.3.8 NMAC - Rp, NMDAA 91-1.2.03, 06/30/2010]

10.4.3.9 NEW EMPLOYEE'S ENTRANCE SALARY:

A. A district attorney may pay a newly hired employee from the minimum rate to the midpoint of the salary range of the appointed class. The salary placement above the minimum rate must be based on the following documented assessments:

(1) the employee possesses training or experience substantially above the minimum qualifications required for the class and the district attorney determines that the employee is exceptionally well qualified for the position; and

(2) other factors may include the availability of suitable applicants, geographic location and special circumstances affecting the applicant or the district attorney.

B. The district attorney must base salary placement above the midpoint on documented assessment of the new employee's relevant education, experience, salary history, review of salaries of current employees performing the same job, qualifications and other relevant factors. In such cases, the district attorney, subject to fund availability, may pay the new employee at any rate up to fifteen percent (15%) above the midpoint compensation rate with the prior approval of the board.

[10.4.3.9 NMAC - Rp, NMDAA 91-1.2.05, 06/30/2010]

10.4.3.10 REINSTATED EMPLOYEE ENTRANCE SALARY:

An employee who has been granted an authorized leave of absence without pay upon returning to the same position or

equivalent position shall be paid at the same rate paid at the time leave was granted. If a pay range adjustment has occurred during such an absence, the employee's pay rate shall be adjusted to the minimum entry level salary if the minimum of the new range is higher than the rate paid at the time leave was granted.

[10.4.3.10 NMAC - Rp, NMDAA 91-1.2.06, 06/30/2010]

10.4.3.11 SALARY ADMINISTRATION:

A. Promotion / reclassification. A promotion is a reassignment of an employee to a position with a higher salary range. Upon promotion, an employee's salary may be increased up to the mid-point of the new job class. Any increases beyond mid-point of the new job class must be justified in writing based on qualifications, years of experience, expertise, etc. with prior approval of the board. No salary upon promotion may exceed the maximum rate of the new range.

B. Reduction in class. An employee may elect to or be placed in a job at a lower salary due to pending layoff or reduction-in-force or other reasons, if such position exists, with the approval of the district attorney. When a reduction in class occurs, the employee's salary shall in no event be increased and shall be no greater than the maximum salary of that class.

C. Demotion. At the discretion of the district attorney, an employee may be demoted to a position at a lower salary range, due to unsatisfactory job performance, misconduct or other disciplinary considerations. When an employee is demoted, his/her present salary must be reduced by at least 5%, to a rate within the salary range of the class to which demoted and shall not exceed the maximum of the new salary range.

D. Range changes. Subject to legislative approval, the salaries of all employees affected by range changes due to market pricing reviews, job measurement studies, and classification studies shall be adjusted to at least the minimum rate of the new salary range.

E. Merit based salary increases. Subject to legislative appropriations, employee performance appraisals may be the basis for merit-based salary increases. A merit-based salary increase, however, may not exceed the maximum salary level for an employee's job class according to the approved salary schedule.

F. Temporary salary adjustment. A district attorney may grant a temporary salary adjustment, for up to six (6) months, to an employee who temporarily accepts the duties of a higher classification. The temporary salary adjustment shall not

exceed ten percent (10%) of the employee's current salary. The district attorney shall, at the end of the temporary job assignment, revert the employee to his/her previous salary, plus any pay increases for which the employee may have been eligible.

G. Budgetary limitations. All provisions of this part relating to payment of salaries are contingent upon funds being available.

H. Effective date of salary changes. The effective date of all salary changes provided for in this part shall be the first day of a pay period following approval by the district attorney.

I. Out-of-cycle salary increase:

(1) An employee may be awarded an out-of-cycle salary increase. Documentation must exist that justifies the increase. Employees will be limited to one (1) out-of-cycle salary increase per fiscal year, not including adjustments or other increases as approved and appropriated by the legislature. The increase shall not exceed fifteen percent (15%) of an incumbent's current hourly rate.

(2) The following requirements must be met when requesting out-of-cycle salary increases.

(a) An out-of-cycle salary increase shall not be granted to a new employee unless the employee has completed a period of at least six (6) months in the same position.

(b) An out-of-cycle salary increase shall not affect the date on which an employee is eligible for any other increase in salary.

(c) An out-of-cycle salary increase shall not be requested unless adequate funds exist in the current budget. It may only be funded through vacancy savings or other approved revenues as long as the increase does not result in a request for a deficiency or supplemental appropriation from the legislature nor for emergency funding from the state board of finance.

(d) An out-of-cycle salary increase may be in the form of either a lump sum payment or an increase to an employee's base hourly rate.

(e) An out-of-cycle salary increase shall not be requested if an employee's last performance appraisal did not reflect a rating of "meets expectations" or higher.

(f) All out-of-cycle salary increases shall be justified in writing to the personnel review board utilizing the request for out-of-cycle salary increase form and based on at least one of the following criteria:

(i) An employee's assigned duties have significantly exceeded the expected and established job requirements of the employee's job class, and their performance remains at a fully effective level or higher.

(ii) An employee's

performance of duties has involved overcoming unusual prolonged difficulties.

(iii) An employee's performance has involved special effort or special innovations resulting in significant economic savings or improvements.

(iv) An employee's salary is not comparable to their level of performance or job responsibility when compared with employees in similar positions with similar work experience.

(v) An employee has been offered a job, in writing, by an employer outside of this personnel compensation plan and an incentive for emergency retention purposes is warranted.

(g) The administrative office of the district attorneys must submit an approved request form (request for out-of-cycle salary increase) which shall be sent to both the department of finance and administration and the legislative finance committee analysts assigned to the district attorneys.

(h) All out-of-cycle salary increases shall be approved by the district attorney personnel review board.

(i) The total number of out-of-cycle salary increases shall not exceed 20% of all eligible employees per office during the fiscal year.

[10.4.3.11 NMAC - Rp, NMDAA 91-1.2, 06/30/2010]

10.4.3.12 DISTRICT ATTORNEYS REQUEST FOR OUT-OF-CYCLE SALARY INCREASE FORM:

With regard to out-of-cycle salary increases, a form entitled "request for out-of-cycle salary increase" shall be completed and submitted. The form may be created and revised from time to time by the administrative office of the district attorneys, subject to the approval or ratification by the district attorneys as a group. The current version of the form shall be maintained by, and is available upon request from, the administrative office of the district attorneys and may contain the following information:

- A. date submitted;
- B. indication of whether the position is a non-general fund, term or contract position;
- C. employee name;
- D. job class;
- E. current hourly salary;
- F. proposed hourly salary;
- G. date of last salary increase;
- H. percentage increase over current salary;
- I. lump sum amount;
- J. date of appointment to current class;
- K. date and rating of last performance evaluation;
- L. source of available funds;

M. if the increase was to the base hourly rate, an indication of:

(1) the amount required from the effective date to the end of the current fiscal year; and

(2) the amount required for a full fiscal year;

N. reasons for a salary increase;

O. a certification by the district attorney and the chief financial officer for the district attorney that based on the agency's most recent budget projections, the out-of-cycle salary increase will not result in the agency having to request either a deficiency or a supplemental appropriation from the legislature or emergency funding from the state board of finance, and it will not result in an increase to the base operating budget; and

P. a dated certification from a representative of the district attorney personnel review board that the out-of-cycle salary increase request was reviewed and approved by the district attorney personnel review board.

[10.4.3.12 NMAC - N, 06/30/2010]

HISTORY OF 10.4.3 NMAC:

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

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT CHAPTER 4 DISTRICT ATTORNEYS PART 4 APPOINTMENT OF EMPLOYEES

10.4.4.1 ISSUING AGENCY: Administrative Office of the District Attorneys

[10.4.4.1 NMAC - N, 06/30/2010]

10.4.4.2 SCOPE: This part sets forth the framework for the appointment of employees to certain positions in the office

of the district attorney.

[10.4.4.2 NMAC - Rp, NMDAA 91-1.3.01, 06/30/2010]

10.4.4.3 STATUTORY AUTHORITY: This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration; and

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys.

[10.4.4.3 NMAC - N, 06/30/2010]

10.4.4.4 DURATION: Permanent

[10.4.4.4 NMAC - N, 06/30/2010]

10.4.4.5 EFFECTIVE DATE: June 30, 2010, unless a later date is cited at the end of a section.

[10.4.4.5 NMAC - N, 06/30/2010]

10.4.4.6 OBJECTIVE: To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.4.6 NMAC - N, 06/30/2010]

10.4.4.7 DEFINITIONS: [RESERVED]

[See 10.4.1.7 NMAC]

10.4.4.8 APPOINTMENT TO PERMANENT POSITIONS:

A. Permanent positions have no expiration date and have been

funded by the legislature. Permanent positions may be filled by either covered or at will employees.

B. Employees appointed to permanent positions designated as covered shall serve a probationary period. Upon satisfactory completion of the probationary period they shall have all of the privileges of covered employees.

[10.4.4.8 NMAC - N, 06/30/2010]

10.4.4.9 APPOINTMENT TO TERM POSITIONS:

A. Term positions have an expiration date and may be funded by the legislature, a federal grant or some other revenue source. Term positions may be filled by either covered or at will employees.

B. Employees appointed to term positions designated as covered shall serve a probationary period. Upon satisfactory completion of the probationary period they shall have all of the privileges of covered employees, except the right to appeal the expiration of appointment.

C. The duration of term appointments and compensation and salary increases for term appointments are dependent upon the funding for the position.

D. Employees accepting a term appointment shall sign a statement indicating that they understand and accept the conditions of the term appointment.

E. The expiration of term appointments shall not be considered a layoff or a disciplinary action within the meaning of these rules.

[10.4.4.9 NMAC - Rp, NMDAA 91-1.3.05, 06/30/2010]

10.4.4.10 APPOINTMENT TO TEMPORARY POSITIONS:

A. Temporary positions have a duration of less than one (1) year.

B. Employees appointed to temporary positions shall be required to sign a statement of willingness to accept a temporary appointment in the office of the district attorney.

C. Employees appointed to temporary positions may be terminated at will by the district attorney. Temporary employees have no rights to utilize grievance procedures and the appeals provisions in these rules.

D. The expiration of a temporary appointment shall not be considered a layoff or disciplinary action within the meaning of these rules.

[10.4.4.10 NMAC - Rp, NMDAA 91-1.3.06, 06/30/2010]

10.4.4.11 APPOINTMENT TO PART-TIME POSITIONS:

Employees appointed to part-time positions must be scheduled to work less than eighty (80) hours each pay period. The appointment may be

temporary, term or covered. Employees appointed to part-time positions, with the exception of temporary employees, shall receive prorated compensation and leave accruals and are entitled to all the rights pursuant to the District Attorney Personnel and Compensation Act and these rules.

[10.4.4.11 NMAC - Rp, NMDAA 91-1.3.07, 06/30/2010]

HISTORY OF 10.4.4 NMAC:

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

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 4 DISTRICT
ATTORNEYS**

**PART 5 REDUCTION IN
FORCE**

10.4.5.1 ISSUING AGENCY: Administrative Office of the District Attorneys

[10.4.5.1 NMAC - N, 06/30/2010]

10.4.5.2 SCOPE: This part sets forth the layoff procedure affecting covered employees in the event of a reduction in force.

[10.4.5.2 NMAC - Rp, NMDAA 91-1.4.01, 06/30/2010]

10.4.5.3 STATUTORY AUTHORITY: This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires

the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (6) NMSA 1978 which requires the promulgation of district attorney personnel rules governing reduction in force. [10.4.5.3 NMAC - N, 06/30/2010]

10.4.5.4 D U R A T I O N : Permanent
[10.4.5.4 NMAC - N, 06/30/2010]

10.4.5.5 EFFECTIVE DATE: June 30, 2010, unless a later date is cited at the end of a section.
[10.4.5.5 NMAC - N, 06/30/2010]

10.4.5.6 OBJECTIVE: To establish for all district attorneys a uniform, equitable and binding system of personnel administration.
[10.4.5.6 NMAC - N, 06/30/2010]

10.4.5.7 DEFINITIONS : [RESERVED]
[See 10.4.1.7 NMAC]

10.4.5.8 L A Y O F F PROCEDURE:

A. When a covered position cannot be continued due to the lack of work, lack of legislatively appropriated funds or other reasons that do not reflect discredit on the services of employees, the district attorney may order a reduction in personnel.

B. A district attorney may propose to divide their office into organizational units based on the needs of the office for purposes of layoff. Such organizational units may be recognized on the basis of geographic area, function or classification and may be different for different classifications.

C. The order of layoff due to reduction in force shall be based upon type of appointment, classification and length of uninterrupted service with the district attorney's office where employed.

D. Employees in that classification series to be affected by a layoff shall be given two (2) weeks written notice of such action.

E. For layoff purposes, employees in the various organizational units shall be laid off in the following order:

- (1) temporary employees;
- (2) probationary employees in term positions;
- (3) probationary employees in permanent positions;
- (4) covered employees in term positions; and
- (5) covered employees in permanent positions.

[10.4.5.8 NMAC - Rp, NMDAA 91-1.4.03, 06/30/2010]

10.4.5.9 RECALL RIGHTS:

A. For a period of six (6) months following a layoff, affected employees shall be given priority for reinstatement to their former positions at the same pay or to a similar position for which they qualify at a lower, equivalent or higher rate of pay in the reverse order in which they were laid off (see Subsections C and E of 10.4.5.8 NMAC).

B. The district attorney shall advise the employee to be recalled by certified or registered United States mail. Laid off employees have the responsibility of keeping the district attorney informed as to their current mailing address.

C. Recall rights shall cease:
(1) six (6) months after the effective date of layoff;

(2) when an employee refuses to accept employment with the district attorney in a position for which they are qualified and for which the pay is the same or comparable to that of the position from which they were laid off;

(3) when an employee unconditionally accepts another position with the district attorney;

(4) when a former employee fails to respond to an offer of re-employment; or

(5) when a former employee who accepts re-employment after layoff fails to occupy the position within the allotted time. [10.4.5.9 NMAC - Rp, NMDAA 91-1.4.04, 06/30/2010]

HISTORY OF 10.4.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District

Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 4 D I S T R I C T
ATTORNEYS
PART 7 ATTENDANCE AND
LEAVE**

10.4.7.1 ISSUING AGENCY: Administrative Office of the District Attorneys
[10.4.7.1 NMAC - N, 06/30/2010]

10.4.7.2 SCOPE: This part sets forth the rules governing the attendance and leave of employees in the office of the district attorneys.
[10.4.7.2 NMAC - Rp, NMDAA 91-1.6.01, 06/30/2010]

10.4.7.3 S T A T U T O R Y AUTHORITY: This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district

attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (4) NMSA 1978 which requires the promulgation of district attorney personnel rules governing hours of work requirements and holiday, overtime and leave policies.
[10.4.7.3 NMAC - N, 06/30/2010]

10.4.7.4 DURATION:
Permanent
[10.4.7.4 NMAC - N, 06/30/2010]

10.4.7.5 EFFECTIVE DATE:
June 30, 2010, unless a later date cited at the end of a section.
[10.4.7.5 NMAC - N, 06/30/2010]

10.4.7.6 OBJECTIVE: To establish for all district attorneys a uniform, equitable and binding system of personnel administration.
10.4.7.6 NMAC - N, 06/30/2010]

10.4.7.7 DEFINITIONS:
[RESERVED]
[See 10.4.1.7 NMAC]

10.4.7.8 HOURS OF WORK:

A. The standard work week for full-time, covered employees shall be forty (40) hours. All full-time and part-time employees shall be required to be present on their assigned job for the total hours in the established work week, unless absent with authorization.

B. Required attendance at training courses shall be considered as hours worked.

C. When an employee is in official travel status under the law, time spent in travel beyond the normal work day shall be considered as hours worked.

D. The standard lunch period for all employees shall be one (1) hour each day and any deviations shall be approved by the district attorney.

E. All employees may be permitted one work break during the first half of their work day and one work break during the second half. No single work break shall exceed fifteen (15) minutes. Employees are not permitted to accumulate unused work breaks.

[10.4.7.8 NMAC - Rp, NMDAA 91-1.6.03, 06/30/2010]

10.4.7.9 RECORD KEEPING:

A. Each district attorney's office is required to keep an accurate record of all hours worked by each employee. A

record of all authorized leaves of absence taken by employees, pursuant to these rules, shall be kept.

B. Falsification of any attendance or leave records shall be cause for dismissal of the employee or employees involved.

[10.4.7.9 NMAC - Rp, NMDAA 91-1.6.04, 06/30/2010]

10.4.7.10 OVERTIME:

A. Overtime is calculated in terms of a work week beginning on Saturday and ending on Friday which is a fixed and regularly recurring period of one hundred sixty-eight (168) hours of seven (7) consecutive twenty-four (24) hour periods. If an employee is required to work beyond forty (40) hours in a work week, overtime shall be compensated at time and a half. All overtime work must be authorized in advance by the district attorneys or their designees.

B. Failure of an employee to work scheduled overtime may result in disciplinary action against that employee.

C. Law enforcement personnel are subject to overtime after more than eighty-six (86) hours per pay period or fourteen consecutive days. However, public safety employees who work for public agencies with fewer than five (5) public safety employees engaged in law enforcement are totally exempt from overtime compensation. Therefore, law enforcement personnel in district attorneys' offices where this provision applies will not be paid overtime.

D. For purposes of overtime compensation, all leave, with the exception of state designated holidays, will not count as time worked.

E. Supervisors, subject to the approval of the district attorney, may grant employees compensatory time in lieu of overtime pay at the rate of one and one-half (1-1/2) hours off for every one (1) hour of overtime worked. This arrangement must be agreed upon by all parties before the overtime work is performed.

F. The employee must use any accumulated compensatory time within ninety (90) days after its accrual unless otherwise authorized by the district attorneys or their designees and agreed upon by all parties. Accrued compensatory leave time shall be taken at a mutually agreeable time.

G. Upon separation of employment, unused compensatory time shall be paid at the employee's average rate per hour over the last three (3) years of employment or their present salary, whichever is greater.

H. If an employee accrues more than two hundred forty (240) hours of compensatory time, they may receive cash compensation at the rate of time and one-

half for any additional overtime worked.

I. Some positions, as determined by the personnel review board, may not be eligible for overtime compensation.

[10.4.7.10 NMAC - Rp, NMDAA 91-1.6.05, 06/30/2010]

10.4.7.11 ANNUAL LEAVE:

A. Annual leave shall be accrued by all eligible employees from the first day of employment. Eligible employees include all employees, except those in temporary positions. In the case of part-time employees, leave shall be accrued in proration to hours worked. For any service less than one (1) month, annual leave will be prorated.

B. All full-time employees who are eligible shall accrue annual leave as follows:

(1) if less than four (4) years of service, then the rate of annual accrual shall be four and sixty-two hundredths (4.62) hours per pay period, ten (10) hours per month, and one hundred twenty (12) hours per year;

(2) if four (4) or more but less than eight (8) years of service, then the rate of annual leave accrual shall be five and eight hundredths (5.08) hours per pay period, eleven (11) hours per month, or one hundred thirty-two (132) hours per year;

(3) if eight (8) or more but less than twelve (12) years of service, then the rate of annual leave accrual shall be five and fifty-four hundredths (5.54) hours per pay period, twelve (12) hours per month, or one hundred forty-four (144) hours per year;

(4) if twelve (12) or more but less than sixteen (16) years of service, then the rate of annual leave accrual shall be six (6) hours per pay period, thirteen (13) hours per month, or one hundred fifty-six (156) hours per year; and

(5) if sixteen (16) or more years of service, then the rate of annual leave accrual shall be six and forty-six hundredths (6.46) hours per pay period, fourteen (14) hours per month, or one hundred sixty-eight (168) hours per year.

C. Annual leave shall be accrued at the end of each pay period or on the last working day of the month depending on which alternative the district attorney chooses. In the case of separation, annual leave shall be accrued on the last day the employee is on the payroll.

D. During leaves of absence with pay, an employee shall accrue annual leave.

E. During leaves of absence without pay or leave without pay, an employee shall not accrue annual leave.

F. The maximum carryover of accrued annual leave from one calendar year to the next is no more than

two hundred forty (240) hours. Any excess must be used before the end of each calendar year or it shall be forfeited. Each district attorney shall make every reasonable effort to advise employees of their annual leave status to avoid the loss of accrued leave by employees. The accrued annual leave of each employee shall be adjusted so that no employee begins a calendar year with more accrued annual leave than the maximum permitted.

G. Annual leave shall not be authorized prior to the time it is earned.

H. All annual leave shall be requested by the employee and approved in advance by the district attorney or their designee.

I. An employee transferring into a district attorney's office from either the executive, judicial or legislative branches of New Mexico state government or from another New Mexico district attorney's office shall be credited with the employee's unused annual leave.

J. Forfeiture of accrued annual leave as a disciplinary action shall not be authorized. No employee shall lose accrued annual leave because of promotion, demotion or transfer within a district attorney's office including a change of classification.

K. An employee who separates from the service of a district attorney's office shall be paid for the employee's total accrued annual leave not to exceed two hundred forty (240) hours.

L. An employee subpoenaed as an expert witness in a court or administrative hearing, not involving personal litigation or service with a district attorney's office shall use annual leave, and any expert witness fees shall be retained by the employee. The district attorney shall not reimburse the employee for per diem or travel expenses incurred while serving as an expert witness.

[10.4.7.11 NMAC - Rp, NMDAA 91-1.6.06, 06/30/2010]

10.4.7.12 SICK LEAVE:

A. Sick leave shall be accrued by all eligible employees from the first day of employment. Eligible employees include all employees, except those in temporary positions. In the case of part-time employees, leave shall be accrued in proration to hours worked. For any service less than one month, sick leave will be prorated.

B. All full-time employees who are eligible shall accrue eight (8) hours of sick leave per month as follows:

(1) three and sixty-nine hundredths (3.69) hours per period;

(2) eight (8) hours per month; or

(3) ninety-six (96) hours per year.

C. Sick leave shall be

accrued at the end of each pay period or on the last working day of the month depending on which alternative the district attorney chooses. In the case of separation, sick leave shall be accrued on the last day the employee is on the payroll.

D. Sick leave shall be used only for an illness, injury or medical treatment of an employee or bereavement for or medical care of a relation by blood or marriage within the third degree or person residing within the employee's household. Abuse of sick leave shall be grounds for dismissal.

E. It is the responsibility of an employee to notify their supervisor within the first (1st) hour of their scheduled workday of an absence from work necessitating sick leave.

F. If the employee has hours available in annual leave or compensatory time, then these hours may be used in lieu of sick leave. When all types of leave are exhausted, the employee may be placed on leave without pay.

G. During leaves of absence with pay, an employee shall accrue sick leave.

H. During leaves of absence without pay or leave without pay, an employee shall not accrue sick leave.

I. Sick leave shall not be authorized prior to the time it is earned.

J. There shall be no limit on the number of sick leave hours an employee may accrue.

K. An employee transferring into a district attorney's office from either the executive, judicial or legislative branches of New Mexico state government or from another New Mexico district attorney's office shall be credited with the employee's unused sick leave.

L. An employee who makes a false claim or who fails to cooperate in an investigation regarding their claim for sick leave shall not be paid for sick leave and shall be subject to disciplinary action including dismissal.

M. Forfeiture of accrued sick leave as a disciplinary action shall not be authorized. No employee shall lose accrued sick leave because of promotion, demotion or transfer within a district attorney's office, including a change of classification.

N. A certificate from a physician verifying the continued or recurring illness, injury or medical treatment may be required by the district attorney. If the requested certificate is not provided, sick leave may be terminated and the employee ordered to return to work by a specific date or be subject to dismissal.

O. Employees affected by pregnancy, childbirth or related medical conditions must be treated the same as persons affected by other medical conditions.

P. In accordance with Section 10-7-10, NMSA 1978, employees who have accumulated six hundred (600) hours of unused sick leave are entitled to be paid for additional unused sick leave at a rate equal to fifty percent (50%) of their hourly rate of pay for up to one hundred twenty (120) hours of sick leave. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full pay period in January or the first full pay period in July.

Q. In accordance with Section 10-7-11, NMSA 1978, immediately prior to retirement from the service, employees who have accumulated more than six hundred (600) hours of unused sick leave are entitled to be paid up to four hundred (400) hours of unused sick leave over and above the accumulated six hundred (600) hours of unused sick leave, at a rate equal to fifty percent (50%) of their hourly rate.

R. Upon separation of employment, accrued sick leave shall be forfeited except as provided in Subsection Q.

[10.4.7.12 NMAC - Rp, NMDAA 91-1.6.07, 06/30/2010]

10.4.7.13 WORKERS' COMPENSATION LEAVE:

A. An employee who is entitled to workers' compensation shall be compensated and treated in accordance with the Workers' Compensation Act, Chapter 52, Article 1, NMSA 1978, as amended.

B. An employee who sustains a job-related disability and is temporarily unable to perform his/her regular duties shall, after the first seven days of disability, be eligible to receive workers' compensation benefits as provided by New Mexico law.

C. In order to preclude loss of pay during the first seven days, the employee may use sick leave, annual leave, compensatory time or any combination thereof. If there are no paid leave accruals, the employee shall be placed on leave without pay for the initial seven-day period plus the subsequent duration of disability.

D. The employee may elect to use accrued sick, compensatory or annual leave in an amount necessary to receive salary payment that will increase the workers' compensation payments to the total salary being received prior to the occurrence of the disability. In no case shall the employee's salary and workers' compensation benefits exceed the amount of the employee's regular salary payments.

[10.4.7.13 NMAC - Rp, NMDAA 91-1.6.08, 06/30/2010]

10.4.7.14 FAMILY MEDICAL LEAVE:

A. Eligible employees

are entitled to leave in accordance with the Family and Medical Leave Act (FMLA) of 1993 (29 U.S.C. 2601 et seq.). Eligible employees are those who have been employed in either the executive, judicial, or legislative branches of New Mexico state government or any local public body within New Mexico for at least one thousand two hundred fifty (1,250) hours during the consecutive twelve (12) month period immediately preceding the start of FMLA leave.

B. Eligible employees are entitled to a total of twelve (12) weeks of FMLA leave in a twelve (12) month period for the following reasons: birth of a child, placement of an adopted child, an employee's serious health condition or the serious health condition of a family member, as defined in the FMLA. The twelve (12) week period shall be calculated forward from the date an employee's first FMLA leave begins.

C. FMLA leave may be comprised of any combination of sick leave, annual leave, or leave without pay and must be requested and pre-approved at least thirty (30) days in advance, except in the case of emergencies.

D. No part of FMLA leave shall be considered a break in employment and shall not change an employee's anniversary date.

E. Employees shall not accrue sick or annual leave nor be paid for "observed" holidays while on unpaid FMLA leave. Employees may be paid for "observed" holidays and accrued annual and sick leave on a prorated basis based on whether FMLA leave is paid or unpaid.

F. The required FMLA notices shall be posted in all district attorneys' offices, and all offices are required to maintain employee FMLA leave records. All medical records and correspondence relating to employees or their families shall be considered confidential.

[10.4.7.14 NMAC - N, 06/30/2010]

10.4.7.15 LEAVE WITHOUT PAY:

A. An employee may, upon request, be granted leave without pay for a period not exceeding twelve (12) months, provided the district attorney deems such leave to be justified and not detrimental to the operations of the office.

B. The district attorney may place an employee on involuntary leave without pay for up to twelve (12) months for the purpose of investigation of a violation of law or pending the disposition of criminal charges.

C. Employees do not accrue sick or annual leave or any benefits while on leave without pay.

D. Leave without pay may be granted only when the district attorney

can assure a position of like status and pay at the same geographic location upon the return of the employee from leave without pay. However, if the district attorney cannot make such assurances, the employee may waive in writing those assurances and be granted the leave without pay.

[10.4.7.15 NMAC - Rp, NMDAA 91-1.6.09, 06/30/2010]

10.4.7.16 ABSENCE WITHOUT LEAVE:

A. Employees who fail to appear for work without authorized leave or who appear for work but are in violation of office policy governing their readiness for work shall be considered to be absent without leave.

B. Employees shall not be paid for any periods of absence without leave and shall not accrue sick or annual leave.

[10.4.7.16 NMAC - Rp, NMDAA 91-1.6.10, 06/30/2010]

10.4.7.17 ADMINISTRATIVE LEAVE:

A. The district attorney may authorize an employee administrative leave when it is in the best interest of the district attorney's office to do so.

B. An employee who has been duly appointed as a member of a public board or commission shall be entitled to administrative leave, with the consent of the district attorney, to attend meetings provided such attendance does not adversely affect the performance of the employee's required duties.

C. Employees who are registered and eligible voters may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The district attorneys or their designees may specify the hours during which the voter (employee) may be absent. This leave is not available to employees whose work day begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls.

D. Employees shall be entitled to administrative leave when appearing in obedience to a subpoena. Fees received as a witness during normal working hours, excluding reimbursement for meals, travel and overtime, shall be remitted to the district attorney's office.

E. Employees shall be entitled to administrative leave for serving on a federal, state, grand or petit jury. Fees received as a juror during normal working hours, excluding reimbursement for meals, travel and overtime, shall be remitted to the district attorney's office.

F. In no case shall

administrative leave be granted for court attendance when an employee is engaged in personal litigation or service as a paid expert witness. However, an employee may be granted annual leave in such cases with the approval of the district attorney.

[10.4.7.17 NMAC - Rp, NMDAA 91-1.6.11, 06/30/2010]

10.4.7.18 EDUCATIONAL LEAVE:

Educational leave permits employees to pursue special training related to their employment. A district attorney may grant an employee educational leave with or without pay.

[10.4.7.18 NMAC - Rp, NMDAA 91-1.6.12, 06/30/2010]

10.4.7.19 MILITARY LEAVE - ACTIVE DUTY:

A. An employee who is ordered to active duty (not active duty training) and presents a copy of the official orders or appropriate military certificate to the district attorney shall be granted military leave with pay for the first fifteen (15) calendar days. After the paid military leave has been exhausted, the remainder of time they are on active duty must be taken as leave without pay, unless they elect to use their annual or compensatory leave.

B. Employees who enter active military duty are entitled to return to their former positions or to similar positions with the same pay provided they are still qualified to perform the duties of the position. Employees must notify the respective district attorney's office that they are eligible for re-employment within thirty (30) days of release from military service.

C. Upon re-employment, employees are entitled to be treated as though they never left for purposes of rights and benefits based upon length of service. The time spent in the military shall count for seniority, general pay increases and annual accrual rate purposes. Part-time employees shall receive prorated benefits.

D. Employees in the reserves and the national guard who are called to active duty shall first be granted any remaining military leave from the fiscal year normally used for training purposes and then be granted an additional fifteen (15) days of military leave, as authorized by the governor.

[10.4.7.19 NMAC - Rp, NMDAA 91-1.6.13, 06/30/2010]

10.4.7.20 MILITARY LEAVE - ACTIVE DUTY: TRAINING:

A. Members of organized reserve units or the national guard ordered to active duty training shall be given up to fifteen (15) working days of paid military leave per federal fiscal year. These fifteen (15) days are in addition to other authorized

leave.

B. The governor may grant members of the national guard paid military leave for active duty training, in addition to that already given by law. Such additional leave must not exceed fifteen (15) working days per federal fiscal year.

C. Members of the state defense force shall be granted paid military leave to attend officially authorized training or instruction courses. Such leave applies only to full-time employees and must not exceed fifteen (15) working days per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed fifteen (15) working days per calendar year for search and rescue missions.

E. Employees who are members of a reserve component of the United States armed forces shall, upon request, be granted unpaid leave for the period required to perform active duty for training or inactive duty training in the United States armed forces according to the provisions of 38 U.S.C. Section 2024. The employee may choose to utilize their annual leave for this purpose.

[10.4.7.20 NMAC - Rp, NMDAA 91-1.6.14, 06/30/2010]

10.4.7.21 PERSONAL LEAVE:

A. Employees in full-time positions who have completed at least one year of service are entitled to one (1) personal leave day each calendar year. Employees in part-time positions who have completed at least one (1) year of service are entitled to a personal leave prorated to the hours worked.

B. The personal leave must be taken during eight (8) consecutive hours or, in the case of part-time employees, consecutive prorated hours.

C. The personal leave must be used within the calendar year that it was accrued, or it shall be forfeited.

D. Employees who do not take the personal leave shall not be paid for it upon separation from the service.

E. The personal leave may be used for any purpose the employee chooses. Such leave must be requested and approved in advance.

[10.4.7.21 NMAC - Rp, NMDAA 91-1.6.15, 06/30/2010]

10.4.7.22 HOLIDAYS:

A. The district attorneys' offices shall observe the dates published by the New Mexico supreme court as legal public holidays.

B. Covered employees required to work on the day a holiday is observed shall be paid at two (2) times the usual hourly rate of pay for all hours actually worked on the holiday.

C. When a full-time

employee's scheduled non-work day falls on a day observed as a holiday, the employee shall be entitled to one other day off.

D. Employees must not be in a leave without pay status the normal work day immediately before and work day immediately after the holiday in order to be paid for the holiday.

E. Holidays which occur during an employee's vacation or sick leave will be charged to holiday time and not vacation or sick leave.

[10.4.7.22 NMAC - Rp, NMDAA 91-1.6.18, 06/30/2010]

10.4.7.23 UNAUTHORIZED

LEAVE: If an employee's request for leave of absence with or without pay is disapproved and the employee takes unauthorized leave, the district attorney may place the employee on leave without pay and after an unauthorized leave of absence for three (3) consecutive workdays may consider the employee to have abandoned the position and resigned from the office of the district attorney. Employees who are deemed absent without leave shall not accrue annual or sick leave.

[10.4.7.23 NMAC - N, 06/30/2010]

10.4.7.24 DONATION OF ANNUAL LEAVE:

A. Employees may donate annual leave to other employees in the same district attorney's office for a serious health condition or the serious health condition of a family member as defined in the FMLA, with the approval of the district attorney.

B. Each district attorney's office is required to maintain records of all donations which shall include but are not limited to the following information: name of donor; amount of annual leave donated; name of recipient; amount of annual leave used; a health care provider's description of the nature, severity and anticipated duration of the health condition provided by the employee or legally authorized representative; and any other pertinent information or documents requested by the district attorney.

C. Supporting documentation for the request to either donate or receive annual leave shall be kept confidential and not subject to public inspection without the written consent of the employee.

D. The method used for donation of annual leave shall be determined by the district attorney.

E. The recipient of donated annual leave may not use such leave until first exhausting all accrued annual leave, sick leave, compensatory time and personal leave.

F. The form "request for donation of annual leave" shall be used

by employees requesting donated annual leave, and the form "annual leave donation disclosure," shall be used by employees donating annual leave. As authorized by the district attorneys as a group, the "request for donation of annual leave" forms and the "annual leave donation disclosure" forms are created by the administrative office of the district attorneys, and such forms are revised from time to time as authorized or ratified by the district attorneys as a group. Current copies of the forms are maintained by, and are available from, the administrative office of the district attorneys.

[10.4.7.24 NMAC - N, 06/30/2010]

10.4.7.25 DISTRICT ATTORNEYS ANNUAL LEAVE DONATION FORMS:

A. With regard to a request for donation of annual leave, a form entitled "request for donation of annual leave" shall be completed and submitted. The form may be created and revised from time to time by the administrative office of the district attorneys, subject to the approval or ratification by the district attorneys as a group. The current version of the form shall be maintained by, and is available upon request from, the administrative office of the district attorneys and may contain the following information:

- (1) date submitted;
- (2) name of the district attorney or their designee;
- (3) name of the employee requesting the donation of annual leave;
- (4) if the annual leave donation request is sought for the employee's needs, a description of the reason why the donation is sought;
- (5) if the annual leave donation request is sought to address the needs of a family member, or another person (with a description of the relationship between the employee and the other person);
 - (a) a description of the reasons the family member's or other person's needs necessitate the employee to request an annual leave donation; and
 - (b) written documentary details from a health care provider about the nature, severity and duration of a serious health condition; and
- (6) the signature of the employee or their authorized representative requesting the donation of annual leave.

B. With regard to a donation of annual leave, a form entitled "annual leave donation disclosure" shall be completed and submitted. The form may be created and revised from time to time by the administrative office of the district attorneys, subject to the approval or ratification by the district attorneys as a group. The current version of the form shall be maintained by, and is available upon request from, the

administrative office of the district attorneys and may contain the following information:

- (1) the typed or printed name of the employee who is donating their annual leave;
 - (2) the number of hours of accrued annual leave that the employee is donating;
 - (3) a statement that the donating employee understands that any annual leave remaining at the end of the emergency shall be forfeited;
 - (4) the date the form is signed;
 - (5) the address of the donating employee, including street, city, state and zip code;
 - (6) the social security number of the donating employee; and
 - (7) the signature of the donating employee.
- [10.4.7.25 NMAC - N, 06/30/2010]

HISTORY OF 10.4.7 NMAC:

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

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT CHAPTER 4 DISTRICT ATTORNEYS PART 8 EMPLOYEE PERFORMANCE EVALUATIONS

10.4.8.1 ISSUING AGENCY: Administrative Office of the District Attorneys
[10.4.8.1 NMAC - N, 06/30/2010]

10.4.8.2 SCOPE: This part sets forth the performance appraisal and development of employees in the offices of the district attorneys and the administrative office of the district attorneys.
[10.4.8.2 NMAC - Rp, NMDAA 91-1.7.01, 06/30/2010]

10.4.8.3 STATUTORY

AUTHORITY: This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (5) NMSA 1978 which requires the promulgation of district attorney personnel rules governing the evaluation of performance of employees for the purpose of improving staff effectiveness.
[10.4.8.3 NMAC - N, 06/30/2010]

10.4.8.4 DURATION: Permanent
[10.4.8.4 NMAC - N, 06/30/2010]

10.4.8.5 EFFECTIVE DATE: June 30, 2010, unless a later date is cited at the end of a section.
[10.4.8.5 NMAC - N, 06/30/2010]

10.4.8.6 OBJECTIVE: To establish for all district attorneys a uniform, equitable and binding system of personnel administration.
[10.4.8.6 NMAC - N, 06/30/2010]

10.4.8.7 DEFINITIONS: [RESERVED]
[See 10.4.1.7 NMAC]

10.4.8.8 PURPOSE: The purpose of completing an employee performance appraisal and development

form may be in order to achieve any of the following:

A. to evaluate and assess an employee's performance, conduct, and ability in relation to the job requirements for their position;

B. to inform an employee of strong and weak points as well as training needs and expected improvements;

C. to compare an employee's performance to previously set goals;

D. to establish performance goals for the coming year and to determine the steps necessary to achieve them;

E. to make fair, equitable, and legally defensible compensation decisions;

F. to recognize an employee's potential for promotion;

G. to assist in determining the order of layoff and reinstatement; and

H. as a basis for taking disciplinary action against an employee.
[10.4.8.8 NMAC - N, 06/30/2010]

10.4.8.9 RESPONSIBILITY:

A. It is the responsibility of an employee's immediate supervisor to rate each incumbent's performance at least once a year. This individual shall be referred to as the "rater".

B. It is the responsibility of upper level management to review all employee performance appraisal and development forms once they have been completed by the immediate supervisor. These individuals shall be referred to as the "reviewers". A reviewer is typically the rater's immediate supervisor.

C. It is incumbent upon all individuals designated as either a rater or a reviewer to attend training on the use of the district attorney employee performance and appraisal form within one year of being assigned to supervise an employee, or within one year of any changes to the existing employee performance appraisal and development form or process.
[10.4.8.9 NMAC - N, 06/30/2010]

10.4.8.10 PROCESS AND PROCEDURES:

The district attorney employee performance appraisal and development forms and an accompanying manual of detailed instructions are created and revised from time to time by the administrative office of the district attorneys, subject to the approval or ratification by the district attorneys as a group. The current version of the employee performance appraisal and development forms and an accompanying manual of detailed instructions shall be maintained by the administrative office of the district attorneys.

A. The current version of the employee performance appraisal and

development forms shall be maintained by, and are available upon request from, the administrative office of the district attorneys and may contain the following sections:

- (1) a general information section;
- (2) an overall performance appraisal section;
- (3) an acknowledgments section;
- (4) a job assignment activities and performance standards section;
- (5) a performance indicators section;
- (6) an appraisal results section; and
- (7) an employee development plan.

B. The current version of the employee performance appraisal and development manual shall be maintained by, and is available upon request from, the administrative office of the district attorneys. [10.4.8.10 NMAC - N, 06/30/2010]

HISTORY OF 10.4.8 NMAC:

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

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.
NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT CHAPTER 4 DISTRICT ATTORNEYS PART 9 DISCIPLINARY ACTIONS

10.4.9.1 ISSUING AGENCY:
Administrative Office of the District Attorneys
[10.4.9.1 NMAC - N, 06/30/2010]

10.4.9.2 SCOPE: This part sets forth the rules for the establishment, maintenance and administration of an equitable, disciplinary process which shall be applicable to all positions in the offices of the district attorneys and the administrative

office of the district attorneys.

[10.4.9.2 NMAC - Rp, NMDAA 91-1.8.01, 06/30/2010]

10.4.9.3 STATUTORY AUTHORITY: This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (8) NMSA 1978 which requires the promulgation of district attorney personnel rules governing a disciplinary procedure, which shall provide for an equitable response to infractions of rules or work performance standards.

[10.4.9.3 NMAC - N, 06/30/2010]

10.4.9.4 DURATION:
Permanent
[10.4.9.4 NMAC - N, 06/30/2010]

10.4.9.5 EFFECTIVE DATE:
June 30, 2010, unless a later date is cited at the end of a section.
[10.4.9.5 NMAC - N, 06/30/2010]

10.4.9.6 OBJECTIVE: To establish for all district attorneys a uniform, equitable and binding system of personnel administration.
[10.4.9.6 NMAC - N, 06/30/2010]

10.4.9.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.9.8 JUST CAUSE FOR DISCIPLINARY ACTION:

A. A covered employee may be suspended, demoted or dismissed only for just cause which is any behavior that is inconsistent with the employee's obligation to the agency, even though no previous disciplinary actions have been taken.

B. Just cause includes, but is not limited to: inefficiency; incompetence; misconduct; negligence; insubordination; continued unsatisfactory performance; unauthorized leave; failure to comply with any provisions of these rules or to meet a condition of employment as required by law; violation of the obligation of confidentiality imposed upon district attorney employees; falsifying official records or documents; or violation of a felony or misdemeanor when the provisions of the Criminal Offender Employment Act of NMSA 1978 apply.
[10.4.9.8 NMAC - N, 06/30/2010]

10.4.9.9 TYPES OF DISCIPLINARY ACTIONS:

A. Formal disciplinary actions include dismissal, demotion, suspension or written reprimand.

B. Informal disciplinary actions include a written or verbal warning, or a written or verbal reprimand.

C. The written reprimand must be signed by the district attorney or the designee and the employee. The signature of the employee does not necessarily indicate concurrence with the written reprimand. Signature of the employee at least will indicate that they acknowledged receipt of the written reprimand.

D. An employee may submit a written response or rebuttal to his/her supervisor's written reprimand which shall be included in the employee's personnel file.

[10.4.9.9 NMAC - Rp, NMDAA 91-1.8.04, 06/30/2010]

10.4.9.10 FORMAL DISCIPLINARY PROCEDURE:

A. The dismissal, demotion or suspension of a covered employee shall be accomplished according to the following procedure.

(1) The employee will be served by the district attorney, or their designee, with a written notice of the proposed disciplinary action which shall:

(a) cite the specific action or acts allegedly constituting just cause;

(b) provide an explanation of the evidence that the district attorney or their designee has;

(c) specify what the proposed

disciplinary action is; and

(d) state that the employee, or a representative of the employee's choosing, has five (5) working days from service of the notice to respond to the district attorney or their designee in writing to the notice or to request an opportunity to be heard.

(2) If service of the notice is by certified mail, with return receipt requested, three (3) working days shall be added to the time for an answer.

(3) If the employee requests a pre-disciplinary review, the district attorney or designee shall conduct such review within five (5) working days of the district attorney's or designee's receipt of the request, unless the employee and the employer agree, in writing, to an extension of time. The review is not a formal evidentiary proceeding.

B. The district attorney or their designee shall consider the employee's response, if any, and determine what action is appropriate within five (5) working days of the response. If the employee does not respond to the notice of proposed disciplinary action, the district attorney or designee may proceed to determine the appropriate action and serve a notice of final decision no later than ten (10) working days after the employee receives the written notice of proposed action. The district attorney or their designee may proceed with a notice of final decision before the end of the five (5) day period for response if the employee's response is received or the review is concluded prior to the expiration of this period.

C. The written notice of final decision must:

(1) specify the date of service of the notice of proposed disciplinary action;

(2) identify the specific acts constituting just cause, which may not include acts not specified in the notice of proposed disciplinary action;

(3) specify the disciplinary action, if any, to be taken;

(4) specify the effective date of the dismissal, demotion or suspension which must be at least twenty-four (24) hours from the date of service; and

(5) inform the covered employee that the disciplinary action may be appealed to either the district attorneys personnel review board or to the state personnel office within thirty (30) days of the effective date of the disciplinary action.

D. The disciplinary action will not be stayed, pending the completion of the appeal process.

[10.4.9.10 NMAC - N, 06/30/2010]

HISTORY OF 10.4.9 NMAC:

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

NMDAA 90-1, New Mexico District

Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT

CHAPTER 4 DISTRICT ATTORNEYS

PART 10 APPEALS AND ADJUDICATION

10.4.10.1 ISSUING AGENCY:
Administrative Office of the District Attorneys

[10.4.10.1 NMAC - N, 06/30/2010]

10.4.10.2 SCOPE: This rule sets for the rules for the establishment, maintenance and administration of an equitable appeals and adjudication process which is applicable to covered positions in the offices of the district attorneys and the administrative office of the district attorneys.
[10.4.10.2 NMAC - N, 06/30/2010]

10.4.10.3 STATUTORY AUTHORITY:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA

1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (9) NMSA 1978 which requires the promulgation of district attorney personnel rules governing an appeal process to review a disciplinary action solely involving suspension, demotion or termination.

[10.4.10.3 NMAC - N, 06/30/2010]

10.4.10.4 DURATION:
Permanent

[10.4.10.4 NMAC - N, 06/30/2010]

10.4.10.5 EFFECTIVE DATE:
June 30, 2010, unless a later date is cited at the end of a section.

[10.4.10.5 NMAC - N, 06/30/2010]

10.4.10.6 OBJECTIVE: To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.10.6 NMAC - N, 06/30/2010]

10.4.10.7 DEFINITIONS:
[RESERVED]
[See 10.4.1.7 NMAC]

10.4.10.8 APPEALS PROCEDURE:

A. Covered employees who have been demoted, dismissed or suspended have the right to appeal to the board for a public hearing before the board or before a state-personnel- office designated hearing officer within thirty (30) calendar days of the effective date of the disciplinary action.

B. The appeal notice and supporting documents shall be directed to the president of the New Mexico district attorneys personnel review board. Upon receipt of the appeal, the president shall forward a copy to the members of the personnel review board.

C. In the event the appellant elects a state-personnel-designated hearing officer, the board shall promptly make that request to the state personnel office and promptly execute any and all documents necessary to implement this election. The state personnel office shall promptly arrange for the hearing officer without charge. This officer shall have all of the rights, duties and responsibilities provided to the board by the District Attorney Personnel and Compensation Act. This hearing officer's

decision shall be binding and of the same force and effect as if the board itself had rendered the final decision.

D. In the event the appellant elects a hearing before the board, the president of the personnel review board shall inform the other board members and the affected parties of the time and place of the hearing; and the president or their designee shall preside over all proceedings pertaining to each appeal. A sitting board member who is the employer of the appellant must excuse themselves from hearing the appeal. The president of the board may designate a hearing officer who may be a member of the board to preside over and take evidence at any hearing pursuant to such appeal. This hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of act. The board shall render a final decision on the appeal, which shall include findings of fact and conclusions of law. If a hearing is continued, the same three (3) members who started to hear the appeal shall serve until the conclusion of the appeal process. The president of the personnel review board shall inform the other board members and the affected parties of the time and place of the hearing; and the president or their designee shall preside over all proceedings pertaining to each appeal. A sitting board member who is the employer of the appellant must excuse himself/herself from hearing the appeal. The president of the board may designate a hearing officer who may be a member of the board to preside over and take evidence at any hearing pursuant to such appeal. This hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a final decision on the appeal, which shall include findings of fact and conclusions of law. If a hearing is continued, the same three (3) members who started to hear the appeal shall serve until the conclusion of the appeal process.

[10.4.10.8 NMAC - N, 06/30/2010]

10.4.10.9 ADJUDICATION PROCEDURE: All adjudication procedures apply similarly to all presiding hearing officers.

A. Consolidation or joinder of cases:

(1) The board or the state personnel office designated hearing officer may consolidate cases in which two or more appealing employees have cases containing identical or similar issues.

(2) The board or the state personnel office designated hearing officer may join the appeals of an appellant who has two or more appeals pending.

(3) The board or the state personnel office designated hearing officer may consolidate or join cases if it would

expedite final resolution of the cases and would not adversely affect the interests of the parties.

B. Motions:

(1) Any defense, objection, or request that can be determined on the merits prior to a hearing may be raised by motion before the deadline set by the board or by the state personnel office designated hearing officer, unless good cause is shown for the delay.

(2) Responses to any motions shall be filed according to a schedule set by the board or by the state personnel office designated hearing officer.

(3) During the course of a hearing, motions may be renewed or made for the first time, if such a motion then becomes appropriate.

(4) The board or the state personnel office designated hearing officer may rule on all non-dispositive motions.

C. Sanctions: The board or the state personnel office designated hearing officer may impose sanctions upon the parties as necessary to serve the cause of justice including, but not limited to, the instances set forth below.

(1) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, a request for admission and/or production of witnesses, the board or the state personnel office designated hearing officer may:

(a) draw an inference in favor of the requesting party with regard to the information sought;

(b) prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought;

(c) permit the requesting party to introduce secondary evidence concerning the information sought; and

(d) strike any part of the pleadings or other submissions of the party failing to comply with such request.

(2) The board or the state personnel office designated hearing officer may refuse to consider any motion or other action which is not filed in a timely fashion.

(3) The board or the state personnel office designated hearing officer may dismiss an appeal with prejudice or rule for the appellant if a party fails to defend or prosecute an appeal.

[10.4.10.9 NMAC - Rp, NMDAA 91-1.9.01, 9.02, 9.03, 06/30/2010]

10.4.10.10 PRE - HEARING CONFERENCE:

A. At the pre-hearing conference, the parties shall submit to the board or the state personnel office designated hearing officer a proposed pre-hearing order

which shall contain at least:

(1) a statement of any contested facts and issues;

(2) stipulation of those matters not in dispute;

(3) identity of all witnesses to be called and a brief summary of their testimony;

(4) a list of exhibits;

(5) requests for subpoenas; and

(6) a tentative hearing date.

B. The board or the state personnel office designated hearing officer, in cooperation with the parties, may further revise the pre-hearing order.

C. Any discussion concerning possible settlement of the appeal shall not be a part of the pre-hearing order nor may it be introduced at the hearing.

[10.4.10.10 NMAC - Rp, NMDAA 91-1.9.04, 06/30/2010]

10.4.10.11 ADDITIONAL WITNESSES:

Witnesses who were not identified at the prehearing conference must be identified to the opposing party and the board or the state personnel office designated hearing officer at least three (3) working days prior to the hearing. The board or the state personnel office designated hearing officer may waive this rule for good cause.

[10.4.10.11 NMAC - Rp, NMDAA 91-1.9.05, 06/30/2010]

10.4.10.12 SUBPOENAS:

A. The board and the state personnel office designated hearing officer have the power to subpoena witnesses and compel the production of books, papers, and any other materials pertinent to any investigation or hearing.

B. Subpoenas must be hand delivered.

C. In order to compel attendance at a hearing, the subpoena shall be received by the witness at least seventy-two (72) hours prior to the time the witness is to appear. The board or the state personnel office designated hearing officer may waive this rule for good cause shown.

D. Employees under subpoena shall be granted administrative leave.

[10.4.10.12 NMAC - Rp, NMDAA 91-1.9.06, 06/30/2010]

10.4.10.13 HEARINGS:

A. Notice of hearing shall be made by certified mail with return receipt requested at least fourteen (14) calendar days prior to the hearing, unless otherwise agreed to by the parties and the board or the state personnel office designated hearing officer.

B. The hearing shall be open to the public, unless the parties agree that it shall be closed.

C. A party may appear

at the hearing through a representative, provided such representative has made a written entry of appearance prior to the hearing date.

D. The board or the state personnel office designated hearing officer may clear the room of witnesses not under examination, if either party so requests, and any person who is disruptive. The district attorney is entitled to have a person in the hearing room during the course of the hearing, even if the person will testify in the hearing.

E. The district attorney or his representative may make an opening statement. The appellant may then make an opening statement or wait until the district attorney is through presenting his/her case.

F. The district attorney shall present his/her evidence first.

G. Oral evidence shall be taken only under oath or affirmation.

H. Each party shall have the right to:

- (1) call and examine witnesses and introduce exhibits;
- (2) cross-examine witnesses;
- (3) impeach any witness; and
- (4) rebut any relevant evidence.

I. The hearing shall be conducted in an orderly and informal manner without adherence to the rules of evidence required in judicial proceedings. However, at least some non-hearsay evidence must support the decision reached.

J. The board or the state personnel office designated hearing officer may admit all evidence, including affidavits, if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of business. The board or the state personnel office designated hearing officer shall exclude immaterial, irrelevant or unduly cumulative testimony.

K. The board or the state personnel office designated hearing officer may take administrative notice of those matters of which courts of this state may take judicial notice.

L. The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in the district courts of the state of New Mexico.

M. The board or the state personnel office designated hearing officer shall consider only those allegations against the appellant included in the notice of final action.

N. The hearing shall be recorded by a sound-recording device under the supervision of the board or the state personnel office designated hearing officer.

O. The board or the state personnel office designated hearing officer may require post-hearing briefs and proposed findings of fact and conclusions of

law.

P. Upon hearing the evidence and statements of the parties and after the necessary deliberation, the board shall issue a written decision within twenty (20) working days after the close of the record and send copies to the parties and their representatives. The decision, which shall be based upon the preponderance of the evidence, shall order either corrective action or dismissal of the appeal. The decision of the board or the state personnel office designated hearing officer shall be final. No further administrative appeal is authorized. [10.4.10.13 NMAC - Rp, NMDAA 91-1.9.07, 06/30/2010]

10.4.10.14 REINSTATEMENT:

A. If the board or the state personnel office designated hearing officer finds that the action taken was without just cause, the board or the state personnel office designated hearing officer may modify the disciplinary action or order the reinstatement of the appellant to his or her former position or to a position of like status and pay.

B. When the board or state personnel office designated hearing officer orders reinstatement of an appellant, the reinstatement shall be effective within thirty (30) calendar days after service of a written copy of the decision on the affected party. The board or the state personnel office designated hearing officer may award back pay as of the date of the dismissal, demotion or suspension or as of such later date as the reinstatement order may specify. [10.4.10.14 NMAC - Rp, NMDAA 91-1.9.08, 06/30/2010]

10.4.10.15 HEARING OFFICER:

A. The hearing officer shall not participate in any adjudicatory proceeding if, for any reason, the hearing officer cannot afford a fair and impartial hearing to either party. Either party may ask to disqualify the designated hearing officer for cause by filing an affidavit of disqualification within fourteen (14) calendar days of the pre-hearing order. The affidavit must state the particular grounds for disqualification. The designated hearing officer shall rule on motions for disqualification and an appeal of the ruling may be made to the board within fourteen (14) calendar days of the hearing officer's ruling.

B. Appeals from employees of the district attorney's office shall be heard by the board, a member of the board designated as hearing officer or a state personnel office designated hearing officer.

C. The hearing officer may dismiss an appeal with prejudice in accordance with the provisions of a settlement agreement approved by the hearing officer or upon the filing of a motion to withdraw the appeal at any time before the

deadline for the completion of discovery.

D. The hearing officer may dismiss an appeal with prejudice upon the filing of a motion to withdraw the appeal after the deadline for the completion of discovery upon such terms and conditions as the hearing officer deems proper, up to and including the assessment of costs.

E. Persons shall not discuss the merits of any pending hearing or proceeding with the designated hearing officer or member of the board unless both parties, or their representatives, are present. [10.4.10.15 NMAC - N, 06/30/2010]

10.4.10.16 APPEAL TO DISTRICT COURT:

A. Any party aggrieved by the decision of the board or the state personnel office designated hearing officer made pursuant to this part may appeal the decision to the district court in the district in which they reside, is employed or maintains a principal office or to the district court for the district of Santa Fe county. The appeal shall be initiated by filing a notice of appeal with the clerk of the appropriate district court within thirty (30) days after the service on that party of a written copy of the final decision of the board or the state personnel office designated hearing officer. Upon appeal the district court shall affirm the decision of the board or the state personnel office designated hearing officer unless the decision is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence; or
- (3) otherwise not in accordance with law.

B. An appeal from the decision of the district court may be taken to the court of appeals in accordance with the rules of civil procedure.

[10.4.10.16 NMAC - N, 06/30/2010]

HISTORY OF 10.4.10 NMAC:

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

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

**NEW MEXICO
ADMINISTRATIVE
OFFICE OF THE DISTRICT
ATTORNEYS**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 4 DISTRICT
ATTORNEYS
PART 14 J O B
SPECIFICATIONS**

10.4.14.1 ISSUING AGENCY:
Administrative Office of the District
Attorneys
[10.4.14.1 NMAC - N, 06/30/2010]

10.4.14.2 SCOPE: Applicable to
all employees in a district attorney's office
and in the administrative office of the district
attorneys, except where noted.
[10.4.14.2 NMAC - N, 06/30/2010]

**10.4.14.3 STATUTORY
AUTHORITY:** This rule is adopted
pursuant to:

A. Section 36-1-25
NMSA 1978 which, among other things,
authorizes the duly appointed director of the
administrative office of the district attorneys
to appoint necessary personnel and assign
their duties within the administrative office
of the district attorneys;

B. Section 36-1-26 NMSA
1978 which, among other things, requires
the director of the administrative office of
the district attorneys to develop uniform
systems for use by district attorney offices
with respect to personnel matters;

C. Section 36-1A-2 NMSA
1978 of the District Attorney Personnel
and Compensation Act, Sections 36-1A-
1 through 36-1A-15 NMSA 1978, which,
among other things, created the District
Attorney Personnel and Compensation
Act to establish for all district attorneys a
uniform, equitable and binding system of
personnel administration; and

D. Section 36-1A-8 NMSA
1978 which, among other things, requires the
district attorneys to promulgate personnel
rules, with the assistance of the director
of the administrative office of the district
attorneys as authorized by Subsection I of
Section 36-1-26 NMSA 1978, which among
other things requires the director of the
administrative office of the district attorneys
to perform such other duties in furtherance
of the administration of the business of the
district attorneys as directed by the elected
or appointed district attorneys.
[10.4.14.3 NMAC - N, 06/30/2010]

10.4.14.4 DURATION:
Permanent

[10.4.14.4 NMAC - N, 06/30/2010]

10.4.14.5 EFFECTIVE DATE:
June 30, 2010, unless a later date is cited at
the end of a section.
[10.4.14.5 NMAC - N, 06/30/2010]

10.4.14.6 OBJECTIVE: To
establish for all district attorneys a uniform,
equitable and binding system of personnel
administration.
[10.4.14.6 NMAC - N, 06/30/2010]

10.4.14.7 DEFINITIONS:
[RESERVED]
[See 10.4.1.7 NMAC]

**10.4.14.8 J O B
SPECIFICATIONS:**
A. Administrative office of
the district attorneys director:

(1) Purpose: This position
performs a variety of administrative and
managerial duties as the agency director
for the administrative office of the district
attorneys.

(2) Supervision: Incumbent
receives administrative direction from
the elected district attorneys. Incumbent
supervises the administrative office of the
district attorneys staff.

(3) Examples of work performed:
Incumbent plans, develops and executes
administrative policy governing agency
operations; implements, oversees, and
evaluates agency management decisions
and is responsible for multiple programs/
projects; establishes agency accountability
measures; participates in the preparation of
documents for the office such as budgets,
information technology plans, agency
annual report; drafts legislation and testifies
regarding legislative initiatives; oversees
budgets involving multiple funding sources;
and supervises agency staff.

(4) Distinguishing characteristics:
This is a management level position which
involves the administration of a single
agency. The incumbent acts on behalf of the
New Mexico district attorneys' association,
when so directed, and serves at the pleasure
of the district attorneys.

(5) Working conditions: Work is
performed in an office environment. Some
physical effort and frequent travel may be
required. May be required to work extended
hours at certain intervals during the year.

(6) Knowledge, skills,
and abilities: This position requires
knowledge of the criminal justice system,
public administration principles, office
management practices, federal and state
laws and regulations; effective writing and
verbal communication skills, supervisory
skills, analytical and decision-making skills;
ability to plan and coordinate large scale
projects involving numerous programs and

individuals; ability to organize and prioritize
workloads and manage multiple projects.

(7) Requirements: Bachelor's
degree in public administration, criminal
justice administration, or related field plus
seven (7) years of work experience in
administration, management, or related field,
which must include two years supervision/
administration experience.

(8) Preferred qualifications: Law
degree, which must include two years
supervision/administration experience.

B. District office manager:

(1) Purpose: This position
provides management and oversight of
district attorney office operations, functions,
and programs.

(2) Supervision: Incumbent
receives administrative direction from the
district attorney. Incumbent supervises
office support staff as directed by the district
attorney. Incumbent also takes direction
and is accountable to the assigned budget
analysts at the department of finance and
administration and the legislative finance
committee. Incumbent is also accountable
to the designated auditing firm for their
respective agency.

(3) Examples of work
performed: Incumbent manages the day-
to-day operations of an office which may
include, but is not limited to: managing
and performing the duties related to fiscal
and human resource activities; overseeing
the processing of financial documents,
the procurement process, administration
of employee benefits, payroll processing,
asset management, budget preparation
and administration, and federal/state/local
grant administration; communicating with
other agencies, vendors, etc.; acting as the
liaison with both the legislative finance
committee and department of finance and
administration for their respective agency;
overseeing the maintenance of all necessary
files and records; managing prosecution
support functions and case management;
overseeing office security and maintenance;
and coordinating staff development and
supervision. Incumbent may manage certain
programs within a district attorney's office
which may include but are not limited
to: pre-prosecution diversion, worthless
check program, victim/witness assistance;
domestic violence programs, etc. The
incumbent insures compliance with federal
regulations, state statutes, policies and
directives; and performs other related job
duties.

(4) Distinguishing characteristics:
This is a management level position which
serves at the pleasure of the district attorney.

(5) Working conditions: Work is
performed in an office environment. Some
physical effort and frequent travel may be
required. May be required to work extended
hours at certain intervals during the year.

(6) Knowledge, skills, and abilities: This position requires some knowledge of the criminal justice system and considerable knowledge of office management practices, fiscal and human resource administration; effective public relations and communication skills, supervisory skills, analytical and decision-making skills; ability to organize, prioritize and manage multiple projects and workloads.

(7) Requirements: Bachelor's degree in public administration, criminal justice administration, political science or related field plus five (5) years of related work experience and education; or any combination of experience and education in a related field totaling at least nine (9) years, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Master's degree in public administration, criminal justice administration, political science or related field plus five (5) years of related work experience and education; or any combination of experience and education in a related field totaling at least eleven (11) years, which must include two (2) years supervision/administration experience.

C. Law clerk:

(1) Purpose: This position provides technical legal research, and document preparation within a district attorney's office.

(2) Supervision: Incumbent receives immediate supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent conducts legal research, prepares legal documents, files pleadings, and assists attorneys in case preparation as instructed; and performs other related job duties.

(4) Distinguishing characteristics: This position functions primarily to provide legal research, writing and support for attorneys.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires basic knowledge in the areas of criminal prosecution, rules of evidence, rules of criminal procedure, legal research and writing; organizational skills, basic computer skills; ability to effectively communicate verbally and in writing, ability to research and analyze information and situations.

(7) Requirements: Completion of a minimum of one year in an accredited law school.

(8) Preferred qualifications: Law degree from an accredited law school.

D. Human resource coordinator:

(1) Purpose: This position assists district attorney offices in the administration of the New Mexico district attorneys'

personnel and compensation plan, and with a variety of human resource management issues.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent reviews personnel and position documents for plan compliance and accuracy; processes documents through the automated payroll and personnel system; may act as liaison to the district attorneys' personnel review board; assists with salary calculations, studies, human resource reports; provides information and administrative support; may assist with the coordination of training and general staff development activities; handles issues pertaining to loss control, fair labor standards act, Americans with disabilities act, workers compensation, employee liability and mediation, and employee orientation; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position within the human resource series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the district attorneys' personnel and compensation plan, state personnel and payroll system, federal regulations, general office procedures and equipment; good public relations and communications skills, good organizational skills, good computer skills, good math skills, ability to follow directions and policies.

(7) Requirements: Associates degree, or two (2) years related work experience and education.

(8) Preferred qualifications: Associates degree, and at least two (2) years related work experience or four (4) years related work experience and education.

E. Human resource administrator:

(1) Purpose: This position assists district attorney offices in the administration of the New Mexico district attorneys' personnel and compensation plan.

(2) Supervision: Incumbent receives general supervision from the administrative office of the district attorneys director, district attorneys or their designees.

(3) Examples of work performed: Incumbent reviews personnel and position documents for plan compliance and accuracy; processes documents through the automated payroll and personnel system; may act as liaison to the district attorneys' personnel review board; assists with salary calculations, studies, human resource reports; provides information and administrative support; may assist with the

coordination of training; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position within the human resource series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the district attorneys' personnel and compensation plan, state personnel and payroll system, federal regulations, general office procedures and equipment; good public relations and communications skills, good organizational skills, good computer skills, good math skills, ability to follow directions and policies.

(7) Requirements: Associates degree, and at least two (2) years related work experience or four (4) years related work experience and education.

(8) Preferred qualifications: Bachelor's degree and at least two (2) years related work experience or any combination of experience and education in a related field totaling at least six (6) years.

F. Special program director:

(1) Purpose: This position provides management and oversight of special operations, functions, and programs within a district attorney's office.

(2) Supervision: Incumbent receives administrative direction from the district attorney. Incumbent supervises staff as directed by the district attorney.

(3) Examples of work performed: Incumbent manages specific programs within a district attorney's office which may include but are not limited to: investigations; budget and finance; pre-prosecution diversion; worthless checks; victim/witness assistance; domestic violence; etc. Duties may include, but are not limited to: initiating and overseeing criminal investigations; program budget preparation and administration; administration of federal funds; policy development and implementation; networking with community and law enforcement agencies; conducting training; managing and performing the duties related to fiscal and human resource activities; overseeing the maintenance of all necessary files and records; managing prosecution support functions and case management; overseeing office security and maintenance; and coordinating staff development and supervision. The incumbent insures compliance with federal regulations, state statutes, policies and directives; and performs other related job duties.

(4) Distinguishing characteristics: This is a management level position which serves at the pleasure of the district attorney.

(5) Working conditions: Work is

performed in an office environment. Some physical effort and frequent travel may be required.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of the criminal justice system, court proceedings and procedures within a district attorney's office, considerable knowledge of applicable state statutes, and knowledge of office management practices, and fiscal and human resource administration; effective public relations and communication skills, supervisory skills, good writing skills, analytical and decision-making skills, and a high level of organizational skills; and ability to organize and prioritize workloads and to manage multiple projects.

(7) Requirements: Bachelor's degree in criminal justice, public administration, business administration, social sciences or related fields plus four (4) years of related work experience; or any combination of experience and education in a related field totaling at least eight (8) years; which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Master's degree in criminal justice, public administration, business administration, social sciences or related field plus two (2) years of related work experience; or any combination of experience and education totaling eight (8) years; which must include two (2) years supervision/administration experience.

G. Associate trial attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent charges and prosecutes criminals in misdemeanor cases and cases involving adjudication of juveniles; performs felony work under supervision; assists in trial teams; performs non-criminal statutory duties as assigned; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the attorney series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities: This position requires some knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations skills, organizational skills, basic computer skills; ability to draft legal documents, ability to work effectively with other criminal justice agencies, ability to

communicate effectively, ability to research and analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar.

(8) Preferred qualifications: legal experience totaling at least one year.

H. Assistant trial attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent may supervise office staff.

(3) Examples of work performed: Incumbent charges and prosecutes criminals in misdemeanor cases and cases involving adjudication of juveniles; performs felony work under minimal supervision; assists in trial teams; performs non-criminal statutory duties as assigned; supervises or mentors entry level attorneys and staff; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the attorney series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations skills, organizational skills, basic computer skills, effective trial skills; ability to draft legal documents, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to research/analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar plus a minimum of two years as a practicing attorney.

(8) Preferred qualifications: Two years as a practicing attorney in criminal law.

I. Senior trial attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent supervises office staff.

(3) Examples of work performed: Incumbent charges and prosecutes criminals in misdemeanor cases and cases involving adjudication of juveniles; performs routine and complex felony work; leads or assists in trial teams; performs other non-criminal statutory duties as assigned; supervises or mentors subordinate attorneys and staff; performs training for staff and law enforcement; and performs other related job duties.

(4) Distinguishing characteristics:

This is an advanced level position of the attorney series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities:

This position requires substantial knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations skills, organizational skills, supervisory skills, basic computer skills, fully-effective trial skills; ability to draft legal documents, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to research/analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar plus a minimum of four years as a practicing attorney.

(8) Preferred qualifications: Four years as a practicing attorney in criminal law.

J. Deputy district attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases and may manage an office division or bureau.

(2) Supervision: Incumbent receives supervision from the chief deputy district attorney and district attorney. Incumbent supervises office staff.

(3) Examples of work performed: Incumbent charges and prosecutes criminals in routine and complex felony cases; leads or assists in trial teams; performs other non-criminal statutory duties as assigned; performs training for staff and law enforcement; may manage caseloads for a division/bureau in addition to their own caseload; assists or leads in special prosecutions assigned by the district attorney; supervises or mentors subordinate attorneys and staff; may assist in establishing and enforcing office policies; may represent the district attorney's office at official functions; and may be a division/bureau head in a main or satellite office; and performs other related job duties.

(4) Distinguishing characteristics:

This is an advanced level position of the attorney series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities:

This position requires extensive knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure, office policies and procedures; public relations skills, organizational skills, supervisory skills, basic computer skills, fully-effective trial skills; ability to draft legal documents, ability to work effectively

with other criminal justice agencies, ability to communicate effectively, ability to research/analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar plus a minimum of six years as a practicing attorney in criminal law, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Six years as a prosecuting attorney, which must include two (2) years supervision/administration experience.

K. Chief deputy district attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases and acts on behalf of the district attorney in their absence. This position may exercise administrative and management authority.

(2) Supervision: Incumbent receives administrative supervision from the district attorney. Incumbent supervises office staff.

(3) Examples of work performed: Incumbent charges and prosecutes criminals; leads or assists in trial teams; performs non-criminal statutory duties as assigned; supervises or mentors subordinate attorneys and staff; prosecutes routine and complex felony cases; performs the duties of a division/bureau head; represents the district attorney's office at official functions; may interact with the media; acts in the capacity of the district attorney in their absence; ensures compliance with policies and directives; and performs other related job duties.

(4) Distinguishing characteristics: This position is the administrative level of the attorney series and is characterized by the high level of trust, discretion and judgment vested in the incumbent by the district attorney.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure, public administration; public relations skills, organizational skills, supervisory skills, basic computer skills, fully-effective trial skills; ability to draft legal documents, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to research/analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar plus a minimum of six years as a practicing attorney in criminal law, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Six years as a prosecuting attorney, which

must include two (2) years supervision/administration experience.

L. Clerk apprentice:

(1) Purpose: This position provides general office support in a limited clerical capacity.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent answers, screens and routes telephone calls, records messages; performs other clerical duties such as typing, filing, copying, etc., and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the clerk series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires basic knowledge of math and grammar, reading comprehension, basic office skills, basic typing/computer skills, and the ability to follow directions and policies.

(7) Requirements: Must be at least sixteen (16) years old or have a valid state work permit.

(8) Preferred qualifications: Some work experience in an office setting.

M. Clerk:

(1) Purpose: This position provides general office support in a clerical capacity.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent answers, screens and routes telephone calls; records messages; performs other clerical duties such as typing, filing, copying, etc.; greets and provides assistance to office visitors; receives and distributes incoming mail; prepares outgoing mail; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the clerk series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires knowledge of proper telephone and customer service etiquette, math and grammar, reading comprehension, good grammar skills, office skills, typing/computer skills, ability to communicate effectively, and ability to follow direction and policies.

(7) Requirements: High school diploma or GED.

(8) Preferred qualifications: Any combination of education and work experience totaling at least one (1) year.

N. Clerk specialist:

(1) Purpose: This position provides general office support in a specialized clerical capacity.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent performs specialized clerical duties which may include but are not limited to data entry, records/file maintenance and storage, data retrieval; answers, screens and routes telephone calls; records messages; performs other clerical duties such as typing, filing, copying, etc.; greets and provides assistance to office visitors; receives and distributes incoming mail; prepares outgoing mail; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the clerk series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of manual and automated records maintenance and retrieval, proper telephone and customer service etiquette, math and grammar, reading comprehension, considerable typing/computer skills, ability to be accurate and efficient, and the ability to follow direction and policies.

(7) Requirements: High school diploma or GED and one (1) year related work experience.

(8) Preferred qualifications: Any combination of education and work experience totaling at least two (2) years.

O. Financial assistant:

(1) Purpose: This position provides support and assistance to fiscal and human resource operations.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares and processes financial documents; assists in the procurement process, administration of employee benefits, payroll processing, maintenance of leave records; assists in budget preparation and administration, grant administration, communicates with other agencies, vendors etc., maintains all necessary files and records; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position within the financial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge in the areas of general accounting practices, human resource administration, general office procedures and equipment; public relations and communications skills,

good organizational skills, and the ability to follow directions and policies.

(7) Requirements: High school diploma or GED, and at least one year related work experience and education.

(8) Preferred qualifications: Any combination of experience and education in a related field totaling at least two (2) years.

P. Financial specialist:

(1) Purpose: This position provides support and expertise to fiscal and human resource operations.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent may supervise office staff.

(3) Examples of work performed: Incumbent prepares and processes financial documents; assists in the procurement process, administration of employee benefits, payroll processing, asset management, and maintenance of leave records; assists in budget preparation and administration, grant administration; communicates with other agencies, vendors etc.; maintains all necessary files and records; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the financial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge in the areas of general accounting practices, human resource administration, general office procedures and equipment; public relations and communications skills; good organizational skills; ability to analyze and interpret financial information, and the ability to follow directions and policies.

(7) Requirements: High school diploma or GED, and at least three (3) years related work experience and education.

(8) Preferred qualifications: Any combination of experience and education in a related field totaling at least four (4) years.

Q. Financial specialist supervisor:

(1) Purpose: This position provides support and expertise to fiscal and human resource operations.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent supervises office staff.

(3) Examples of work performed: Incumbent performs and supervises the activities related to the preparation and processing of financial documents; assists in the procurement process, administration of employee benefits, payroll processing; asset management, assists in budget preparation and administration, grant administration; communicates with other agencies, vendors, etc.; maintains all necessary files and records;

and performs other related job duties.

(4) Distinguishing characteristics: This is a supervisory level position within the financial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge in the areas of general accounting practices, human resource administration, general office procedures and equipment; public relations and communications skills, effective supervisory skills, good organizational skills; ability to analyze and interpret financial information, and the ability to follow directions and policies.

(7) Requirements: Bachelor's degree in accounting, business administration or other related financial field, or four (4) years related work experience and education, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Bachelor's degree in accounting, business administration or other related financial field, plus two (2) years of related work experience and education; or six (6) years related work experience and education, which must include two (2) years supervision/administration experience.

R. Chief financial officer:

(1) Purpose: This position provides office management functions which include management of fiscal and human resource operations and prosecution programs.

(2) Supervision: Incumbent receives administrative supervision from the assigned supervisor, usually a district attorney, the administrative office of the district attorneys director, or their designee. Incumbent supervises office staff. Incumbent also takes direction and is accountable to the assigned budget analysts at the department of finance and administration and the legislative finance committee. Incumbent is also accountable to the designated auditing firm for their respective agency.

(3) Examples of work performed: Incumbent manages the day-to-day operations of an office which may include, but is not limited to: managing and performing the duties related to fiscal and human resource activities; overseeing the processing of financial documents, the procurement process, administration of employee benefits, payroll processing, asset management, budget preparation and administration, and federal/state/local grant administration; preparing audit statements and pre-audit reports; communicating with other agencies, vendors, etc.; acting as the liaison with both the legislative finance committee and the department of finance and administration for their respective agency; overseeing the maintenance of all necessary

files and records; managing prosecution support functions and case management; overseeing office security and maintenance; and coordinating staff development and supervision. The incumbent insures compliance with federal regulations, state statutes, policies and directives; and performs other related job duties.

(4) Distinguishing characteristics: This is a management level position within the financial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge in the areas of general and governmental accounting practices, human resource practices, general office procedures and equipment; considerable knowledge of the criminal justice system; effective public relations and communications skills, effective management and supervisory skills; a high level of organizational skills; ability to analyze and interpret financial information, ability to manage multiple projects and deadlines; and ability to follow directions and policies.

(7) Requirements: Bachelor's degree in accounting, business administration or other related financial field, plus two (2) years of related work experience and education; or six (6) years related work experience and education, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Bachelor's degree in accounting, business administration or other related financial field, plus four (4) years of related work experience and education; or eight (8) years related work experience and education, which must include two (2) years supervision/administration experience.

S. Information systems assistant:

(1) Purpose: This position performs a variety of information systems support duties in a district attorney's office or for a statewide system.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent trains users in various software applications and case management; assists with basic hardware problems; installs hardware and sets up applications for users; develops and maintains various data and statistical reports; performs liaison duties between users and higher level information systems staff; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position which primarily involves the technical support to users of an information system.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. Consistent exposure to VDT's, CRT's, and other electrical devices.

(6) Knowledge, skills, and abilities: This position requires some knowledge of information systems technology, systems applications; software applications; data base principals; effective communication skills; ability to analyze and recommend solutions to basic systems situations, ability to organize and prioritize workloads; ability to manage multiple projects simultaneously; ability to effectively complete work projects to ensure user satisfaction.

(7) Requirements: Associate's degree or certification from a technical/vocational school in computer science or related technical field; or two (2) years of related work experience and education in a related field.

(8) Preferred qualifications: Associate's degree in computer science or related technical field plus one (1) year of work experience in related field.

T. Information systems administrator:

(1) Purpose: This position performs a variety of highly complex duties in support of an information system for a district attorney's office or statewide network.

(2) Supervision: Incumbent receives general guidance and direction from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent controls, monitors and maintains servers and telecommunications for an information system; researches and evaluates the integration of software systems within a multiprocessor information systems environment; investigates and analyzes new data processing techniques and technologies; performs complex systems development, planning, and maintenance, assists in the coordination and maintenance of a local or wide area network; provides and directs client support and specialized curriculum development; evaluates disaster recovery resource requirements and make recommendations to produce disaster recovery plans; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position which primarily involves the technical support of information systems resources in an open-platform environment.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. Consistent exposure to VDT's, CRT's, and other electrical devices. May be required to work beyond normal work hours.

(6) Knowledge, skills, and abilities:

This position requires substantial knowledge of information systems technology, operating systems, network and systems applications and development, systems engineering, effective writing and verbal communication skills, effective systems analytical skills, effective supervisory skills; ability to analyze and recommend solutions to complex systems situations, ability to organize and prioritize workloads; ability to manage multiple projects simultaneously; ability to effectively complete work projects to ensure user satisfaction.

(7) Requirements: Associate's degree in computer science or related technical field plus two (2) years of work experience and education information systems, and systems design and analysis; or four (4) years of related work experience and education in a related field.

(8) Preferred qualifications: Bachelor's degree in computer science or related field plus two (2) years of work experience in information systems, and systems design and analysis.

U. Data base administrator:

(1) Purpose: This position performs a variety of highly complex duties in support of an information system for a district attorney's office or statewide network.

(2) Supervision: Incumbent receives general guidance and direction from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent controls, monitors and maintains a multi-data base system in a statewide client-server environment; designs and maintains databases and resolves associated problems; implements and maintains database security; controls and executes system utilities affecting database structures; provides training on data base concepts and functions; analyzes and recommends database software needs for budget submission; documents systems design; develops, modifies and maintains application systems in a data base; maintains data dictionary; investigates and analyzes new data processing techniques and technologies; performs complex systems development, planning, and maintenance; provides and directs user support and specialized curriculum development; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position which primarily involves the technical support of a multi-data base system.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. Consistent exposure to VDT's, CRT's, and other electrical devices. May be required to work beyond normal work hours.

(6) Knowledge, skills, and abilities: This position requires substantial

knowledge of information systems technology, operating systems, systems applications and development, systems engineering; data base analysis, design and administration; effective writing and verbal communication skills, effective systems analytical skills, effective supervisory skills; ability to analyze and recommend solutions to complex systems situations, ability to organize and prioritize workloads; ability to manage multiple projects simultaneously; ability to effectively complete work projects to ensure user satisfaction.

(7) Requirements: Associate's degree in computer science or related technical field plus two (2) years of work experience and education in data base design and management; or four (4) years of related work experience and education in a related field.

(8) Preferred qualifications: Bachelor's degree in computer science or related field plus two (2) years of work experience in data base design and management.

V. Information systems manager:

(1) Purpose: This position manages and directs the overall information systems activities for a district attorney's office and its associated satellite offices, a statewide network, or a large scale systems project.

(2) Supervision: Incumbent receives administrative direction from the district attorney or the administrative office of the district attorneys director. Incumbent supervises other staff.

(3) Examples of work performed: Incumbent manages and directs the overall information systems activities and services in support of a multiple-site, statewide network; designs and manages the maintenance of the local area and wide area networks; develops and monitors information systems goals and objectives; establishes, implements, and monitors information systems policies, procedures and standards; assists in the development of the information systems budget and information technology plan; monitors information systems budget and expenditures; manages information systems contracts; recommends and implements information systems training for the organization; and performs other related job duties.

(4) Distinguishing characteristics: This is a management level position which primarily involves the management of information systems resources in an open-platform environment.

(5) Working conditions: Work is performed in an office environment. Physical effort and frequent travel may be required. Incumbent may be required to work beyond normal working hours. Consistent exposure to VDT's, CRT's and other electrical devices

can be expected.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of information systems technology, operating systems, systems applications and development, systems engineering, data base administration, knowledge of design, implementation, and maintenance of network systems; effective writing and verbal communication skills, effective systems analytical skills, effective management skills; ability to analyze and recommend solutions to complex systems situations, ability to evaluate and allocate staff resources to accomplish goals and objectives.

(7) Requirements: Bachelor's degree in computer science or related field plus four (4) years of work experience in information systems, data base administration, and systems design and analysis; or eight (8) years of related work experience and education in a related field.

(8) Preferred qualifications: Bachelor's degree in computer science or related field plus six (6) years of work experience in information systems, data base administration, and systems design and analysis.

W. Investigator:

(1) Purpose: This position provides investigative functions as required by a district attorney's office.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Example of work performed: Incumbent locates witnesses; serves subpoenas and other process documents; executes warrants; interviews witnesses; researches investigative leads; provides logistical assistance with witnesses and evidence; testifies in court; coordinates efforts with other law enforcement agencies; provides internal security within a district attorney's office; executes all powers and duties established by statute pertaining to peace officers' and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the investigator series.

(5) Working conditions: Considerable amount of work is performed in field investigations outside the office that may require the prevention and detection of crime; some work is performed in an office environment; considerable physical effort may be required. May be required to be on-call during non-working hours. May encounter dangerous situations.

(6) Knowledge, skills, and abilities: This position requires knowledge of criminal law and procedures, and equipment; knowledge of surveillance techniques; interview and interrogation skills; investigatory skills; writing skills;

communication skills; ability to establish and maintain effective working relationships with other law enforcement agencies; ability to interact effectively with the public; and the ability to follow directions and policies.

(7) Requirements: High school diploma or GED, plus New Mexico peace officer certification, within the first year of employment.

(8) Preferred qualifications: New Mexico peace officer certification, plus one (1) year work experience, education and training in law enforcement; investigations or related field.

X. Senior investigator:

(1) Purpose: This position provides advanced investigative functions required by a district attorney's office.

(2) Supervision: Incumbent receives supervision from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent locates witnesses; serves subpoenas and other process documents; executes warrants; interviews witnesses; researches investigative leads; provides logistical assistance with witnesses and evidence; testifies in court; coordinates efforts with other law enforcement agencies; provides internal security within a district attorney's office; executes all powers and duties established by statute pertaining to peace officers; provides training to other investigators; may supervise other staff in the absence of the chief investigator; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the investigator series.

(5) Working conditions: Considerable amount of work performed in field investigations outside the office that may require the prevention and detection of crime; some work is performed in an office environment; considerable physical effort may be required. May be required to be on-call during non-working hours. May encounter dangerous situations.

(6) Knowledge, skills, and abilities: This position requires knowledge of criminal law and procedures, and equipment; knowledge of surveillance techniques; interview and interrogation skills; investigatory skills; supervisory skills; writing skills; communication skills; ability to conduct training, establish and maintain effective working relationships with other law enforcement agencies; ability to interact effectively with the public; and the ability to follow directions and policies.

(7) Requirements: Associates degree in criminology, criminal justice, police science or a related field, or two (2) years work experience in related field, plus New Mexico peace officer certification

(8) Preferred qualifications: New

Mexico peace officer certification, plus three (3) years work experience, education and training in law enforcement; investigations or related field.

Y. Lead investigator:

(1) Purpose: This position provides advanced and complex investigative functions required by a district attorney's office, and manages the investigations unit within a district attorney's office.

(2) Supervision: Incumbent receives administrative direction from the district attorney.

(3) Examples of work performed: Incumbent manages a criminal investigations unit. Incumbent initiates and oversees criminal investigations which might include, but is not limited to: locating witnesses; serving subpoenas and other process documents; executing search warrants; interviewing witnesses; developing, researching, and following up on investigative leads; providing logistical assistance with witnesses and evidence; testifying in court; coordinating efforts with other law enforcement agencies; providing internal security within a district attorney's office as well as courtroom security; executing all powers and duties established by statute pertaining to peace officers; providing training to other investigators and law enforcement agencies; and supervising other staff; and performs other related job duties.

(4) Distinguishing characteristics: This is a management level position of the investigator series.

(5) Working conditions: Considerable amount of work is performed in field investigations outside the office that may require the prevention and detection of crime; some work is performed in an office environment; considerable physical effort may be required. May be required to be on-call during non-working hours in order to respond to crime scenes. May encounter dangerous situations.

(6) Knowledge, skills, and abilities: This position requires significant knowledge of criminal law and procedures, and equipment; knowledge of surveillance techniques; interview and interrogation skills; investigatory skills; supervisory and management skills; writing skills; communication skills; ability to conduct training, establish and maintain effective working relationships with other law enforcement agencies; ability to interact effectively with the public; and the ability to follow directions and policies.

(7) Requirements: Bachelor's degree in criminology, criminal justice, police science or a related field, or four (4) years work experience in related field; which must include two (2) years supervision/administration experience, plus New Mexico peace officer certification. Certification as a

law enforcement instructor within one (1) year of entry into this position.

(8) Preferred qualifications: New Mexico peace officer certification, plus five (5) years work experience, education and training in law enforcement; investigations or related field.

Z. Program assistant:

(1) Purpose: This position provides support and assistance to special programs within a district attorney's office.

(2) Supervision: Incumbent receives supervision and guidance from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares, disburses, and maintains files and documents; arranges for services to be provided to clientele; maintains contact with clientele and other outside agencies as required; receives and monitors client payments; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the program series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge of the criminal justice system; knowledge of general office procedures and equipment; public relations and communication skills; basic math skills; good organizational skills; and the ability to follow direction and policies.

(7) Requirements: High school diploma or G.E.D. plus two (2) years of related work experience and education.

(8) Preferred qualifications: Any combination of related work experience and education totaling at least four (4) years.

AA. Program specialist:

(1) Purpose: This position provides support and assistance to special programs within a district attorney's office.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares disbursements and maintains files and documents; assesses services to be provided to clientele; interviews and maintains contact with clientele; collaborates with other outside agencies as required; monitor program compliance and receives and monitors client payments; may be required to testify in court and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the program series, which primarily involves the provision of direct services to clients.

(5) Working conditions: Work is performed in an office environment, but requires periodic site visits. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system; knowledge of general office procedures and equipment; public relations and communication skills; basic math skills; good organizational skills; ability to supervise and counsel clients, and the ability to follow directions and policies.

(7) Requirements: Bachelor's degree in criminal justice, social science or related field, or at least four (4) years work experience and education in the criminal justice system, criminal law, human services or other related field.

(8) Preferred qualifications: Bachelor's degree plus two (2) years related work experience and education in the criminal justice system, criminal law, human services or other related field.

BB. Program administrator:

(1) Purpose: This position provides implementation and administration of special programs within a district attorney's office.

(2) Supervision: Incumbent receives administrative supervision from the assigned supervisor. The incumbent may supervise other office staff.

(3) Examples of work performed: Incumbent assesses and provides services to clientele; maintains contact and interviews clientele; collaborates with other outside agencies as required; monitors program compliance and follows up with community service providers; may be required to testify in court; may assist with audit reports and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the program series, which primarily involves the provision of direct services to clients and may or may not be a supervisory position.

(5) Working conditions: Work is performed primarily in an office environment, but does require periodic site visits. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of the criminal justice system; effective public relation and communication skills; good organizational skills; may require management and supervisory skills; ability to supervise and counsel clients; and the ability to follow policies and procedures.

(7) Requirements: Bachelor's degree plus two (2) years related work experience and education in, criminal justice, criminal law, human services, social sciences or related field.

(8) Preferred qualifications: Bachelor's Degree plus four (4) years related work experience in criminal justice, criminal law, human services, social sciences or other related field.

CC. Prosecution assistant:

(1) Purpose: This position provides support to prosecutors by facilitating the development and preparation of cases.

(2) Supervision: Incumbent receives supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent performs limited legal research and case preparation duties to include location of witnesses; screen incoming cases for necessary reports and other correspondence; serves subpoenas and other process documents; organizes investigative files; prepares exhibits; drafts and prepares legal correspondence; provides logistical assistance related to witnesses and evidence; interacts with law enforcement and court personnel; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the prosecution support series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge of the criminal justice system, knowledge of general office procedures and equipment; some analytical research and writing skills, organizational skills, basic computer skills; effective public relations and communication skills; and the ability to follow directions and policies.

(7) Requirements: High school diploma or G.E.D. plus at least two years work experience and education in a related field.

(8) Preferred qualifications: Associate degree in criminal justice or paralegal studies, plus two years work experience and education in a related field.

DD. Prosecution specialist:

(1) Purpose: This position provides support to prosecutors by facilitating the development and preparation of cases.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent performs advanced legal research and case preparation duties to include location of, and interview witnesses; screen incoming cases for necessary reports and other correspondence; serves subpoenas and other process documents; organizes investigative files; prepares exhibits; drafts and prepares court documents and legal correspondence; provides logistical assistance related to witnesses and evidence; coordinates prosecution efforts with law enforcement personnel; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the prosecution support series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system, knowledge of general office procedures and equipment; substantial analytical research and writing skills, organizational skills, supervisory skills, effective computer skills; effective public relations and communication skills; and the ability to follow directions and policies.

(7) Requirements: Associates degree in criminal justice, paralegal studies or other related field and two years work experience and education in a related field; or at least four years of work experience and education in a related field.

(8) Preferred qualifications: Bachelor's degree in criminal justice or paralegal studies, plus two years work experience or education in a related field.

EE. Secretary:

(1) Purpose: This position provides basic secretarial assistance to office staff.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent types documents and correspondence; maintains calendars; files; answers telephones; prepares and maintains case files; contacts witnesses; performs data entry; transcribes tapes; assists office visitors; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the secretarial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge of general office equipment, math, grammar and reading comprehension; effective word processing skills, telephone etiquette skills, filing skills; ability to communicate effectively, and follow directions and policies.

(7) Requirements: High school diploma or GED and one (1) year work experience in related field.

(8) Preferred qualifications: Two (2) years work experience and education in related field.

FF. Senior secretary:

(1) Purpose: This position provides secretarial assistance to office staff.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares legal documents and correspondence; assists in trial preparation;

performs data entry; transcribes tapes; maintains calendars; prepares and maintains case files; responds to telephone inquiries; contacts witnesses; assists office visitors; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the secretarial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires knowledge of the criminal justice system and general office equipment; good typing and word processing skills, filing skills, and organizational skills; ability to communicate effectively and follow directions and policies.

(7) Requirements: High school diploma or GED, plus two (2) years work experience in a related field.

(8) Preferred qualifications: Three (3) years work experience and education in a related field.

GG. Administrative secretary:

(1) Purpose: This position provides advanced secretarial assistance to office staff.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor, and may supervise other staff.

(3) Examples of work performed: Incumbent prepares legal documents and correspondence; performs data entry; assists in trial preparation; attends court hearings; transcribes tapes; maintains calendars; assists in office administrative functions; prepares and maintains case files; interacts with external agencies; responds to telephone inquiries; contacts witnesses; assists office visitors; assists, trains and supervises other secretaries; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the secretarial series, and may include supervisory duties.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system and general office equipment; effective typing and word processing skills, filing skills, supervisory skills, and organizational skills; ability to communicate effectively and to follow directions and policies.

(7) Requirements: High school diploma or GED, plus three (3) years work experience in a related field.

(8) Preferred qualifications: Four (4) years work experience and education in a related field.

HH. Supervising secretary:

(1) Purpose: This position provides supervision and coordination of all secretarial functions within an office or division.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor, and is required to supervise other staff.

(3) Examples of work performed: Incumbent prepares legal documents and correspondence; performs data entry; assists with trial preparation; transcribes tapes; maintains calendars; prepares and maintains case files; interacts with external agencies; responds to telephone inquiries; contacts witnesses; assists office visitors; supervises and trains secretarial/ clerical staff; conducts performance evaluations; assists in office administrative functions; makes recommendations concerning personnel matters and staff assignments; delegates tasks to secretarial/clerical staff; and performs other related job duties.

(4) Distinguishing characteristics: This is a supervisory level position of the secretary series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of the criminal justice system, general office equipment and the day-to-day operations of a district attorney's office; effective supervisory skills, organizational skills, typing and word processing skills, filing skills; ability to communicate effectively and to follow directions and policies.

(7) Requirements: High school diploma or GED, plus four (4) years work experience in a related field.

(8) Preferred qualifications: Six (6) years work experience and education in a related field, with at least three (3) years being within a criminal justice or related agency.

II. Victim advocate:

(1) Purpose: This position provides services to victims and witnesses of crimes.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares victim and witness notification of court and non-court events; creates, organizes and maintains case files to include duties related to the maintenance of electronic files in the office case management system; assists victims with the completion of various documents related to restitution, compensation, and the return of property to victims; educates victims and witnesses regarding the criminal justice process; may accompany victims and witnesses to

court proceedings; may provide direction to program volunteers; networks with community resources; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the victim advocate series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge of the criminal justice system, court proceedings, and procedures within the district attorney's office; communication and organizational skills; ability to prepare reports and correspondence; ability to work with diverse individuals and agencies.

(7) Requirements: Associates degree in criminal justice, social sciences, or related field or at least two (2) years work experience in the criminal justice system, criminal law, human services, or other related field.

(8) Preferred qualifications: Bachelor's degree in criminal justice, social sciences, or related field; or four (4) years work experience in a related field.

JJ. Senior victim advocate:

(1) Purpose: This position provides services to victims and witnesses of crimes.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent prepares victim and witness notification of court and non-court events; creates, organizes and maintains case files to include duties related to the maintenance of electronic files in the office case management system; assists victims with the completion of various documents related to restitution, compensation, and the return of property to victims; educates victims and witnesses regarding the criminal justice process; accompany victims and witnesses to court proceedings; assists with the organization of volunteer training; networks with community resources and law enforcement agencies; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the victim advocate series which may be designated to provide services to specialized groups of victims.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. May be required to be on-call during non-working hours.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system,

court proceedings, and procedures within the district attorney's office; effective communication and organizational skills; supervisory skills; ability to prepare statistical and routine reports and correspondence; and the ability to work with diverse individuals and agencies.

(7) Requirements: Bachelor's degree in criminal justice, social sciences, or related field or at least four (4) years work experience in the criminal justice system, criminal law, human services, or other related field.

(8) Preferred qualifications: Bachelor's degree in criminal justice, social sciences, or related field plus two (2) years work experience in criminal justice, criminal law, human services, or other related field.

KK. Victim advocate coordinator:

(1) Purpose: This position provides services to victims and witnesses of crimes and may provide management and oversight of a victim advocate unit.

(2) Supervision: Incumbent receives administrative and general direction from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent prepares victim and witness notification of court and non-court events; creates, organizes and maintains case files to include duties related to the maintenance of electronic files in the office case management system; assists victims with the completion of various documents related to restitution, compensation, and the return of property to victims; educates victims and witnesses regarding the criminal justice process; accompany victims and witnesses to court proceedings; assists with the organization of volunteer training; networks with community resources and law enforcement agencies; may supervise and manage other staff; may be required to handle more complex cases; may be required to author grant proposals; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the victim advocate series, which may be designated to provide services to specialized groups of victims and may manage a victim advocate unit.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. May be required to be on-call during non-working hours.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system, court proceedings, and procedures within the district attorney's office; effective written and verbal communication skills, organizational skills, supervisory skills; ability to prepare statistical and routine reports and correspondence; ability to work

with diverse individuals and agencies; grant writing and administration abilities.

(7) Requirements: Bachelor's degree in criminal justice, social sciences, or related field plus two (2) years work experience in the criminal justice system, criminal law, human services; or at least six (6) years work experience in related fields.

(8) Preferred qualifications: Bachelor's degree in criminal justice, social sciences, or related field plus four (4) years work experience in the criminal justice system, criminal law, human services, or other related field.

LL. Victim advocate administrator:

(1) Purpose: This position provides services to victims and witnesses of crimes and manages the victim advocate program of a district attorney's office.

(2) Supervision: Incumbent receives administrative direction from the district attorney or their designee. Incumbent shall supervise other staff.

(3) Examples of work performed: Incumbent manages the victim advocate program including program budget preparation and administration, employee supervision and development, administration of federally funded programs, development of program policies and procedures, coordination of volunteer program, acts as liaison with other community organizations; educates victims and witnesses regarding the criminal justice process; accompany victims and witnesses to court proceedings; organizes volunteer/intern training; networks with community resources and law enforcement agencies; may be required to handle more complex cases; authors grant proposals; and performs other related job duties.

(4) Distinguishing characteristics: This is a management position of the victim advocate series which may be designated to provide services to specialized groups of victims and manages a victim advocate program.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. May be required to be on-call during non-working hours.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of the criminal justice system, court proceedings, and procedures within the district attorney's office; effective writing and verbal communication skills, organizational skills, effective management skills; ability to prepare statistical and routine reports and correspondence; ability to work with diverse individuals and agencies; and grant writing and administration abilities.

(7) Requirements: Bachelor's degree in criminal justice, social sciences, or related field plus four (4) years work experience in the criminal justice system,

criminal law, human services, or other related field which must include direct services to victims; or at least eight (8) years work experience in related fields, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Bachelor's degree in criminal justice, social sciences, or related field plus six (6) years work experience in the criminal justice system, criminal law, human services, or other related field which must include at least one (1) year direct service to victims, and which must include two (2) years supervision/administration experience. [10.4.14.8 NMAC - Rp, NMDAA 91-1.13, 06/30/2010]

HISTORY OF 10.4.14 NMAC:

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

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

History of Repealed Material:

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, sections 6, 8, 12, and 15, effective June 30, 2010

5.5.50.6 OBJECTIVE: The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program, also known as the Industrial Training Development Program or "in plant training," strengthens New Mexico's economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Since the program's inception in 1972, more than [973] 1,000 companies and [47,676] close to 50,000 New Mexico workers have benefited from the program. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees

themselves. Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference can also be made to the enabling legislation (Section 21-19-7, NMSA 1978 and subsequent amendments).

A. Company eligibility:

Three categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators [and], film digital production, and post-production companies are eligible under the manufacturing category. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico; unless the company is considered a green industry. To be considered for JTIP, non-retail service companies must export a service rather than import a customer. The third category - film production companies - are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP. For a more complete explanation of expansion requirements, refer to "company qualifications and requirements" in 5.5.50.8 NMAC. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP participants.

B. Job eligibility:

Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to 10% of the total number of jobs applied for in the proposal. Jobs must also meet a wage requirement to be eligible for funding. For contract-based call centers, the position must meet or exceed at least 90% of the county median wage to qualify in urban locations and [\$8.50] \$10.00 per hour in rural locations. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit. An additional incentive [is] may be offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance

coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

C. Trainee eligibility:

To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a GED.

D. Reimbursable training costs:

Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A portion of trainee wages up to 75% for up to six months of initial training.

(b) A portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses up to 75% with a cap of 5% of total funding for wages may be available.

(2) Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit [are] may be eligible for an additional 5% wage reimbursement above the standard rates.

(3) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

E. Program management and administration:

General management of the Job Training Incentive Program is the responsibility of the job training incentive program board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the year. The board has the authority to make funding decisions based on the availability of funds, sufficient appropriations, and the board's determination of the qualifications of the business. The board has adopted this policy manual to ensure the program supports the development of New Mexico's

economy as intended by the governing legislation. Policies and procedures for the New Mexico enhanced skilled training program, STEP UP, are outlined in a separate document. The JTIP board meets the second Friday of every month to consider proposals for funding. The third Friday of the month serves as an alternate date when required. Administration of the Job Training Incentive Program is the responsibility of the JTIP staff in the New Mexico economic development department. One copy of a proposal for funding is due to the JTIP staff one month before the board meeting at which the proposal will be considered. Once staff has reviewed the proposal for accuracy and completeness, ten copies will be requested for distribution to the board approximately two weeks prior to the meeting.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

A. C o m p a n y qualifications and requirements: The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds: companies which manufacture a product in New Mexico and certain non-retail service providers. The first category is companies which manufacture a product in New Mexico. Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). Manufacturing businesses are typically included in Sectors 31-33 of the North American industry classification system (NAICS). Renewable power generators, film digital production companies such as animation and video game production, and film post production companies are eligible under the manufacturing category. A company whose employees are compensated solely on piecework is also not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service rather than import a customer. Companies that derive their revenues from within New Mexico or via face-to-face customer

interaction at the company site or customer site are ~~[not eligible, unless]~~ only eligible if they exist for the sole purpose of producing, installing or integrating environmentally sustainable products. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national or multi-state entities. Major United States research labs or companies which operate major United States research and development national laboratories are not eligible. JTIP will not consider contractors which rely on income that is already in the state of New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, collections or telemarketing are not eligible for JTIP funds. Contract-based call centers have special wage requirements. Contract-based call centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based call centers do not have a core expertise; rather they communicate information provided to them by their clients. For contract-based call centers, the positions must meet or exceed at least 90% of the county median to qualify in urban locations and pay at least ~~[\$8-50]~~ \$10.00 per hour in rural areas. Another category of non-retail business service providers is shared services centers that serve regional or national divisions. Distribution is another category of non-retail business service providers. A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer, or customer. Distributors qualify for JTIP as service providers if at least 50% of the customer base is located outside of New Mexico. ~~[Headquarter facilities which are considered shared services centers are also eligible.]~~ Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the north American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New

Mexico. Start-up companies are also eligible, provided they are producing a saleable product and are beyond the initial research and development or prototype phase. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the ~~[three]~~ two prior years. The company must meet or exceed the average employment level for the past ~~[three]~~ two years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program previously, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels.

(3) If a company hires twenty or more trainees in a municipality with a population of more than forty thousand according to the most recent decennial census or in a class A county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(4) Companies are required to submit three years of financial statements (profit and loss and balance sheets) as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials must submit financials for the period for which they are available, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, or pro forma financial statements which would substantiate their business expansion. Start-up companies must be producing a saleable product and may not be in the initial research and development or prototype phase.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American

products using labels, trademarks and other measures.

(6) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within 1 year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) which were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP lay-offs exceeds \$100,000 of reimbursement. The board will require a refund of funds within 90 days of notification.

(7) Layoff is defined as a separation of an employee from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(8) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for JTIP.

B. Position qualifications and requirements: The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies for the high wage job tax credit. These levels are \$40,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$28,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Las Cruces, Rio Rancho, Roswell, and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under JTIP must directly support the primary mission of the business. In addition, other newly created positions may be funded up to a maximum of 10% of the total number of jobs for which funding is requested.

C. Trainee qualifications and requirements: The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet

legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the JTIP program. Individuals who have been employed temporarily in a position classified as intern in order to gain practical training that connects an academic pathway into work based or relevant business experience may be eligible. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or Industrial Development Training Program are not eligible to participate again with the same company.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications should remain fixed during the program. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a permanent full-time employee before the end of the JTIP approved training hours.

(b) The trainee must receive the same wages and major medical, dental, and vision benefits while working as a temporary employee that permanent employees of the company receive.

(c) The staffing agency must disclose wages paid to the temporary employee to the company.

(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(10) Companies are reimbursed for wages as each trainee completes the approved training hours.

(11) If a trainee leaves the company before completing training, the company

is not eligible for any reimbursement for that employee. If another trainee can be hired in that position and complete training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010]

5.5.50.12 PROCEDURAL OVERVIEW:

The procedure for completing a funding proposal is explained in detail in the *JTIP proposal guide*. The procedure for program participation once funding is approved is described in the *JTIP program guide*. This summary is intended to provide a general overview of the process. Please refer to the appropriate guide when completing a proposal for funding and administering the program once it is funded. JTIP staff is available for assistance with these processes.

A. Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding. Early submission is required to allow JTIP staff and board members to review the materials and request clarification or additional information if needed. Ten copies of the proposal will be requested once the proposal has been reviewed by staff and refined, if necessary.

B. Board meetings are generally held on the second Friday of each month. The alternate date, which is used when a meeting on the second Friday is not viable (a quorum cannot be achieved, holiday, etc.) is the third Friday of the month.

C. The contract start date is the date of the board meeting at which funding was approved. The contract end date is one year after the start date. All claims for reimbursement must be submitted and the final audit must be completed within 30 days of the contract end date.

D. The contractual agreement will be prepared and mailed out to the company within 15 working days after the board approval date. A sample contract is included as an appendix to this manual. Companies are encouraged to review the contract before applying for funding, as the contract cannot be edited.

E. The company must return the signed contractual agreement to the economic development department within 15 business days from the issue date.

F. Eligible job openings must be registered with the New Mexico department of workforce solutions. The company is also encouraged to advertise through the placement office at local post-secondary educational institutions. A list of all post-secondary, public and proprietary institutions is available from the New

Mexico higher education department (<http://hed.state.nm.us>).

G. The company must hire trainees within [six] four months of the contract start date. This timing ensures that trainees who are eligible for six months of training will complete the program before the contract end date.

H. The company must provide the JTIP staff with a roster of new hires at the end of the [six] four month hiring period. When the company submits the list, the allocation of funds for their contract will be adjusted to reflect the number of people hired. The board will not entertain extensions to the contract.

I. Claims for reimbursement should be submitted as each participant completes training.

J. Each project is subject to compliance reviews throughout the term of the contract. The compliance review includes program and fiscal surveys.

K. The company must arrange for a final audit by an independent accounting firm registered with the New Mexico regulation and licensing department, board of accountancy. A list of approved auditors is available from JTIP staff or from (www.saonm.org). A specific amount for the audit is included as part of the proposal approval. Any amount in excess of this amount is the responsibility of the company. The audit must be completed before the end of the contract. Companies should keep this deadline in mind when selecting an auditor. The final audit requirement does not apply to contracts for custom training at New Mexico higher educational institutions. These institutions must meet all other program requirements and are subject to a compliance audit by JTIP staff.

L. All claims for reimbursement must be submitted and the final audit must be completed before the contract end date. The final claim for reimbursement should be submitted with the completed final audit. The final wage claim will be paid once the final audit has been received and approved favorably.

M. Yearly follow-ups are conducted to show effectiveness of the program, including surveys to address retention rates of program participants.

N. Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

[5.5.50.12 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2010]

5.5.50.15 GLOSSARY:

A. Agriculture/mining/extractive industries: Companies classified in agriculture, mining, and extractive by the North American industry classification

system (NAICS) are not eligible for JTIP.

B. Company: A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.

C. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for 75% reimbursement. To receive a 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

D. Expanding company: An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the [three] two prior years. (Refer to "peak employment.")

E. Film and multimedia post production: Film digital production and post-production [is] companies are considered manufacturing provided the company operates year round and is primarily engaged in any of the following: animation, editing, Foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

F. Frontier: A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

G. Green industries: Those that exist for the sole purpose of contributing directly to preserving

or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

H. High wage job tax credit: The high wage job tax credit provides a tax credit of 10% of the wages and benefits paid for each new economic-based job created on or after July 1, 2004 and before July 1, 2009, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$28,000/year in a community with a population of less than 40,000 and \$40,000/year in a community with a population of 40,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

I. Manufacturing: Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined at Section 7-4-10B NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons."

J. NAICS: North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive

system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at www.census.gov/epcd/naics02/naicod02.htm.

K. Native American crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

L. New company: A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID and a New Mexico unemployment insurance ID when applying for JTIP funds.

M. Non-retail service sector business: To be considered for JTIP funding, the company must provide services which are not retail in nature and must export 50% of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies must export a service rather than import a customer.

N. O*NET: The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at www.onetcenter.org.

O. Peak employment: First time JTIP applicants: Peak employment will be based on the employment average from [three] two previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

P. Peak employment: Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the

board may utilize the state of New Mexico unemployment insurance (UI) report for the last [three] two years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

Q. Retail trade: Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise. Retailers operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers.

R. Renewable energy: is a source of power generated from resources which are naturally replenished, including but not limited to electricity or heat derived from solar, wind, tidal power, hydropower, biomass, geothermal resources and biofuels or hydrogen produced from renewable resources.

[R-] S. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

[S-] T. Urban communities: An urban community is defined as a municipality with a population of forty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (448,607), Las Cruces (74,267), Rio Rancho (51,765), Roswell (45,293), and Santa Fe (62,203). Class A counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

[T-] U. Metropolitan statistical area: An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Torrance counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

[U-] V. Rural: Any area located 10 miles or more outside communities defined as urban in the JTIP policy.

[5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.51 NMAC, Sections 7 through 12, effective June 30, 2010.

5.5.51.7 DEFINITIONS: For use in this part, the following definitions apply.

A. "Above-the-line" is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

B. "Below-the-line" is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew that does not have direct creative or financial control of the project nor receive residuals.

C. "Company" means the contractor for FCAP and is either a temporary film or multimedia production company that was created to produce (one) film or multimedia product or a film or multimedia production company that is permanently based in New Mexico with full-time employees and creates film or television products.

D. "Craft" means the specialized area or department in which a film technician works.

E. "Crew" means the employees hired by a company to complete a film or multimedia project(s).

F. "Deal memo" means the film industry contract that defines the exact terms of a crew member's employment including but not limited to position title and pay rate.

G. "FCAP" means film crew advancement program.

H. "Film or television credit" for this program means work on a film or television production for more than one week which was not a student film, internship, unpaid position, documentary, commercial, nor on a project where the budget was under one million dollars and the company did not participate in this program.

I. "Film technician" means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

J. "General safety"

certified” means a crew member has completed a class or course that meets OSHA standards for general safety associated with working on a film and multimedia project.

K. “JTIP” means job training incentive program.

L. “Non-union” means the job position is not in the contractual jurisdiction of a film union or film guild.

M. “Mentor” means the go-to person for questions and direction or the supervisor of a program participant and has a stronger skill set in relation to the job position in which that participant was hired.

N. “NM” means New Mexican.

O. “Open hours” means a trainee that qualified for FCAP during a production did not use all 1040 hours available. Hours that remain are considered “open” and may be used for that job position on another production upon qualification.

P. “On-the-job training” means gaining experience in a hired and paid position increasing job opportunities for continual employment in the film and television industry.

[P:] Q. “Payroll report” means the report generated from a payroll company hired by the production company to act as the crew’s payment agent for the film and multimedia project.

[Q:] R. “Principal photography” means the cameras have started filming and the majority of preparation for a film and multimedia project has been completed; call sheets are now issued to crew members and production reports are completed daily.

[R:] S. “Production” means the film or multimedia project preparation, principal photography and set break down periods while creating a film or television project.

[S:] T. “Resident” means an individual who is domiciled in New Mexico. This domicile is the individual’s permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

[T:] U. “Salaries” means wages or the hourly pay rate for hours physically worked by trainee during a production.

[U:] V. “Trainee” means the crew member that shall be learning a new skill set or graduating to a higher job classification through the FCAP and is synonymous with the terms program participant or applicant.

[V:] W. “Wages” means the hourly pay rate for hours physically worked by trainee during production. It

does not include film payments to trainees such as kit rental, holiday pay, travel time, mileage reimbursements, or any payment to employee due to penalties incurred by company during production of the project. [5.5.51.7 NMAC - Rp, 5.5.51.7 NMAC, 4-30-2009; A, 6-30-2010]

5.5.51.8 P R O G R A M OUTLINE:

A. The following is the program outline for all participating companies:

(1) Each trainee qualifies for a maximum of 1040 hours. As the trainee works on a film or television project, the hours shall be deducted accordingly.

(2) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(3) Trainee’s pay rate shall be consistent with trainee’s job position per this crew member’s contract with company and trainee’s pay rate shall be higher than the positions in the lower tier of positions under trainee, or per union contractual agreement where applicable.

(4) Any requests for a different job position or mentor ~~[to be permitted in program shall be submitted in writing or via email to the New Mexico film division]~~ to qualify for the program shall be considered by the New Mexico film division, and if approved, noted in file.

B. The following is in addition to the program outline in Subsection “A” and shall apply to temporary companies participating in program:

(1) Trainees shall work at least 80 hours in their hired position in order to qualify.

(2) Trainees may qualify for an additional 1040 hours if the training received through this program is used to progress from their current job to a higher job classification or to move laterally into a new skill set and the individual meets program qualifications.

(3) Qualifying participants may apply any unused hours to future on-the-job training work opportunities in the specified job position until the 1040 hours are exhausted.

(4) Unused training hours in a lower level position are forfeited once a trainee moves to a higher level within that skill set and that department.

~~[(5) No more than two film technician trainees and non-union trainees shall qualify per production department on a given production and exceptions may be made with approval by the New Mexico film division prior to the commencement of principal photography when, as an example,~~

~~a production department has more than ten crew members.~~

~~_____~~ **(6) (5)** Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for individual projects produced by temporary companies.

C. The following are in addition to the program outline in Subsection “A” and shall apply to permanent companies participating in program:

(1) Trainees shall complete the 1040 hours to qualify.

(2) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(3) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for permanent companies creating products.

(4) Qualifying participants may only participate one time in the program as an employee of this company; however, where the trainee has completed all 1040 hours in the original hired position, requests to participate again will be considered upon written documentation submitted by the employer and by the trainee that verifies the trainee will be advancing to a higher job classification.

[5.5.51.8 NMAC - Rp, 5.5.51.8 NMAC, 4-30-2009; A, 6-30-2010]

5.5.51.9 T R A I N E E ELIGIBILITY:

A. Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

B. Trainee applicants shall be New Mexico residents.

C. Trainee applicants shall raise their film or television position to a higher classification or be adding a completely new skill set.

D. Applicants shall not have a film or television credit in a higher position in that department to qualify for 1040 training hours for that position.

E. Trainee shall not be a mentor simultaneously on a production on projects produced by temporary companies. [5.5.51.9 NMAC - Rp, 5.5.51.9 NMAC, 4-30-2009; A, 6-30-2010]

5.5.51.10 M E N T O R ELIGIBILITY AND QUALIFICATIONS:

A. Mentors shall be certified as a film and multimedia mentor by the New Mexico film division.

B. Mentors of trainees shall be New Mexico residents.

C. Any requests for mentors who are not NM residents shall be submitted in writing or via email to the New

Mexico film division.

D. A mentor shall not be a trainee simultaneously during a production on projects produced by temporary companies.

E. Mentor shall work in the same or directly related department with the trainees that they supervise for this program. [5.5.51.10 NMAC - Rp, 5.5.51.10 NMAC, 4-30-2009; A, 6-30-2010]

5.5.51.11 C O M P A N Y ELIGIBILITY AND ADMINISTRATIVE REQUIREMENTS:

A. Company shall submit the JTIP for film & multimedia application part one for FCAP.

B. Company shall enter into a contract as outlined by the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

C. The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

D. Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

E. Company entering into a contractual agreement with economic development department shall return the program contractual agreement and program application to the New Mexico film division [either prior to the start of principal photography in New Mexico or within the first week of first trainee's employment in the qualifying positions]. This contract will be requested by the New Mexico film division prior to principal photography.

F. Completed FCAP trainee applications must be submitted to the New Mexico film division by the company.

G. Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

H. Company shall submit time records and reimbursement invoices as established by the economic development division to the New Mexico economic development department, which is the payment agent.

I. The participating company shall submit forms and reports as established by the New Mexico film division of the New Mexico economic development department which may include:

(1) JTIP for film & multimedia

application part one for FCAP; and

(2) department of finance and administration (DFA) tax information form; and

(3) JTIP for film & multimedia application part two for FCAP; and

(4) JTIP for film & multimedia agreement for FCAP; and

(5) FCAP participants' applications; and

(6) production's final crew list or equivalent as determined by the New Mexico film division; and

(7) a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division; and

(8) payroll reports for each qualified trainee that verify hours worked and all rates per hours; and

(9) a notarized invoice.

J. All paperwork and forms shall be submitted to the development training program administrator of the New Mexico film division of the economic development department.

K. Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

[5.5.51.11 NMAC - Rp, 5.5.51.11 NMAC, 4-30-2009; A, 6-30-2010]

5.5.51.12 REIMBURSEMENT OF TRAINING COSTS:

A. Reimbursement shall be made to the participating company in accordance with the terms of JTIP for film & multimedia agreement for FCAP.

B. Failure to fully and accurately complete administrative requirements may require sending the invoice back to company for correction and this process shall delay reimbursement payment.

C. The invoice or claim for reimbursement may be submitted during the contract period, when trainees complete the number of contracted hours.

D. Trainee wages shall be reimbursed upon completion of the training project (not to exceed 1040 hours) and the conclusion of the production in New Mexico.

E. Reimbursement from the state shall be based on the [negotiated contractual agreement that includes a wage range outlined in JTIP for film & multimedia application part two for FCAP to meet any wage adjustments during the training period] contractual agreement.

F. Reimbursements shall be based upon the number of trainees who have qualified for the training program.

G. Reimbursement shall not exceed fifty percent (50%) of the trainees' rates multiplied by the hours trained.

H. Training costs shall be

reimbursed to the company based on the number of qualified employees, their wages from hours physically worked ~~[, and the estimated production time as written in the contract]~~.

I. The contract amount established in the contract shall remain the same for the length of the agreement.

J. Trainee wages shall be reimbursed upon completion of training on the production which shall not exceed 1040 hours per trainee at the conclusion of production in New Mexico and when company qualifications and requirements have been met.

K. The New Mexico film division shall make arrangements to have an audit at the end of the contract that may be facilitated by and completed at the New Mexico film division to verify program compliance by either an independent accountant or a representative of the New Mexico film division.

L. In the case where overpayment has been made by the state of New Mexico to the production company, the production company shall refund the department the difference of the correct reimbursement payment from the paid reimbursement amount.

[5.5.51.12 NMAC - Rp, 5.5.51.12 NMAC, 4-30-2009; A, 6-30-2010]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 19, effective June 11, 2010

19.31.4.19 E M E R G E N C Y ORDER FOR FISH SALVAGE: Under authority of 19.31.10.14 promulgated by the state game commission on April 1, 2007, I, TOD W. STEVENSON, director of the department of game and fish, hereby declare that an emergency exists within the Santa Fe River in Santa Fe county from Paseo de Peralta to Camino Alire. The extent to which, fish life will be destroyed by drying of the river. Bag limits on sport fish will be unlimited. Manner and method regulations will also be suspended. This relaxation will go into effect at 12:01 a.m., June 11, 2010, and will remain in effect through 11:59 p.m., July 2, 2010.

[19.31.4.19 NMAC - N/E, 6-11-2010]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.3.13 NMAC, Sections 2, 6, 7, 8, and 10 effective July 1, 2010.

5.3.13.2 SCOPE: 5.3.13 NMAC applies to the allocation and distribution of money appropriated to the adult basic education fund including funding for instructional materials for adult basic education students by the legislature for use in a given fiscal year and further applies to the allocation and distribution of those monies made available to the state of New Mexico for basic education of adults and available for formula allocation and distribution to pay for the establishment or expansion of adult education programs to be carried out by public schools and school districts, universities, community based organizations of demonstrated effectiveness, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14-1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, state-supported educational programs, postsecondary educational institutions operated by tribal entities, and bureau of Indian affairs controlled postsecondary schools located in New Mexico.
[5.3.13.2 NMAC - Rp, 6 NMAC 8.2.1.2, 6/30/2003; A, 12/30/2004; A, 7/31/2005; A, 3/31/2008; A, 7/1/2010]

5.3.13.6 OBJECTIVE: This regulation establishes a formula funding process whereby monies appropriated by the New Mexico legislature to the adult basic education fund including funding for instructional materials for adult basic education students and monies made available to the state of New Mexico for basic education of adults and available for formula allocation and distribution to pay for the establishment or expansion of adult education programs are allocated and distributed.

[5.3.13.6 NMAC - Rp, 6 NMAC 8.2.1.6, 6/30/2003; A, 12/30/2004; A, 7/31/2005; A, 7/1/2010]

5.3.13.7 DEFINITIONS:

A. "Adult basic education" (ABE) means adult education as defined by 20 U.S.C. Section 9202(1).

B. "Adult basic education fund" means that fund established pursuant to Section 21-1-27.5 NMSA 1978 for the purpose of funding adult basic education programs for educationally disadvantaged adults.

C. "Department" means the higher education department.

D. "Educational media" means a system of instructional materials, computer software, interactive videodisc, magnetic media, CD-ROM, DVD, computer courseware, on-line services, an electronic medium, or other means of conveying information to the student or otherwise containing intellectual content and contributing to the learning process.

E. "Instructional material" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, assessments, supplementary material and electronic media.

F. "Instructional material fund" means that fund established pursuant to Section 22-15-9 NMSA 2009 for the purpose of funding adult basic education student instructional materials.

[E-] G. "State administrative site" means an entity submitting a proposal meeting the criteria established by the higher education department and approved for formula funding through the adult basic education fund for a given fiscal year, including public schools and school districts, universities, community based organizations of demonstrated effectiveness, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14 -1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, state-supported educational programs, postsecondary educational institutions operated by tribal entities, and bureau of Indian affairs controlled postsecondary schools located in New Mexico.

[5.3.13.7 NMAC - Rp, 6 NMAC 8.2.1.7, 6/30/2003; A, 12/30/2004; A, 7/31/2005; A, 3/31/2008; A, 7/1/2010]

5.3.13.8 [APPROPRIATION TO] RESPONSIBILITIES OF DEPARTMENT AND STATE ADMINISTRATIVE SITES:

A. The higher education department will convene a task force on ABE formula funding with members representing ABE programs, post-secondary institution fiscal offices, and the association of community colleges to make recommendations on changes to the funding formula as appropriate.

B. The department shall review the formula and any proposed changes with the adult basic education administrative sites prior to adoption or amendment.

C. The department shall develop, implement and maintain procedures and training to address the purchase and

reporting of instructional materials for the free use by adult basic education students.

D. Each state administrative site may purchase items of instructional material by issuing a purchase order to the publisher or the publisher's authorized agent. The entity is responsible for payment to the vendor/publisher, etc. The cost of the items, plus transportation charges, will be charged against the instructional material allocation.

E. Annually, at a time specified by the department, each state administrative site acquiring instructional material pursuant to the Instructional Material Law (22-15-1 to 22-15-14 NMSA 1978) shall file a report with the department.

F. If closure of a site is imminent, the site shall contact the department in writing within 30 days of closure to obtain approval to dispose of materials.

[5.3.13.8 NMAC - Rp, 6 NMAC 8.2.1.8, 6/30/2003; A, 12/30/2004; A, 7/31/2005; A, 7/1/2010]

5.3.13.10 DISTRIBUTIONS:

A. Adult basic education program fund

[A-] (1) Distributions will be made to state administrative sites upon timely submission of expenditure and program reports in accordance with procedures established by the higher education department. Distributions may be requested on a monthly basis.

[B-] (2) Distributions will be made solely on a reimbursement basis.

[C-] (3) Unless otherwise provided by law, reimbursement will not be made for expenditures not obligated on or before June 30 of the fiscal year for which the allocation is being made.

(4) Performance based funding components will be used to distribute the adult basic education program allocations.

B. Instructional material fund

(1) Distributions will be made to state administrative sites according to New Mexico department of finance and administration rules.

(2) A state administrative site that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years.

[5.3.13.10 NMAC - Rp, 6 NMAC 8.2.1.10, 6/30/2003; A, 7/31/2005; A, 7/1/2010]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.7 NMAC, Section 8, effective June 30, 2010.

6.60.7.8 REQUIREMENTS:

A. ~~[Beginning July 1, 2006]~~ Beginning June 30, 2010, applicants seeking an initial educator license shall pay by money order or certified check or other form acceptable to the PED the following fees at the time of submission of their applications.

(1) All applicants, except those described in Paragraphs (2) or (3) below, shall pay an application fee of ~~[\$65.00]~~ \$125.

(2) Applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of ~~[\$25.00]~~ \$35.

(3) Applicants for athletic coaching licensure who are seeking a coaching license only shall pay a fee of ~~[\$25.00]~~ \$35.

B. ~~[Beginning July 1, 2006]~~ Beginning June 30, 2010, applicants seeking the renewal of an existing educator license through the PED shall pay by money order or certified check or other form acceptable to the PED the following fees at the time of submission of their applications.

(1) All applicants, except those described in Paragraphs (2) or (3) below, shall pay an application fee of ~~[\$35.00]~~ \$95.

(2) Applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of ~~[\$25.00]~~ \$35.

(3) Applicants for athletic coaching licensure who are seeking a coaching license only shall pay a fee of ~~[\$25.00]~~ \$35.

C. ~~[Beginning July 1, 2006]~~ Beginning June 30, 2010, applicants seeking advancement to higher levels of teacher licensure by initial submission of a professional development dossier (PDD) as provided in 6.69.4.11 NMAC shall pay ~~[\$185.00]~~ \$320 by money order, certified check or other payment method acceptable to the PED or its contractor at the time of submission of their PDD. Applicants who resubmit previously failed PDD strands shall pay a fee of ~~[\$65]~~ \$110 for one (1) strand, ~~[\$115]~~ \$220 for two (2) strands and ~~[\$165]~~ \$320 for three (3) strands. If submission of the PDD corresponds with the renewal of licensure, the fee for renewal in Subsection B of this section shall be waived.

D. ~~[Beginning July 1, 2006]~~ Beginning June 30, 2010, applicants seeking to add an endorsement or endorsements to an existing license shall pay by money order or certified check or other form acceptable to the PED a fee of ~~[\$35.00]~~ \$95.

E. ~~[Beginning February 1,~~

~~2007]~~ Beginning June 30, 2010, applicants seeking alternative teaching licensure by way of portfolio review in Paragraph (3) of Subsection B of 6.60.3.8 NMAC shall pay upon registration by money order, certified check or other payment method applicable to the PED or its contractor a ~~[\$300.00]~~ \$320 fee, which shall be non-refundable. Applicants who resubmit previously failed portfolio strands shall pay a fee of ~~[\$100.00 per strand]~~ \$110 per strand for a resubmission of one (1) or two (2) strands and \$320 for a resubmission of three (3) strands.

~~[6-15-98; 6.60.7.8 NMAC - Rn, 6 NMAC 4.2.4.7.8 & A, 10-13-00; A, 09-30-03; A, 08-31-04; A, 04-29-05; A, 05-31-06; A, 10-31-06; A, 10-31-07; A, 06-30-10]~~

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Repeal

1.18.665 NMAC, Executive Records Retention and Disposition Schedule for the Department of Health, is being repealed and replaced with the new 1.18.665 NMAC, Executive Records Retention and Disposition Schedule for the Department of Health, effective July 15, 2010. The New Mexico Commission of Public Records at their June 15, 2010 meeting repealed the current rule and approved the new rule.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

June 15, 2010

Leo R. Lucero, Agency Analysis Bureau Chief

NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rule:

* 1.18.665 NMAC ERRDS,
Department of Health

A review of this rule shows that its impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

SJ/lrl

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.665 NMAC ERRDS, Department of Health

1. Subject matter: 1.18.665 NMAC, Executive Records Retention and Disposition Schedule for the Department of Health. This rule is new and replaces 1.18.665 NMAC ERRDS, Department of Health, an outdated version that was filed on 12/7/2001. The records retention and disposition schedule is a timetable for the management of specific records series created by the Department of Health. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Department of Health.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Department of Health. Persons and entities normally subject to the rules and regulations of the Department of Health may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Department of Health.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Health. Any person or entity outside the covered geographical area that conducts business with or through the Department of Health may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes

Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: July 15, 2010.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.665 NMAC ERRDS, Department of Health.

Tania Maestas Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.430 NMAC, ERRDS Public Regulation Commission, adding Section 45 effective 07/15/2010.

1.18.430.45 QUARTERLY AND ANNUAL INSURANCE FINANCIAL STATEMENT FILES:

A. Program: examinations

B. Maintenance system: chronological by date, then alphabetical by insurance type, then company name

C. Description: mandatory quarterly and annual insurance financial statements submitted to the commission for examination and analysis. File may include annual statement (i.e., supporting exhibits, schedules, liabilities, assets, etc.), quarterly statement (i.e., supporting exhibits, schedules, liabilities, assets, etc.), analysis report, correspondence, etc.

D. Retention: 10 years from date analysis report issued by the commission

[1.18.430.45 NMAC - N, 07/15/2010]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.5 NMAC, Section 11, effective July 5, 2010.

15.2.5.11 WORKOUTS: REQUIREMENTS:

(1) A non-starter must have had within sixty (60) days of entry at least two (2) workouts recorded at a pari mutuel or commission recognized facility and posted with the racing secretary prior to entry, one (1) of the two (2) workouts shall be from the starting gate, and be gate approved. It shall be the trainer's responsibility to establish validity as to workouts and gate approvals.

(2) Any horse which has started, but not within six (6) months, must have one (1) official workout from the starting gate or must have proof of standing the horse at least one (1) time within a sixty (60) day period. Any horse which has started, but not within sixty (60) days, must have at least one (1) workout within sixty (60) days prior to entry. Horses that have not started within six (6) months of entry must have at least two (2) approved workouts within the sixty (60) days.

(3) Gate approvals at a licensed facility must be made by a licensed starter on a commission approved form.

B. IDENTIFICATION:

(1) Each horse must be properly identified prior to its participation in an official timed workout.

(2) The trainer or exercise rider shall bring each horse scheduled for an official workout to be identified by the clocker or clocker's assistant immediately prior to the workout.

(3) A horse may be properly identified by its lip tattoo immediately prior to participating in an official timed workout. A horse may also be properly identified by other approved methods of positive identification as described in Subsection F of 15.2.3.8 NMAC.

(4) The owner, trainer or rider shall be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

C. INFORMATION DISSEMINATION: Information regarding a horse's approved timed workout(s) shall be furnished to the public prior to the start of the race for which the horse has been entered.

D. RESTRICTIONS: A horse shall not be taken onto the track for training or a workout except during hours designated by the association.

[15.2.5.11 NMAC - Rp, 15 NMAC 2.5.11, 03/15/2001; A, 03/30/2007; A, 06/15/09; A, 07/05/10]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to Subsection C of Section 9 of 15.2.6 NMAC modifying the administration for furosemide and eliminating the use of Meclofenamic acid. Subsection D of Section 9 of 15.2.6 NMAC is amended to change the corresponding penalty recommendations. Subsection F was added to include an additional prohibited substance, Alkalinizing Substances. Subsections A and B were not published as there were no changes made. In addition, Paragraph (4), Subparagraphs (a) through (x) of Subsection C were not published as there were no changes made.

15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

...

C. MEDICATION RESTRICTIONS:

(1) A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include: drugs or medications for which no acceptable levels have been established; therapeutic medications in excess of established acceptable levels; substances present in the horse in excess of levels at which such substances could occur naturally; substances foreign to a horse at levels that cause interference with testing procedures.

(2) Drugs or medications in horses are permissible, provided: the drug or medication is listed by the association of racing commissioners international's drug testing and quality assurance program; the maximum permissible urine or blood concentration of the drug or medication does not exceed the published limit.

(3) Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.

(a) Phenylbutazone: The use of phenylbutazone shall be permitted under the following conditions: Any horse to which phenylbutazone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative phenylbutazone level(s) and/or the presence

of other drugs which may be present in the blood or urine sample(s). The permitted quantitative test level of phenylbutazone or oxyphenbutazone shall be administered in such dosage amount that the official test sample shall not exceed 5 micrograms per milliliter of plasma.

(b) Furosemide (Salix): furosemide (Salix) may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide (Salix) shall be permitted only after the trainer enters the horse on the bleeder list by so declaring it as a bleeder on the entry card.

(i) The use of furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is utilized: furosemide (Salix) shall be administered no less than three hours prior to post time for ~~[the] a quarter horse race for which the horse is entered and no less than four hours prior to post time for a thoroughbred race for which a horse is entered.~~ A horse qualified for a furosemide (Salix) administration must be brought to the detention barn one hour prior to the three-hour or four-hour administration requirement specified above. After treatment, the horse shall be required by the commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association and/or commission security supervision until called to the saddling paddock.

(ii) The use of furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: furosemide (Salix) shall be administered no less than three hours prior to post time for ~~[the] a quarter horse race for which the horse is entered and no less than four hours prior to post time for a thoroughbred race for which a horse is entered;~~ the horse must be logged in at the stable gate with time and location no less than one hour prior to administration; the furosemide (Salix) dosage administered shall not exceed 250 milligrams nor be less than 100 milligrams ~~for horses entered in a quarter horse race and the furosemide (Salix) dosage administered shall not exceed 500 milligrams nor be less than 150 milligrams for horses entered in a thoroughbred race;~~ the trainer of the treated horse shall cause to be delivered to the official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission: the racetrack name, the date and time the furosemide (Salix) was administered to

the entered horse; the dosage amount of furosemide (Salix) administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the furosemide (Salix).

(iii) Quantitation of furosemide in serum or plasma shall be performed when specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per ~~[milliliter]~~ milliliter of serum or plasma.

(iv) Bleeder List. The official veterinarian shall maintain a bleeder list of all horses, which have been certified as bleeder horses. Such certified horses must have been entered by the trainer as a bleeder to obtain certification.

(v) The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered on the bleeder list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's certificate of registration.

(vi) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list.

(vii) A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal and only after remaining on the bleeder list for a minimum of sixty (60) days.

(viii) A horse, which has been placed on a bleeder list in another jurisdiction, may be placed on a bleeder list in this jurisdiction by entering the horse into a race by so declaring it on the entry card as a bleeder in another jurisdiction.

(c) Flunixin: In addition to phenylbutazone and furosemide, flunixin may be administered in such dosage amount that the official test sample shall not exceed ~~[1-0]~~ .05 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

~~[(d) Meclofenamic acid: In addition to phenylbutazone and furosemide, meclufenamic acid may be administered in such dosage amount that the official test sample shall not exceed 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.]~~

[(e)](d) Ketoprofen: In addition to phenylbutazone and furosemide, ketoprofen may be administered in such dosage amount that the official test sample shall not exceed ~~[50]~~ 10 nanograms per milliliter of the drug substance, its metabolites, or analogs, per milliliter of plasma.

...

D. P E N A L T Y RECOMMENDATIONS (in the absence of mitigating circumstances).

(1) A verbal warning to be issued for one positive test within a 12 month period in the following levels (the verbal warning will be recorded in writing):

(a) .06 micrograms per milliliter to 1.0 micrograms per milliliter of flunixin; or

(b) 11.0 to 30.0 nanograms per milliliter of ketoprofen.

[(b)] (2) A written warning for one positive test within a 12-month period in the following levels:

(a) 5.1 micrograms per milliliter to 9.9 micrograms per milliliter in one drug of phenylbutazone or oxyphenbutazone; or

(b) 1.1 microgram per milliliter to 1.3 microgram per milliliter of flunixin; or

~~[(c) 1.1 microgram per milliliter to 1.3 microgram per milliliter of meclufenamic acid;]~~

~~[(d)] (c)~~ **[(c)]** ~~[50.0 to 60.0]~~ 31.0 to 40.0 nanograms per milliliter of ketoprofen.

~~[(2)] (3)~~ **[(3)]** A fine for one positive test within a 12-month period in the following levels:

(a) \$200 for 10.0 micrograms per milliliter and above for combined total amount of phenylbutazone and oxyphenbutazone; or

(b) \$200 for more than 1.3 micrograms per milliliter of flunixin; or

~~[(c) \$200 for more than 1.3 micrograms per milliliter of meclufenamic acid; or]~~

~~[(d)](c)~~ **[(c)]** \$300 for 5.1 micrograms per milliliter or more of either phenylbutazone or oxyphenbutazone in combination with 1.3 micrograms or more of ~~[either]~~ flunixin ~~[or meclufenamic acid]; or~~

~~[(e)] (d)~~ **[(d)]** \$200 for 5.6 to 5.9 micrograms per milliliter in one drug of phenylbutazone, or oxyphenbutazone, and 1.1 to 1.2 micrograms per milliliter of flunixin ~~[or meclufenamic acid];~~

~~[(f)] (e)~~ **[(e)]** \$200 for more than ~~[60.0]~~ 40.0 nanograms per milliliter of ketoprofen.

~~[(3)] (4)~~ **[(4)]** The penalties for a second violation within a twelve-month period are as follows:

(a) a second violation of Paragraph (1) or (2) of this subsection shall be a fine of \$200;

(b) a second violation of [Paragraphs 2(a), 2(b), or 2(c)] Subparagraph (a) or (b) of Paragraph (3) of this subsection shall be a fine of \$400;

(c) a second violation of [Paragraph 2(d)] Subparagraph (c) of Paragraph (3) of this subsection shall be a fine of \$600;

(d) a second violation of [Paragraph 2(e)] Subparagraph (d) of Paragraph (3) of this subsection shall be a fine of \$400;

(e) a second violation of [Paragraph 2(f)] Subparagraph (e) of Paragraph (3) of this subsection shall be a fine of \$400.

~~[(4)]~~ (5) The penalties for a third violation within a twelve-month period are as follows:

(a) a third violation of Paragraph (1) or (2) of this subsection shall be a fine of \$400;

(b) a third violation of [Paragraphs 2(a), 2(b), or 2(c)] Subparagraphs (a) or (b) of Paragraph (3) of this subsection shall be a \$400 fine, disqualification, and loss of purse;

(c) a third violation of [Paragraph 2(d)] Subparagraph (c) of Paragraph (3) of this subsection shall be a fine of \$900, disqualification, and loss of purse;

(d) a third violation of [Paragraph 2(e)] Subparagraph (d) of Paragraph (3) of this subsection shall be a fine of \$900, disqualification, and loss of purse;

(e) a third violation of [Paragraph 2(f)] Subparagraph (e) of Paragraph (3) of this subsection shall be a fine of \$900, disqualification, and loss of purse.

~~[(5)]~~ (6) The penalties for a fourth violation within a twelve-month period are as follows:

(a) a fourth violation of Paragraph (1) or (2) of this subsection shall be a fine of \$400, disqualification, and loss of purse;

(b) a fourth violation of [Paragraphs 2(a), 2(b), or 2(c)] Subparagraph (a) or (b) of Paragraph (3) of this subsection shall be a fine of \$1,000, loss of purse, disqualification, and a thirty day suspension;

(c) a fourth violation of [Paragraph 2(d)] Subparagraph (c) of Paragraph (3) of this subsection shall be a fine of \$1,500, loss of purse, disqualification, and a thirty-day suspension;

(d) a fourth violation of [Paragraph 2(e)] Subparagraph (d) of Paragraph (3) of this subsection shall be a fine of \$1,500, loss of purse, disqualification, and a thirty-day suspension;

(e) a fourth violation of [Paragraph 2(f)] Subparagraph (e) of Paragraph (3) of this subsection shall be a fine of \$1,500, loss of purse, disqualification, and a thirty-day suspension.

~~[(6)]~~ (7) For the fifth violation within a 12 month period of Paragraph (1) or (2) of this subsection shall be a fine of \$1,000, loss of purse, disqualification, and a thirty day suspension.

~~[(7)]~~ (8) A positive test of two permitted non-steroidal anti-inflammatory drugs found at twice the allowable level or more for two drugs shall carry the penalties of a class IV drug positive for the trainer and attending veterinarian. Additional violations shall carry the same penalties as additional violations of a class IV drug for the trainer and the attending veterinarian.

E. MEDICAL LABELING:

(1) No person on association ground where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection.

(2) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following: the name of the product; the name, address and telephone number of the veterinarian prescribing or dispensing the product; the name of each patient (horse) for whom the product is intended/prescribed; the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; the name of the person (trainer) to whom the product was dispensed.

(3) Any drug, medication or paraphernalia determined to be confiscated contraband that is found on association premises which a licensed trainer occupies or has the right to occupy, or in that trainer's personal property or effects or vehicle in that trainer's care, custody or control, and is required to be tested by the official laboratory, will require payment of all costs for testing to be borne by the trainer upon final decision.

F. ALKALINIZING SUBSTANCES: The use of agents that elevate the horses TCO2 or base excess level above those existing naturally in the untreated horse at normal physiological concentrations is prohibited. The following levels also apply to blood gas analysis:

(1) the regulatory threshold for TCO2 is 37.0 millimoles per liter of plasma/serum plus the measurement uncertainty of the laboratory analyzing the sample, or a base excess level of 10.4 millimoles per liter of plasma/serum;

(2) the decision level to be used for the regulation of TCO2 is 37.0 millimoles per liter of plasma/serum plus the measurement uncertainty of the laboratory analyzing the sample, or a base excess level of 10.4 millimoles per liter of plasma/serum;

(3) such violation is that of a class 4 drug and shall be the maximum penalty - 60 days suspension, \$1,000 fine and loss of purse.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A,

10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/09; A, 06/30/09; A, 09/15/09; A, 12/15/09; A, 03/16/10; A, 07/05/10]

NEW MEXICO RACING COMMISSION

This is an amendment to 16.47.1, Section 10, effective July 5, 2010.

16.47.1.10 TRAINERS ELIGIBILITY.

(1) An applicant for a license as trainer or assistant trainer must be at least 18 years of age; be qualified, as determined by the stewards or other commission designee, by reason of experience, background and knowledge of racing; a trainer's license from another jurisdiction, having been issued within a 24 month period by the commission, may be accepted as evidence of experience and qualifications; evidence of qualifications may require passing one or more of the following: a written examination; an ~~interview—~~oral examination; a demonstration of practical skills in a barn test given by a committee of trainers appointed by the New Mexico horsemen's association, witnessed by a steward and approved by the commission.

(2) Applicants not previously licensed as a trainer shall be required to pass a written/oral examination, demonstrate practical skills, and submit at least two written statements as to the character and qualifications of the applicant, and documentation of having completed a six month apprenticeship under the direct supervision of a licensed trainer or assistant trainer.

(a) Applicants failing the first written/oral examination must wait thirty (30) days before retaking the trainer's test.

(b) Applicants failing the second written/oral examination must wait sixty (60) days before retaking the trainer's test.

(c) Applicants failing the third written/oral examination must wait one (1) year before retaking the trainer's test.

B. ABSOLUTE INSURER.

(1) The trainer is the absolute insurer of the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug or medication, or other prohibited substance in such horses. A positive test for a prohibited drug or medication or other prohibited substance or the presence of permitted medication in excess of maximum allowable levels as reported by a commission-approved laboratory is prima facie evidence of a violation of this rule. The trainer is absolutely responsible regardless of the acts of third parties.

(2) A trainer must prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(3) A trainer whose horse has been claimed remains the absolute insurer for the race in which the horse is claimed.

C. O T H E R RESPONSIBILITY. A trainer is responsible for:

(1) the condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;

(2) maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(3) ensuring that fire prevention rules are strictly observed in the assigned stable area;

(4) providing a list to the chief of security of the trainer's employees on association grounds and any other area under the jurisdiction of the commission; the list shall include each employee's name, occupation, social security number, and occupational license number; the chief of security shall be notified by the trainer, in writing, within 24 hours of any change;

(5) the proper identity, custody, care, health, condition, and safety of horses in his/her charge;

(6) disclosure of the true and entire ownership of each horse in his/her care, custody or control; any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary;

(7) training all horses owned wholly or in part by him/her which are participating at the race meeting; registering with the racing secretary each horse in his/her charge within 24 hours of the horse's arrival on association grounds;

(8) immediately notify the stewards and commission veterinarian of all out-of-state certified horses on **Salix®**;

(9) having each horse in his/her care that is racing, or is stabled on association grounds, tested for equine infectious anemia (EIA) and for filing evidence of such negative test results with the racing secretary as required by the commission;

(10) using the services of those veterinarians licensed by the commission to attend horses that are on association grounds;

(11) immediately reporting the alteration in the sex of a horse in his/her care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;

(12) promptly reporting to the racing secretary and the official veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

(13) promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

(14) promptly reporting the death of any horse in his/her care on association grounds to the stewards and the official veterinarian and compliance with the rules in Subsection C of 15.2.6.12 NMAC governing post-mortem examinations;

(15) maintaining a knowledge of the medication record and status of all horses in his/her care;

(16) immediately reporting to the stewards and the official veterinarian if he/she knows, or has cause to believe, that a horse in his/her custody, care or control has received any prohibited drugs or medication;

(17) representing an owner in making entries and scratches and in all other matters pertaining to racing; horses entered as to eligibility and weight or other allowances claimed;

(18) horses entered as to eligibility and weight or other allowances claimed;

(19) ensuring the fitness of a horse to perform creditably at the distance entered;

(20) ensuring that his/her horses are properly shod, bandaged, and equipped; toe grabs with a height greater than two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited; the horse shall be scratched and the trainer may be subject to fine;

(21) ensuring that his/her horses are properly bandaged, and equipped; and no jockey, apprentice jockey, exercise person or any person mounted on a horse shall ride, breeze, exercise, gallop or workout a horse on the grounds of a facility under the jurisdiction of the commission unless the horse is equipped with a nylon rein or a safety rein; a safety rein is a rein with a wire or nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp;

(22) presenting his/her horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

(23) personally attending to his/her horses in the paddock and supervising the saddling thereof, unless excused by the stewards;

(24) instructing the jockey to give his/her best effort during a race and that each horse shall be ridden to win;

(25) attending the collection of urine or blood sample from the horse in his/her charge or delegating a licensed employee or the owner of the horse to do so;

(26) notifying horse owners upon the revocation or suspension of his/her trainer's license; upon application by the owner, the stewards may approve the transfer of such horses to the care of another

licensed trainer, and upon such approved transfer, such horses may be entered to race.

D. A S S I S T A N T TRAINERS.

(1) A trainer may employ an assistant trainer, who shall be equally responsible with the employing trainer for the condition of the horses in their care. The name of the assistant trainer shall be shown on the official program along with that of the employing trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission may include those requirements prescribed in Subsection A, Paragraph (1) of 16.47.1.10 NMAC.

(3) An assistant trainer shall assume the same duties and responsibilities as imposed on the licensed trainer.

(4) The trainer shall be jointly responsible for the assistant trainer's compliance with the rules governing racing.

E. S U B S T I T U T E TRAINERS.

(1) If any licensed trainer is prevented from performing his duties or is absent from the track where he is participating, the stewards shall be immediately notified, and at the same time, a substitute trainer or assistant trainer, acceptable to the stewards, shall be appointed. The stewards shall be advised when the regular trainer resumes his duties.

(2) A substitute trainer must accept responsibility for the horses in writing and be approved by the stewards.

(3) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race pursuant to Subsection B, Paragraphs (1), (2) and (3) of 16.47.1.10 NMAC.

[16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 03/15/2001; A, 11/15/2001; A, 03/30/2007; A, 08/30/2007; A, 06/30/09; A, 09/15/09; A, 07/05/10]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

This is an amendment to 12.11.1 NMAC Section 11, effective 7-1-2010.

12.11.1.11 FEES: The fees set forth in this section do not include fees set by statute or as determined elsewhere in these rules; are expressly prescribed for the expenses of various matters arising pursuant to authority under the New Mexico Uniform Securities Act; are chargeable to the applicant or registrant; and unless otherwise provided, are payable at the time

an application or notice is filed. None of the fees paid are refundable.

A. Administrative fees.

(1) The fee for processing a name change in registration statements on file is \$50.00.

(2) The fee for processing a name change for a registered broker-dealer or a registered investment adviser is \$50.00.

(3) The fee for an interpretative opinion, pursuant to Section 58-13C-605D, or for a no action letter is \$300.00.

B. Inspection fees.

Broker-dealers and investment advisers registered or required to be registered shall be charged a fee of \$100.00 per examiner per day plus actual costs of transportation and lodging where applicable for examinations conducted pursuant to Section 58-13C-411D.

C. Successor firm fees.

(1) An application for registration of a successor firm pursuant to Section 58-13C-407A shall be accompanied by a fee of \$300.00.

(2) An application for registration of successor firms pursuant to Section 58-13C-407A shall be accompanied by an administrative fee of ~~[\$35.00]~~ \$50.00 for each representative's registration which must be transferred to the successor firm. [12.11.1.11 NMAC - Rp, 12.11.1.11 NMAC, 1-1-2010; A, 7-1-2010]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

This is an amendment to 12.11.14 NMAC Section 9, effective 7-1-2010.

12.11.14.9 NOTICE FILING PROCEDURES FOR RULE 506 OFFERINGS:

Pursuant to Section 58-13C-302C, an issuer offering a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933 shall file with the director no later than 15 days after the first sale of such federal covered security in this state the following: a notice on SEC form D; form U-2, consent to service of process; and a fee of \$350. If the notice filing is late but within 10 days after the due date, the fee accompanying the late filing shall be \$700. If the notice filing is more than 10 days after the due date, the fee accompanying the late filing shall be \$1050. For purposes of this rule, the securities and exchange commission "form D" is defined as the document, as adopted by the securities and exchange commission and in effect on September 1, 1996, as may be amended by the securities and exchange commission from time to time, entitled "form D: notice of sale of securities pursuant to Regulation

D, Section 4(6), and/or uniform limited offering exemption," including part E and the appendix. A notice filing shall be considered filed with the New Mexico securities division as of the date on which it is received by the New Mexico securities division.

[12.11.14.9 NMAC - Rp, 12 NMAC 11.4.11.2, 1-1-2010; A, 7-1-2010]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.4 NMAC, Section 10 and 18 effective 6/30/2010.

3.1.4.10 DUE DATES AND TIMELINESS

A. FILING RETURNS

- DUE DATE: A taxpayer becomes liable for tax as soon as the taxable event occurs; payment is not due, however, until on and after the date established by tax acts for the payment of tax. The statutory words "and after" used in the preceding sentence mean that taxes remain due until paid. A taxpayer becomes liable for interest if the tax is not paid when it becomes due. If the tax is not paid when it becomes due or if a report is not filed when due because of negligence of the taxpayer or taxpayer's representative, the taxpayer will also become liable for penalty. The fact that a taxpayer has not registered as a taxpayer is not material to the taxpayer's liability for payment of tax.

B. TIMELINESS OF ELECTRONIC TRANSMISSIONS:

(1) Notices, returns and applications authorized or required to be made or given by electronic transmission, are timely if the notice, return or application is electronically transmitted to the department and accepted on or before the last date prescribed for filing the notice, return or application. Accordingly, the sender who relies upon the applicability of Section 7-1-13 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for filing the notice, return or application.

(2) Returns required by regulation or statute to be filed electronically shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute unless the taxpayer receives an exception or waiver to electronic filing in writing from the department, and taxpayer will be subject to penalties under Section 7-1-69 NMSA 1978 for a late filed return until an electronic return is filed.

C. DETERMINATION OF TIMELINESS:

(1) Notices, returns, applications

and payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by mail are timely if the postmark on the envelope made by the United States postal service bears the date on or before the last date prescribed for filing the notice, return or application or for making the payment. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service. If the postmark does not bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment, the notice, return, application or payment will be presumed to be late. Accordingly, the sender who relies upon the applicability of Section 7-1-9 NMSA 1978 assumes the responsibility that the postmark will bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment.

(2) If a mailing is not received by the department, the contents of the mailing are not timely. If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of the statute. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(3) A facsimile transmittal of a notice, return or application will be considered a timely filing of the notice, return or application only if:

(a) the facsimile is received by the due date for filing the notice, return or application; and

(b) the original is delivered by the due date or, if mailed, postmarked on or before the due date.

D. ILLEGIBLE POSTMARK:

(1) If the postmark on the envelope is not legible and the contents are received by the department by the second business day following the due date, filing of the return, payment or other action will be deemed timely. If the contents are received by the department after the second business day following the due date, the person who is required to file notices, returns or applications, or make payments, has the burden of proving the time when the postmark was made.

(2) The provisions of Subsection D of 3.1.4.10 NMAC apply only to actions required or permitted to be performed by mail.

(3) If the notice, return, application or payment other than payments specified by Section 7-1-13.1 NMSA 1978 is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the due date for

filing the notice, return or application or making the payment.

E. SATURDAY, SUNDAY OR HOLIDAY DUE DATE:

(1) If the last date for filing notices, returns or applications or for making payment of taxes falls on Saturday, Sunday or a state of New Mexico or national holiday, the filing of notices, returns and applications or the making of the payment of taxes, other than payments specified by Section 7-1-13.1 NMSA 1978, shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for taxpayers to file gross receipts tax returns for April receipts is May 25. If May 25th is a Saturday and the following Monday is Memorial Day, a legal holiday designated in Section 12-5-2 NMSA 1978, the due date for filing the gross receipts tax returns is Tuesday, May 28th. The first banking day preceding Tuesday, May 28th is Friday, May 24th.

F. STATE OBSERVANCE OF STATE HOLIDAY ON DAY OTHER THAN THAT DESIGNATED FOR PUBLIC OBSERVANCE:

(1) Whenever the New Mexico state government and its employees are directed by competent authority to observe a state legal public holiday on a day other than that specified in Section 12-5-2 NMSA 1978 for that holiday, the day upon which the holiday is observed by the New Mexico state government is deemed to be a "legal state holiday" for the purposes of the Tax Administration Act.

(2) Example: Section 12-5-2 NMSA 1978 designates the third Monday in February as a legal holiday, President's Day. Traditionally, state offices are open on the third Monday in February and the holiday is observed by state government on the Friday following Thanksgiving. Accordingly, when state government is closed on the Friday after Thanksgiving in a delayed observance of President's Day, the due date for any notices, returns, applications or payments to be made by taxpayers on the Friday after Thanksgiving is the following Monday. For purposes of making payment of tax in accordance with Section 7-1-13.1 NMSA 1978 in this situation, the first banking day preceding the due date is the Friday after Thanksgiving. Because the third Monday in February is observed by the United States postal service and by the national banks, any notices, returns, applications or payments to be made by taxpayers on that date are due the following day, even though state offices are open on President's Day.

G. "RECEIVED BY THE DEPARTMENT" DEFINED:

(1) Unless the secretary by

instruction or other directive permits or requires otherwise, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 means received at the Santa Fe headquarters of the department during the department's normal business hours.

(2) The secretary through instruction or other directive may permit or require payment by check of taxes subject to the provisions of Section 7-1-13.1 NMSA 1978 at any other location of the department or at the location of the state fiscal agent or other agent of the department or during times other than normal business hours of the department. When the secretary has so permitted or required payment by check at such locations or times, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 includes such locations or times.

H. "BANKING DAY" DEFINED:

(1) A banking day is a day which is not a Saturday, Sunday, national bank holiday or a day deemed by regulation of the secretary to be a state legal holiday for purposes of making payment under Subsection 7-1-13.1B NMSA 1978.

(2) Examples:

(a) When Memorial Day falls on Monday, May 27th, the preceding banking day is Friday, May 24th.

(b) The Wednesday immediately prior to Thanksgiving is the first banking day preceding Thanksgiving.

I. TIMELINESS OF ELECTRONIC PAYMENTS:

(1) Payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the payment is electronically transmitted to the department and accepted, on or before the last date prescribed for making the payment. Accordingly, the sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for making the payment.

(2) Payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the result of the electronic payment is that the funds are available to the state of New Mexico on or before the last date prescribed for making the payment. The date that an electronic payment was transmitted to the department is not an indicator of whether the payment was timely. The sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility that the funds were available to the department on or before the last date prescribed for making

the payment.

[7/19/67, 9/9/71, 11/5/85, 8/15/90, 11/7/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.10 NMAC - Rn & A, 3 NMAC 1.4.10, 12/29/00; A, 10/31/07; A, 6/30/10]

3.1.4.18 ELECTRONIC FILING:

A. This regulation is adopted pursuant to the secretary's authority in Section 9-11-6.4 NMSA 1978.

B. For returns due after August 1, 2010, the returns and reports for the following taxes must be filed electronically using approved electronic media on or before the due date of the return or report:

(1) taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded twenty thousand dollars (\$20,000); and

(2) weight distance tax if the taxpayer must pay taxes for two or more trucks.

C. For returns due after January 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded ten thousand dollars (\$10,000) must be filed electronically on or before the due date of the return.

D. For returns due after July 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer is required to file monthly under Section 7-1-15 NMSA 1978, must be filed electronically on or before the due date of the return.

E. Confirmation of electronic filing of a return must accompany payment of taxes by taxpayer. If taxpayer does not have confirmation of electronic filing when the taxpayer submits payment to the department, taxpayer must ensure that taxpayer's tax identification number is on the

payment. Payments without confirmation or tax identification number may not be properly applied to the taxpayer's account and interest and penalty may be assessed.

F. Once a taxpayer is required to file returns electronically pursuant to this regulation, the taxpayer may not file future returns by mail or any method other than electronically.

G. For the purposes of this section, "average monthly tax payment" means the total amount of taxes paid with respect to a group of taxes under Paragraph (1) of Subsection B, Subsection C or Subsection D of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group.

H. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least 30 days before the taxpayer's electronic return is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the tax or tax return to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

I. A taxpayer may be granted a waiver to the requirement of electronic filing for a single tax return. The request for a waiver must be in writing and received by the department on or before the date that the tax return is due and must include the tax or tax return to which the waiver if granted will apply, a clear statement of the reasons for the waiver, and the signature of the taxpayer. A waiver may be granted for the following reasons:

(1) if the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return and file it electronically;

(2) if the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to electronically file; or

(3) if the taxpayer's accountant or other agent or employee who routinely electronically files for taxpayer has suddenly died or has become disabled and unable

to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to electronically file the return or to procure the services of a person to electronically file the return before the due date.

J. If a taxpayer is granted an exception or waiver, the taxpayer must file a paper return in a timely fashion unless an extension pursuant to 3.1.4.12 NMAC has been granted. If a paper return is not timely filed, interest will be due even if an extension is granted.

[3.1.4.18 NMAC - N, 6/30/10]

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

This is an amendment to 11.3.300 NMAC, Section 306, effective June 30, 2010.

11.3.300.306 C L A I M REGISTRATION FORM: Unless otherwise prescribed, claims for regular benefits shall be made on the claims application form, Form ES-400, giving all information required thereby. A claimant shall also separately register for work, which includes completion of an orientation if applicable, with the department within fourteen business days. [~~If the claimant fails to register, his benefits may be temporarily withheld until he registers, and, after a further review, may be denied unless good cause for the failure to register is shown.~~] If the claimants fail to register, including completing the orientation, their benefits may be temporarily withheld until they comply unless good cause for the failure to register and complete the orientation is shown.

[7-15-98; 11.3.300.306 NMAC - Rn & A, 11 NMAC 3.300.306, 01-01-2003; A, 06-30-2010]

End of Adopted Rules Section

Other Material Related to Administrative Law

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE****Public Meeting Notice**

A meeting of the Acequia and Community Ditch Fund Committee will be held to determine distribution of the 2010 Acequia and Community Ditch Fund. The meeting will be held on Wednesday, July 21, 2010, at 9:00 a.m. in Santa Fe, New Mexico, Room 326, State Capitol Building.

Copies of the agenda may be obtained by contacting the New Mexico Department of Agriculture, at (575) 646-1091, or by writing New Mexico Department of Agriculture, Agricultural Programs and Resources, MSC-APR, P O Box 30005, Las Cruces, New Mexico 88003-8005.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the New Mexico Department of Agriculture at least three (3) days prior to the meeting, at (575) 646-1091. Disabled persons who need documents such as agendas or minutes in accessible form should contact the New Mexico Department of Agriculture.

**End of Other Related Material
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
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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.