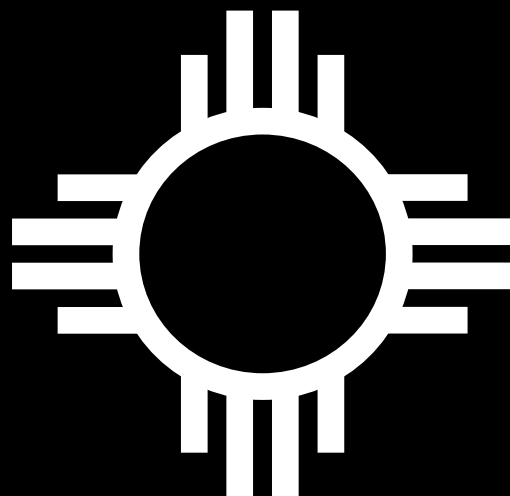


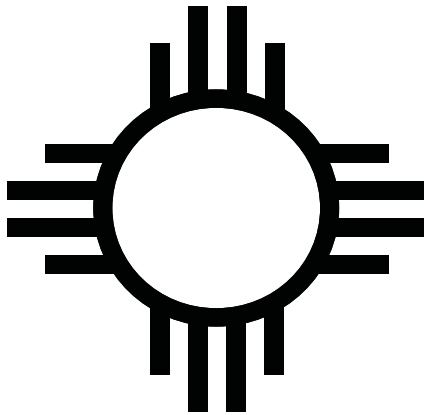
NEW MEXICO REGISTER



Volume XXI
Issue Number 14
July 30, 2010

New Mexico Register

Volume XXI, Issue Number 14
July 30, 2010



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

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Administrative Law Division
Santa Fe, New Mexico
2010

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New Mexico Register

Volume XXI, Number 14

July 30, 2010

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

Notice of Public Hearing

This Human Services Register requests public comments on the annual Low Income Home Energy Assistance Program (LIHEAP) State Plan. Each year, the LIHEAP State Plan is submitted to the Federal administering agency, the Department of Health and Human Services (DHHS). The LIHEAP State Plan will be amended to reflect the administration of the LIHEAP program in Federal Fiscal Year (FFY) 2011 and to make any required adjustments to the LIHEAP Federal poverty guidelines (FPG) as required by federal statute.

The Department proposes to administer LIHEAP in FFY 2011 with any federally mandated changes to the Federal poverty guidelines. (FPG).

The current LIHEAP State Plan can be viewed on the HSD website at <http://www.hsd.state.nm.us/isd/ISDPlans.html>.

Any changes in Federal Poverty Guidelines that are proposed in policy will be incorporated into the FFY 2011 LIHEAP state plan.

The current LIHEAP regulations can be viewed on the internet at <http://www.nmcpr.state.nm.us/nmac/title08/T08C150.htm>.

Individuals wishing to request a copy of the current rules and proposed rule changes and/or the current and the proposed LIHEAP State Plan should contact the Income Support Division, Work and Family Support Bureau, P.O. Box 12740, Albuquerque, New Mexico 87195-0740, or by calling 1-888-523-0051.

The Department proposes to implement these regulations effective October 1, 2010.

A public hearing to receive testimony on these proposed regulations will be held September 2, 2010 at 10:00 AM. The hearing will be held in the Law Library at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 57505. Parking accessible to persons with physical impairments is available.

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 service, please contact the NM Human Services Department toll free at 1-800-432-6217 or through the Relay

New Mexico system, toll free at 1-800-659-8331. The Department requests at least ten-day advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written or recorded comments to:

Kathryn Falls, Secretary
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Interested parties may also address comments by electronic mail to: loretta.williams@state.nm.us

These comments must be received no later than 5:00 P.M., on September 2, 2010. Written and recorded comments will be given the same consideration as oral comments made at the public hearing.

Publication of these proposed regulations approved on July 16, 2010 in Human Services Register Volume 33 No. 27 by:
Kathryn Falls, Secretary

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling three public hearings on August 31, 2010. All three hearings will be held in the South Park Conference Room, 2055 S. Pacheco St., Ste 500-590, Santa Fe.

The subject of the first hearing at 9:00 a.m. is Afghan and Iraqi Special Immigrants.

The New Mexico Human Services Department (HSD) is proposing to include Afghan and Iraqi Refugees as qualified aliens who are exempt from being barred from Medicaid eligibility for a period of five years per Section 8120 of Pub. L. No. 111-118, Department of Defense Appropriations Act of 2010.

The subject of the second hearing at 10:00 a.m. is Estate Recovery.

The Human Services Department is proposing to update Estate Recovery policy to implement provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and the American Recovery and Reinvestment Act of 2009 (ARRA). Section 115 of MIPPA requires States to exempt Medicare cost sharing benefits (Part A and Part B premiums, deductibles, coinsurance, and co-payments) paid under the Medicare

Savings Programs from estate recovery. Section 5006(c) of ARRA requires States to exempt specific income, resources, and property for American Indians and Alaska Natives. Additional changes were made to remove outdated language and define a homestead of modest value.

The subject of the third hearing at 11:00 a.m. is Billing for Medicaid Services.

The Human Services Department, Medical Assistance Division, is issuing a proposed rule to correct typographical errors in Paragraphs (3) and (4), Subsection B of 8.302.2 NMAC, *Billing for Medicaid Services*, which was effective May 1, 2010. When the final rule was issued, the filing limit for claims was established at 90 days for most situations rather than 60 days as originally proposed. However, in the issuing the final rule, there were three instances where the "60 days" were not changed to "90 days" as intended. This rule proposes to correct this error.

Interested persons may submit written comments no later than 5:00 p.m., August 31, 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 and their proposed rules are available for review on our Website at www.hsd.state.nm.us/mad/registers/2010 or by sending a self-addressed stamped envelope to Medical Assistance Division, Long Term Services and Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **August 30th & 31st, 2010** at 9:00 a.m. in the **Ruidoso Police Training Room, 1085 Mechem Dr. Ruidoso, New Mexico** for the purpose of conducting a regular Board meeting.

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

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda and any proposed rule, which will be available August 20, 2010. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting August 20, 2010 through the Board's website: www.rld.state.nm.us/pharmacy.

The Board will address:

Rule Hearings:

16.19.12 NMAC Fees

16.19.22 NMAC General Provisions

16.19.35 NMAC Drug Warehouse (New Rule Request)

Hearings, Board Orders and Surrenders:

Approval of Applications:

Other Board Matters:

Committee Reports:

Public Requests:

*Executive Director's Report:
Case presentations*

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, August 24, 2010, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by August 16, 2010. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

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

Amendments

1.17.230 NMAC

JRRDS, New Mexico District Courts

1.18.790 NMAC

ERRDS, Department of Public Safety

1.18.805 NMAC

ERRDS, Department of Transportation

Repeal

1.18.449 NMAC

ERRDS, Board of Nursing

New-Replacement

1.18.449 NMAC

ERRDS, Board of Nursing

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AN INQUIRY INTO)
THE PROMULGATION OF RULES TO)
PROTECT CONSUMERS' RIGHTS WITH)
RESPECT TO PROPANE SERVICE TO)
IMPLEMENT SENATE BILL 468, "AN ACT)
RELATING TO BUSINESS; ENACTING A)
NEW SECTION OF THE PUBLIC)
REGULATION COMMISSION ACT;)
PROVIDING FOR THE REGULATION OF)
PROPANE SERVICE",)

Case No. 09-
00314UT

CONSUMER RELATIONS DIVISION STAFF)
OF THE NEW MEXICO PUBLIC)
REGULATION COMMISSION,)

Petitioner.)

NOTICE OF PROPOSED RULEMAKING AND HEARING NOTICE

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("NMPRC" or "Commission") proposes to enact new rules regarding the regulation of propane service. This matter comes before the Commission upon its own motion in response to the filing of Response Comments on behalf of Prosperity Works; whereupon, being duly advised,

THE COMMISSION FINDS AND CONCLUDES

The Commission is charged, among other things, with protecting consumers' rights with respect to propane service as provided by NMSA 1978, Section 8-4.1(A), consistent with the Commission's jurisdiction as provided in the New Mexico Constitution, Art. XI, Section 2, and other applicable law.

1. On August 20, 2009, Consumer Relations Division Staff ("Staff") of the

Commission filed a Petition for Notice of Inquiry. In support of the request for the opening of an inquiry, Staff noted that the New Mexico Legislature recently passed Senate Bill 468 which gave the Commission the authority to:

A. "... a d o p t rules to protect consumer rights with respect to propane service."

B. "...report by December 2009 to the appropriate interim legislative committee appointed by the New Mexico legislative council on the progress of the rulemaking pursuant to this section."

2. Staff stated in its motion that it would be in the best interest for the Commission to initiate a Notice of Inquiry to provide notice to the proper parties and begin the process of promulgating rules. The Commission issued such an order on September 15, 2009, and listed the scope of the inquiry as identifying the consumer protection issues relating to propane services that currently exist in New Mexico, the solutions to consumer protection issues in New Mexico given the scope of Senate Bill 468 and the existing resources and staffing of the Commission, and to develop a consensus proposed rule for adoption by the Commission.

3. Staff assembled a working group and met with members of the propane industry, Construction Industries Division, and consumers, as well as members of consumer advocate groups on November 5, 2009. Staff and the working group met a total of five times in workshop meetings in November and December of 2009 and several times throughout April of 2010.

4. On June 25, 2010, Prosperity Works (formerly Community Action New Mexico) filed Response Comments which included a proposed draft rule included herein as "Exhibit 1." The Commission has not received a proposed draft rule from any other parties at this time.

5. It is in the public interest that the Commission promulgate rules protecting consumers with regard to propane service before the onset of winter and the heating season.

6. In the Notice of Proposed Rulemaking process, those parties who have failed to file proposed draft rules will be able to attend the hearings associated with this process and submit comments as to what the final form of the rule shall be. This will allow the Commission to issue and the interested parties to direct their input on a final rule prior to the beginning of the heating season.

7. A copy of the proposed rule to be considered for promulgation as a new rule for Propane Service is attached hereto as "Exhibit 1." The proposed rule has been formatted for inclusion in the New Mexico Administrative Code ("NMAC")

pursuant to NMSA 1978, Section 14-4-3. Additional copies of the proposed rule can be obtained from:

Mr. Ron X. Montoya
NMRPC Records Management
Bureau
1120 Paseo de Peralta/PO Box
1269
Santa Fe, New Mexico 87501
Telephone: 1-888-4ASK-PRC (1-888-427-5772)

IT IS THEREFORE ORDERED:

A. A rulemaking proceeding should be, and hereby is, instituted in this Docket concerning the promulgation of rules pertaining to the protection of consumers' rights with regard to propane service enacted under Senate Bill 468, now codified as NMSA 1978, Section 8-8-4.1.

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

C. Any person wishing to comment on the proposed rules in this matter may do so by submitting written comments no later than August 30, 2010. Any person wishing to respond to comments may do so by submitting written response comments no later than September 17, 2010. Comments suggesting changes to the rule as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be provided in a format consistent with that of the proposed rule.

D. All pleadings, including comments, shall bear the caption and case number contained at the top of this Notice. Comments on the proposed rule shall be filed with the Commission's Records Division, at the address set out at ¶8 hereof.

E. A public hearing on the proposed rule, to be presided over by Commission Chairman David W. King or his designee, shall be held beginning at 11:00 am on Thursday, September 23, 2010, at the offices of the Commission, at the following location:

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

F. Additional hearing may be set as appropriate.

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

to this rulemaking.

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

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

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

K. The Certificate of Service for this proceeding shall include all persons and entities currently involved in the working groups assembled by Staff in this matter.

L. This *Notice of Proposed Rulemaking*, without Exhibit 1, shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of the *Notice of Proposed Rulemaking* as described above shall be filed in this docket.

M. In addition, this Notice shall be posted on the Commission's official Website.

N. Copies of any forthcoming final order adopting the proposed rule shall be mailed, along with copies of the rule as adopted, shall be mailed to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of the final order in this Docket, to all commenters in this case, and to all individuals requesting such copies.

O. This *Notice of Proposed Rulemaking* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 6th day of July, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION

DAVID W. KING, CHAIRMAN

JEROME D. BLOCK, VICE CHAIRMAN

JASON A. MARKS, COMMISSIONER

**THERESA BECENTI-AGUILAR,
COMMISSIONER**

SANDY JONES, COMMISSIONER

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN

that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on August 16, 2010. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Boardroom located at 4900 Alameda Blvd. NE, Albuquerque, New Mexico.

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

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

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

India Hatch
Deputy Agency Director

Dated: July 12, 2010

NEW MEXICO SECRETARY OF STATE

NOTICE OF PUBLIC HEARING

Wednesday, September 15, 2010

The New Mexico Secretary of State will hold a public hearing at 1:30 p.m., on Wednesday, September 15, 2010, at the Office of the Secretary of State, 325 Don Gaspar, 3rd Floor, Conference Room, Santa Fe, New Mexico 87503. The public hearing will be held to solicit comments. The New Mexico Secretary of State proposes to adopt a new set of regulations, pursuant to NM Election Code, Article 12; Section 1-12-70, NMSA 1978.

Comments may be made in person at the hearing or in writing. Written comments should be submitted before Tuesday, August 31, 2010, and sent to: Office of the Secretary of State, Attn: Director, Bureau of Elections, 325 Don Gaspar - Suite 300, Santa Fe, New Mexico 87503.

Any person 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 meeting, please contact Manuel Vildasol at the Secretary of State's Office at 505.827.3600 at least twenty four (24) hours prior to the meeting. Public documents, including the agenda and minutes may be provided in various accessible formats. Please contact Manuel Vildasol if a summary or other type of accessible format is needed.

NEW MEXICO SECRETARY OF STATE

NOTICE OF PUBLIC HEARING

Thursday, September 16, 2010

The New Mexico Secretary of State will hold a public hearing at 1:30 p.m., on Thursday, September 16, 2010, at the Office of the Secretary of State, 325 Don Gaspar, 3rd Floor, Conference Room, Santa Fe, New Mexico 87503. The public hearing will be held to solicit comments. The New Mexico Secretary of State proposes to adopt a new set of regulations, pursuant to NM Election Code, Article 14, Section 1-14-13.2 & Section 1-14-13.3, NMSA 1978.

Comments may be made in person at the hearing or in writing. Written comments should be submitted before Tuesday, August 31, 2010, and sent to: Office of the Secretary of State, Attn: Director, Bureau of Elections,

325 Don Gaspar - Suite 300, Santa Fe, New Mexico 87503.

Any person 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 meeting, please contact Manuel Vildasol at the Secretary of State's Office at 505.827.3600 at least twenty four (24) hours prior to the meeting. Public documents, including the agenda and minutes may be provided in various accessible formats. Please contact Manuel Vildasol if a summary or other type of accessible format is needed.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.44 NMAC, Section 8, effective 07/30/2010.

21.17.44.8 ASSESSMENT:

A. The committee assessment rate is set forth ~~[at 6 dollars (\$6) per land acre of irrigated cotton and 3 dollars (\$3) per land acre for dryland cotton]~~ annually by the committee to be collected each annum from cotton producers in the control district. The control committee may annually set an incentive for early payment of the assessment.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

C. The number of acres used in calculating the assessment amount due will be the number of land acres the cotton producer has certified with the farm service agency, or if the cotton acreage is not certified by the farm service agency the number of land acres used in calculating the assessment amount due shall be determined by other methods set by the control committee or their authorized agent. Any cotton acreage is subject to verification by the control committee.

D. Failure to comply with payment of assessment to the committee or their authorized agent may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed up to a rate of 18 percent per annum or 1 1/2 percent per month on the balance unpaid after 30 days.

[21.17.44.8 NMAC - N, 06/29/2001; A, 09/29/2006; A, 07/30/2010]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 1 N A T U R A L RESOURCES GENERAL PROVISIONS PART 3 ADMINISTRATION OF THE NATURAL HERITAGE CONSERVATION ACT

19.1.3.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[19.1.3.1 NMAC - N, 7/30/2010]

19.1.3.2 SCOPE: 19.1.3 NMAC applies to application and selection procedures for conservation projects that may receive grants from the natural heritage conservation fund.

[19.1.3.2 NMAC - N, 7/30/2010]

19.1.3.3 S T A T U T O R Y AUTHORITY: 19.1.3 NMAC is adopted pursuant to the Laws of 2010, Chapter 83.

[19.1.3.3 NMAC - N, 7/30/2010]

19.1.3.4 D U R A T I O N : Permanent.

[19.1.3.4 NMAC - N, 7/30/2010]

19.1.3.5 EFFECTIVE DATE: July 30, 2010, unless a later date is cited at the end of a section.

[19.1.3.5 NMAC - N, 7/30/2010]

19.1.3.6 OBJECTIVE: 19.1.3 NMAC's objective is to establish procedures for carrying out the provisions of the Natural Heritage Conservation Act to protect New Mexico's natural heritage, customs and culture including establishing criteria for evaluating possible conservation projects to receive grants from the natural heritage conservation fund.

[19.1.3.6 NMAC - N, 7/30/2010]

19.1.3.7 DEFINITIONS:

A. "Agricultural easement" means a less than fee simple interest in land that is granted in perpetuity, which creates a legally enforceable land protection or preservation agreement and restricts or prohibits the future development, including subdivision, or alteration of the land or the permanent severance of any appurtenant water rights for a purpose other than agricultural production or the natural values of the land. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.

B. "Agricultural production" means the production for commercial purposes of crops, livestock or livestock products, including the processing or retail marketing of crops, livestock or livestock products that are primarily produced on site by an operator of a working farm, ranch or other agricultural land. The term includes use of land that is devoted to and meets requirements and qualifications

for soil conservation programs under an agreement with an agency of the federal government and may include periodic fallowing and practices that promote conservation of land and water on and near the property.

C. "Applicant" means a qualified entity.

D. "Committee" means the natural lands protection committee established pursuant to NMSA 1978, Section 75-5-4(A).

E. "Conservation easement" means a less than fee simple interest in land granted in perpetuity, which creates a legally enforceable land protection or preservation agreement that restricts or prohibits further subdivision and may restrict or prohibit development, commercial and industrial uses or other activities, or alteration of the land or any appurtenant water rights necessary to maintain or preserve certain conservation values (*e.g.*, natural resource, wildlife habitat, scenic, open space, cultural, historic or recreational and educational) on the subject property. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.

F. "Conservation entity" means a private nonprofit charitable corporation or trust authorized to do business in New Mexico that has tax-exempt status as a public charity pursuant to the internal revenue code of 1986 and that has the power to acquire, hold or maintain land or interests in land.

G. "Conservation project" means the acquisition of conservation or agricultural easements from a willing seller or a land restoration project that protects the state's natural heritage, customs and culture through action that preserves and conserves water quality and quantity to conserve and restore natural ecosystem function and processes; protects agricultural production on working farms, ranches and other agricultural lands; protects and restores New Mexico's forests and watersheds; conserves and restores wildlife habitat; maintains natural areas; provides outdoor recreation opportunities, including hunting and fishing and trails; or preserves cultural and historic sites with natural resources heritage value.

H. "Department" means the energy, minerals and natural resources department.

I. "Fund" means the natural heritage conservation fund.

J. "In-kind" means property or services that benefit a grant-

supported conservation project that are contributed without charge or at less than fair market value. In-kind contributions for purposes of land restoration projects may consist of the cost of operating equipment or equipment rental, goods or services, including labor, directly benefitting the land restoration project and specifically identifiable to the land restoration project. Labor costs included as in-kind shall be documented as reasonable and reference rates applicable to the local area and type of service. In-kind contributions for purposes of agricultural or conservation easements means the donation of interests in real property or the payment of transactional costs such as appraisals, environmental assessments, title insurance or surveys.

K. "Land restoration project" means actions intended to renew a degraded, damaged or destroyed natural land area and associated vegetation or water features through active intervention, where the action is founded upon science-based technical information and prediction of the intervention's outcome such that it stimulates or accelerates natural system health, integrity and sustainability toward a specified outcome. Restoration includes an array of actions including erosion control, reforestation, forest thinning, re-vegetation of disturbed sites, repair of aquatic systems, removal of non-native species of animals and plants and the related sustainable re-establishment of native species, re-establishment of extirpated native species, measures taken to restrict disturbance to areas of crucial habitat or to develop and restore more suitable habitat and improved outdoor recreation opportunities and overall habitat and range improvements for native species benefit. A project includes related assessment and monitoring to judge long-term effectiveness and determine and implement periodic corrective or additional actions needed to achieve objectives.

L. "Natural resource heritage value" means a vegetation community component, animal species assemblage or combination thereof; other naturally occurring representation of biological diversity; or esthetically appealing vistas of natural landscape that are significant or important.

M. "Partner" means a conservation entity or other individual or entity cooperating or assisting a qualified entity with planning, applying for and executing a conservation project, which is specifically identified in an application, and will be a participant in a public-private conservation project.

N. "Qualified entity" means a state agency, a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, a political subdivision of the state; or, for conservation

projects wholly within New Mexico, an Indian tribe or pueblo.

O. "Working farm, ranch or other agricultural land" means land that has been primarily devoted to active agricultural production for at least two of the five years immediately prior to consideration for an agricultural easement or other conservation project.

[19.1.3.7 NMAC - N, 7/30/2010]

19.1.3.8 GENERAL PROVISIONS:

The department administers the Natural Heritage Conservation Act, which establishes a fund and a competitive grant program to select and fund conservation projects. The committee evaluates proposed conservation projects and recommends to the department which proposed conservation projects should receive funding.

[19.1.3.8 NMAC - N, 7/30/2010]

19.1.3.9 ELIGIBLE APPLICANTS:

Only qualified entities may apply for grants from the fund. Conservation entities may not individually apply for or receive grants directly from the fund, but they may partner with qualified entities on conservation projects. If a conservation entity will jointly acquire a conservation or agricultural easement or is a partner on a land restoration project, the conservation entity shall be identified in the application.

[19.1.3.9 NMAC - N, 7/30/2010]

19.1.3.10 CONSERVATION PROJECTS:

Conservation projects that may receive grants from the fund include the following:

A. acquisition of conservation easements from willing sellers by qualified entities, including the department, which may or may not be in partnership with conservation entities;

B. acquisition of agricultural easements from willing sellers by qualified entities, including the department, which may or may not be in partnership with conservation entities; or

C. land restoration projects by qualified entities, including the department, which may or may not be in partnership with conservation entities.

[19.1.3.10 NMAC - N, 7/30/2010]

19.1.3.11 GRANT APPLICATION PROCESS:

A. If funding is available, the department may establish one or more competitive grant application cycles each calendar year and specify the required format, forms and deadline for application submittal. Each application cycle announcement shall specify any priority area, ecological, geographic, funding, type of project or other limitations applicable to that cycle, as related to funds available, accomplishments to date

and criteria specified in Subsection C of 19.1.3.12 NMAC.

B. The applicant shall submit an application in a format specified by the department that includes at a minimum the following information:

(1) the type of conservation project (e.g., conservation easement, agricultural easement or land restoration);

(2) the applicant's address, contact information and contact person;

(3) the landowner's address and contact information;

(4) general information about the property including a legal description of the property;

(5) information demonstrating how the proposed conservation project meets the requirements of the Natural Heritage Conservation Act, 19.1.3.12 NMAC and the criteria in Subsection B of 19.1.3.12 NMAC;

(6) for grant applications seeking funding to acquire a conservation easement or agricultural easement:

(a) property details supplied by the landowner to the qualified entity, including ownership interests, liens, mortgages and encumbrances;

(b) a draft deed of conservation easement or deed of agricultural easement or a descriptive list of intended easement provisions including acreage, building envelopes, conservation provisions and reserved uses;

(c) a written statement from the landowner that the landowner wishes to sell a conservation easement or agricultural easement to the applicant;

(d) a written description of the applicant's authority to acquire and hold land or interests in land, including conservation easements or agricultural easements; and

(e) a written statement or other proof that the applicant has the experience and the ability to manage lands for conservation, natural resource heritage value or agricultural value;

(7) for land restoration projects, a statement describing the intended land restoration activities with specific objectives and a designated project manager identified to be responsible for implementation of the approved project including overseeing contractor or subcontractor administration, providing liaison with affected landowners, ensuring technical viability of the project, ensuring funds expended are within budget and obtaining any necessary permits;

(8) the name of any qualified entities or conservation entities that are partnering with the qualified entity on the conservation project, a description of each entity's role and contribution and a written commitment from each conservation entity identifying that entity's proposed responsibilities and contributions;

(9) how the conservation project

relates to applicable state, tribal, county or local plans;

(10) projected beginning and completion dates for the conservation project and a schedule of activities required to complete the conservation project with projected beginning and completion dates for those activities;

(11) a full budget for the project detailing the costs and in-kind contributions, if any; and

(12) a list of any permits, certifications and clearances needed to implement the project.

C. The department shall review applications for timeliness and completeness before providing the grant applications it has received to the committee. The committee may consider the grant applications at a regularly scheduled meeting or at a special meeting scheduled for the purpose of considering grant applications.

[19.1.3.11 NMAC - N, 7/30/2010]

19.1.3.12 APPLICATION REVIEW:

A. The committee shall review applications that are timely, that are complete and that comply with the Natural Heritage Conservation Act and 19.1.3 NMAC and evaluate them against the criteria in Subsection B of 19.1.3.12 NMAC. The committee may reject untimely applications, incomplete applications or applications that do not comply with the Natural Heritage Conservation Act or 19.1.3 NMAC. The department secretary, upon request by the committee, may provide technical assistance through staff assignment or a group of public agency and private individuals selected to assist during a specified review cycle. After review, the committee shall make its recommendations on all evaluated conservation projects to the department.

B. The committee shall evaluate applications for conservation projects based upon the following criteria:

(1) the degree to which the conservation project serves the purposes of the Natural Heritage Conservation Act;

(2) the extent of cash and in-kind matching financial support for the conservation project from sources other than the state, in context with the amount of funding requested and available overall;

(3) the applicant's and partner's technical qualifications and its ability to complete and maintain the proposed conservation project;

(4) the degree to which the conservation project fosters and integrates with existing conservation plans, strategies and initiatives;

(5) the potential for benefits at the landscape and ecosystem scale;

(6) the potential for improved public access for outdoor recreation opportunities, including hunting and fishing;

(7) the potential for economic benefits, including direct commerce and ecosystem services, of the completed conservation project;

(8) complementary or strategic values through proximity to other conservation actions, priorities or projects;

(9) conservation project readiness for completion on a timely schedule;

(10) degree and extent of partner involvement;

(11) the likelihood that the conservation project as proposed will have long-term success in achieving its purposes and will have long-term sustainability, including involvement of land dedicated to conservation purposes and an explicit monitoring plan.

C. The committee will evaluate and categorize applications according to the following matrix of factors and relative values and base its assessment and recommendations on the matrix. The committee has discretion to determine how to use the information from the matrix to determine value assignments among features of each application, in consideration of any limitations identified in the application cycle announcement as provided for in Subsection A of 19.1.3.11 NMAC.

Factor	Level 4	Level 3	Level 2	Level 1
Serves purposes of the Natural Heritage Conservation Act	Clearly serves all purposes	Clearly serves multiple purposes	Clearly serves one purpose and may serve others	Questionable if any purposes are adequately served
Extent of matching cash and in-kind financial support	Applicant/Partner provide more than 75% of project costs	Applicant/Partner provide 50 to 75% of project costs	Applicant/Partner provide 25 to 49% of project costs	Applicant/Partner provide less than 25% of project costs
Qualifications and ability of applicant and partners to complete and maintain proposed project	Substantial past experience and continuing capability to do proposed work and follow-up	Demonstrated completions of similar work and is fully structured to do similar work	Demonstrates some past ability and basic documented qualifications and infrastructure	Indicates uncertain capability or has no prior experience and necessary infrastructure
Degree of fostering existing conservation plans, strategies and initiatives (PSIs) specified in the cycle announcement	Project has substantial relation to most PSIs and directly fosters several	Project clearly fosters multiple PSIs and directly relates to several	Project has clear relation to one PSI and possible service to others	Project has uncertain relation to any PSIs or no clear degree of fostering
Potential for benefits at landscape or ecosystem scale	Substantial landscape and ecological scale benefits are evident in completed work	Substantial landscape or ecological scale benefits are evident in completed work	Desired scale benefits are evident, but are judged minimal	No clear benefits are evident at desired scale
Potential for improved public access to outdoor recreation opportunities on or off project site	Multiple enhanced recreation opportunities are evident, including hunting and fishing	Some enhanced outdoor recreation opportunities are evident and have prospect for growth	Some enhanced outdoor recreation opportunities are evident but are limited	Proposal has no discernible outdoor recreation elements

Factor	Level 4	Level 3	Level 2	Level 1
Potential economic benefits of completed project	Project has multiple economic benefits at multiple scales	Project has some economic benefits locally and broader	Project shows economic benefits, at least locally	Project has no discernible economic benefits
Complementary or strategic values through proximity to other ongoing or completed conservation actions, including any priority areas formally identified by the committee	Project is within a priority area or directly links to nearby completed or ongoing conservation actions and provides added heritage values	Project is within a priority area but has limited relationship to other conservation actions that will provide synergistic heritage values	Project is not within a priority area but has proximity to other actions that may provide synergy or economy of scale or cost effectiveness	Project has no proximity to other conservation endeavors and is not otherwise distinctive as a starting point
Degree of readiness to start and complete project on timely schedule	Readiness and time schedule are clear and background work is complete; timely execution is essentially assured	Readiness and time schedule are clear and reasonable to the project, but could experience some delay	Readiness and time schedule are clear, but have acknowledged or likely delays inconsistent with the nature of the project	Readiness and completion scheduling is unspecified, unclear or uncertain
Degree and extent of partner involvement	Multiple entity project where reasonable partnering is included with clear and substantive involvement and contribution	Multiple entity project where reasonable partnering is included beyond minimal but is not extensive	Single or multiple entity project where partnering is included, but is minimal	Single entity project with no partner involvement when such partnership is possible and advised
Likely long-term success and sustainability	Project is well-described and accomplishable with substantive provisions for sustained maintenance and routine outcome assurance	Project is well-described and accomplishable with basic provisions for sustained maintenance and periodic outcome assessment	Project is inherently achievable but contains limited provisions for maintenance over the long-term	Project appears basically achievable, but long-term outcome is questionable or uncertain

D. A summary of committee judgments, without attribution to individual committee members, among factors described in Subsection C of 19.1.3.12 NMAC will be made public regarding all applications that are recommended to the department for funding and those that are not recommended to be funded.

[19.1.3.12 NMAC - N, 7/30/2010]

19.1.3.13 GRANT AWARDS:

A. A conservation project involving acquisition of a conservation or agricultural easement requires an appraisal that establishes the fair market value of the conservation or agricultural easement and meets United States treasury regulations and the uniform standards of professional appraisal practice before the department will disburse the funds to the qualified entity.

B. In addition, for conservation projects involving acquisition of a conservation or agricultural easement, the qualified entity or partner conservation entity shall provide as specified by the department documents including a title commitment; phase I environmental site assessment and, if needed based on phase I environmental site assessment, a phase II environmental site assessment; a title opinion certifying that the landowner owns the minerals rights or a report, satisfactory to the department, from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible; and if deemed necessary by the department, a property boundary survey. If the landowner owns the mineral rights, an easement shall prohibit subsequent sale or development of mineral rights by the landowner granting the conservation or agricultural easement. A baseline documentation report of the property shall be recorded with the deed of conservation easement or agricultural easement in the office of the applicable county clerk.

C. Agricultural and conservation easements shall contain a provision that if a qualified entity, other than the department, or a partner conservation entity fails to enforce the easement as determined by a court or if either the qualified entity or conservation entity cease to exist, that the easement will go to another qualified entity or partner conservation entity as specified in the easement and agreed to by that qualified entity, or otherwise the easement shall become vested in the department as recommended by the department and other extant easement right holders. Any qualified entity's interest in an easement shall only go to another governmental entity. The department shall have the option to provide similar rights of enforcement or possession to other governmental entities (*e.g.*, federal partners) where such partners have similar rules, regulations or requirements and demonstrated capacity to manage or enforce easements.

D. Grant awards may be approved for use to pay transactional costs for easement projects such as appraisals, title insurance, title opinions, surveys or environmental reviews up to three percent of the total value of the conservation project funded or 10 percent of the amount of the grant, whichever is less. The committee and the department may consider and approve grant requests for paying only transaction costs for easement projects, subject to the grant being for up to three percent of the total value of the conservation project or \$45,000, whichever is less.

E. Overhead and administrative expenses used as in-kind contributions may be no more than 10 percent of the total cost of

a project.

E. A qualified entity or conservation entity may use contractors or subcontractors so long as their use is explained in the application, all applicable procurement requirements are met and the contractors or subcontractors are identified by name in the application, to the extent known. If contractors or subcontractors are identified in the application, the qualified entity or entities shall include documentation in the application that demonstrates all applicable procurement requirements were met. The qualified entity or entities associated with an approved project shall be wholly responsible for the project execution and performance, whether or not contractors or subcontractors are used. Use of contractors or subcontractors not identified in an application shall require the department's prior written approval.

G. Prior to commencing any work, any contractors or subcontractors may be required to furnish state certification from insurers for coverage in the minimum amounts as designated by the state. Appropriate coverage shall be maintained in full force and effect during the term of the project and shall not serve to limit any liabilities or any other contractor obligations. The state and the department must be added as additional insured as required by statute, agreement or other obligation.
[19.1.3.13 NMAC - N, 7/30/2010]

19.1.3.14 PUBLIC-PRIVATE CONSERVATION PROJECTS:

A. Conservation or agricultural easements. Conservation projects that are the joint acquisition of a conservation easement or agricultural easement by a qualified entity and a conservation entity and are funded in part with a grant to a qualified entity shall meet the following requirements.

(1) The qualified entity and conservation entity shall hold title to the conservation easement or agricultural easement as cotenants having undivided interests in proportion to each entity's share of the acquisition.

(2) The conservation entity shall acquire no less than 10 percent of the easement as a percentage of the appraised easement value and may do so through cash or in-kind contributions to the total project value not paid by a qualified entity. If an in-kind contribution, no portion of that contribution shall be comprised of the portion of a donation by a landowner for which the landowner has been previously compensated through a state tax incentive or credit, but nothing in this provision shall diminish the ability for any landowner to be eligible to apply for any state tax incentive or credit.

(3) The conservation entity, as

part of the qualified entity's application, shall submit a plan for the conservation and stewardship of the lands for which the conservation entity and the qualified entity are responsible. The plan shall comply with the purposes of the Natural Heritage Conservation Act and shall specifically identify the entity responsible for ongoing monitoring and stewardship.

B. Land restoration. When a conservation entity has partnered with a qualified entity on a land restoration project that is funded in part with a grant to a qualified entity, the following requirements apply.

(1) The conservation entity shall provide at least 10 percent of the cost of the conservation project and may do so, all or in part, through cash or in-kind contributions to the total project cost not paid by a qualified entity.

(2) The qualified entity shall submit a plan for management of the lands for which the qualified entity and conservation entity are responsible. A conservation entity partner may prepare the management plan. The management plan shall comply with the purposes of the Natural Heritage Conservation Act and shall specifically identify the entity responsible for ongoing management, stewardship and monitoring.

[19.1.3.14 NMAC - N, 7/30/2010]

19.1.3.15 MONITORING REPORT REQUIREMENTS:

A. Qualified entities awarded grants from the fund shall submit annual reports, by December 1 each year, to the department for 10 years after the date of the acquisition of the conservation or agricultural easement or the date of a grant agreement for a land restoration project, unless a longer or shorter monitoring period is mutually agreed in writing among the department and the qualified entity. On joint public-private conservation projects, the qualified entity may delegate this requirement to a conservation entity. The designated responsible qualified entity or conservation entity shall document easement monitoring activities in perpetuity and keep all documentation available for review by the department at any time. Annual reporting and perpetual documentation shall describe the subject property's management by the landowner and include the details of the qualified entity's and any partner conservation entity's stewardship and monitoring activities. For land restoration projects, the report shall provide at least a qualitative assessment of the degree to which the project has accomplished or is accomplishing the objectives specified in the land restoration project application and grant agreements. Monitoring involves assessment of a conservation project for

indications that the pre-specified objectives and intent are being met or that trends are in that direction; there is no requirement for scientific-based, cause-effect research and data collection unless such efforts are specifically made a part of the project agreement at the outset or in subsequent amendments of the agreement. The qualified entity or any designated partner entity shall collect sufficient baseline information during the first year of the project such that subsequent monitoring and description of change can be accomplished.

B. A qualified entity's failure to comply with the reporting or documentation requirements, including ensuring proper reporting or documentation by the conservation entity if this requirement is delegated, may disqualify the qualified entity from receiving future grant funding.

[19.1.3.15 NMAC - N, 7/30/2010]

19.1.3.16 COMPLIANCE: The department may audit a qualified entity's or conservation entity's records including stewardship records, financial statements and supporting records relating to the grant award. The qualified entity shall retain such documents pursuant to state and federal requirements, except for stewardship records, which the qualified or conservation entity shall maintain for 10 years, unless a longer or shorter period is mutually agreed in writing among the department and the qualified entity. If the qualified entity is partnering with a conservation entity, the qualified entity shall have a written agreement with the conservation entity that requires the conservation entity to maintain its records for the same time period and allow the department to audit those records. The department may terminate a grant agreement or disqualify a qualified entity from receiving future grants upon discovery of a violation of the terms of the grant agreement or 19.1.3 NMAC.

[19.1.3.16 NMAC - N, 7/30/2010]

19.1.3.17 STATUS REPORTING: The department shall report, including committee outcomes, annually by December 15 to the governor and legislature on status of applications and funded projects.

[19.1.3.17 NMAC - N, 7/30/2010]

HISTORY OF 19.1.3 NMAC:
[RESERVED]

NEW MEXICO DEPARTMENT OF GAME AND FISH

19.35.7 NMAC, Importation of Live Non-Domestic Animals, Birds and Fish, filed March 17, 2000 is hereby repealed by an emergency filing effective July 9, 2010 and replaced by 19.35.7 NMAC, Importation of Live Non-Domestic Animals, Birds and Fish effective July 9, 2010.

NEW MEXICO DEPARTMENT OF GAME AND FISH

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 35 CAPTIVE WILDLIFE USES PART 7 IMPORTATION OF LIVE NON-DOMESTIC ANIMALS, BIRDS AND FISH

19.35.7.1 ISSUING AGENCY: New Mexico Department of Game and Fish.
[19.35.7.1 NMAC - Rp/E, 19.35.7.1 NMAC, 7-9-10]

19.35.7.2 SCOPE: Persons who desire to bring wildlife species into the state of New Mexico. It may include the general public, pet importers, holders of Class "A" park licenses, department permittees and others.
[19.35.7.2 NMAC - Rp/E, 19.35.7.2 NMAC, 7-9-10]

19.35.7.3 STATUTORY AUTHORITY: 17-1-14, 17-1-26 and 17-3-32.
[19.35.7.3 NMAC - Rp/E, 19.35.7.3 NMAC, 7-9-10]

19.35.7.4 DURATION: Permanent.
[19.35.7.4 NMAC - Rp/E, 19.35.7.4 NMAC, 7-9-10]

19.35.7.5 EFFECTIVE DATE: July 9, 2010, unless a later date is cited at the end of a section.
[19.35.7.5 NMAC - Rp/E, 19.35.7.5 NMAC, 7-9-10]

19.35.7.6 OBJECTIVE: To provide consistent criteria for the importation of live non-domesticated animals into New Mexico and to protect native wildlife against the introduction of contagious or infectious diseases, undesirable species and address human health and safety issues.
[19.35.7.6 NMAC - Rp/E, 19.35.7.6 NMAC, 7-9-10]

19.35.7.7 DEFINITIONS:

A. Accredited laboratory: A lab recognized for CWD testing by the New Mexico department of game and fish with input from the national veterinary services laboratory, Ames, IA.

B. Animal health emergency: A situation in which people or animals are at risk of exposure to infectious or contagious diseases as determined by the director.

C. APHIS: Animal and plant health inspection service, United States department of agriculture.

D. Applicant: Any person or entity that causes or submits a department application for importation.

E. Certificate of compliance: An official department document declaring an applicant's ability to resume importation application eligibility.

F. Closed herd sales: Sales of animals from a closed herd directly to the buyer in a manner that allows the buyer to transport the animals from the producer's premises directly to the buyer's premises without contact with animals from another herd, and without contact with other pens or transport facilities used by any other herd.

G. CWD: Chronic wasting disease, a transmissible spongiform encephalopathy of cervids.

H. CWD exposed animal: An animal that is, or has been in the last 60 months, part of a CWD positive herd.

I. CWD positive animal: An animal that has had a diagnosis of CWD confirmed by means of an official CWD test conducted by a laboratory certified by USDA/APHIS.

J. CWD negative animal: An animal that has had an official CWD test and that test resulted in a negative classification.

K. CWD positive herd: A herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

L. CWD suspect herd: A herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

M. CWD exposed herd: A herd in which a CWD positive or CWD exposed animal has resided within the 60 months prior to the diagnosis.

N. CWD trace-back-herd: An exposed herd in which a CWD positive or CWD exposed animal resided in any of the 60 months prior to the diagnosis.

O. CWD trace-forward herd: An exposed herd that has received CWD positive or CWD exposed animals from a positive herd within 60 months prior to the diagnosis of CWD in the positive herd.

P. Dangerous animal: An animal that due to its nature, biology or its

behavior, including predatory or venomous animals, that may present a risk to the health, safety or well-being of the public or other animals including native wildlife, domestic pets or livestock.

Q. Department: Shall mean New Mexico department of game and fish.

R. Director: Shall mean the director of the department of game and fish.

S. Importer: Any person or entity that causes an animal to be brought, transported or shipped into New Mexico with the exception of common mail carriers and delivery service providers during the course of their regular duties.

T. Invasive animal: Any non-native animal, except protected wildlife, including any aquatic invasive species (AIS), whose introduction into New Mexico may cause or is likely to cause harm to the economy, environment, protected wildlife, human health or safety.

U. Isolation: A period of time imported animals are separated and observed. The observation pen must have fences at least eight feet high. The isolation pen must prevent nose-to-nose contact with all wild ungulates during the observation period.

V. Mixed herd: A herd comprised of animals from different sources and held to allow contact or commingling.

W. Mixed herd sales: Sales from sale barns, auctions, private arrangements, or other facilities that allow joint penning or adjacent penning of animals from more than one closed herd, or otherwise facilitate or permit commingling, direct contact, or holding, boarding, or sharing the premises by more than one herd simultaneous or successively in time.

X. Non-domesticated animal: For the purposes of this rule, any animal species that is wild by nature not listed as semi-domesticated or protected under chapter 17 NMSA, 1978.

Y. NPPI: National poultry improvement program.

Z. Protected wildlife: Shall mean those taxonomic groups of mammals, birds and fish listed in Chapter 17 NMSA, 1978, including any species that are listed as either state or federally threatened or endangered.

AA. Release from captivity: For the purpose of this rule, the act of removing from confinement, letting go, liberating or setting free any imported, live non-domesticated animal into the wild.

BB. Semi-domesticated animal: For the purpose of this rule, the director may designate an animal species as semi-domesticated in those instances where individual members of such species are commonly tamed, raised, bred or sold in captivity.

CC. Species importation list: A list containing protected, non-game and semi-domesticated animal species established, maintained, updated or amended by the director of the New Mexico department of game and fish. The species importation list may contain importation requirements, restrictions and conditions for each animal species listed.

DD. Qualified expert: Only a person officially designated by the director to import a specific non-domesticated animal.

EE. Undesirable animal: An animal that may have adverse impacts to health, management or safety.

FF. USDA: United States department of agriculture.

GG. Whole herd or complete monitoring: Participation by park owners or importers in a program requiring every brainstem (obex) from every animal that dies at the facility to be successfully submitted to an accredited laboratory for CWD testing, regardless whether the death is natural or not. Exception: No more than two deaths within a 60 month period may not have been successfully tested for CWD, if the cervid (carcasses) were inspected by a certified veterinarian and attested to show no clinical sign of CWD.

[19.35.7.7 NMAC - Rp/E, 19.35.7.7 NMAC, 7-9-10]

19.35.7.8 IMPORTATION OF LIVE NON-DOMESTICATED ANIMALS:

It shall be unlawful to import any live non-domesticated animal into New Mexico without first obtaining appropriate permit(s) issued by the director except those animals identified within the species importation list group I. Permits will only be issued when all application requirements and provisions have been met. Failure to adhere to or violation of permit provisions may result in the applicant/importer becoming ineligible for importation(s). The pendency or determination of any administrative action or the pendency or determination of a criminal prosecution for the same is not a bar to the other.

[19.35.7.8 NMAC - Rp/E 19.35.7.8 NMAC, 7-9-10]

19.35.7.9 [Reserved]

19.35.7.10 DIRECTOR'S AUTHORITY:

A. Species importation list: The director of the New Mexico department of game and fish shall develop a species importation list. The species importation list shall be established, maintained, updated or amended by the director as species information and concerns become available and are identified. The species importation list shall be grouped into the following minimum importation "groups" based on the

following criteria.

(1) Species importation list group I are designated semi-domesticated animals and do not require an importation permit.

(2) Species importation list group II may be for live non-domesticated animals that are not known to be either invasive or dangerous and do not present a known risk to the health, safety or well-being of the public, domestic livestock or to native wildlife and their habitats.

(3) Species importation list group III may be for live non-domesticated animals that present minimal or manageable concerns that will require specific provisions that must be met prior to issuing an importation permit to address health, safety or well-being of the public, domestic livestock or to native wildlife and their habitats.

(4) Species importation list group IV may be for live non-domesticated animals that are considered dangerous, invasive, undesirable, state or federal listed threatened, endangered, a furbearer or any other species of concern as identified by the director. The importation of these species are prohibited for the general public but may be allowed for, scientific study, department approved restoration and recovery plans, zoological display, temporary events/entertainment, use as service animal or by a qualified expert.

(5) Any species of live non-domesticated animal not currently on the species importation list will be designated group IV until such time as another determination is made by the director.

B. Non-domesticated animal importation: The director may, in times of animal health emergency, suspend all importation activities or suspend importation of selected taxa for indefinite periods of time to protect wild and domestic animals from infectious disease epidemics and to protect the people of New Mexico from zoonoses.

C. Non-domesticated animal intrastate movement: the director may suspend intrastate movement in an animal health emergency.

D. Eligibility requirements for importation (cooperative compliance): The director may declare any applicant or importer who fails to comply with any importation conditions or provisions as ineligible for future importation permits or ability to supply animals into New Mexico until all permit violations are corrected and the appropriate certificate of compliance fees are paid in full.

(1) The director may require an applicant to obtain a certificate of compliance prior to becoming eligible to import any live non-domesticated animals and may impose additional corrective measures in those instances where violations of this provision have been identified.

(2) The director may impose

a cease and desist order that makes an applicant ineligible to apply for an importation permit for up to a year in those instances where corrective measures have not been implemented or repeated violations have occurred.

E. Certificate of compliance fee: The director shall determine the appropriate certificate of compliance fee per violation not to exceed \$500.00 based on the following criteria:

(1) department expenses including manpower, travel, inspection and compliance monitoring;

(2) department office expenses including mailing, shipping, certificate issuance;

(3) animal care, treatment, housing and feeding;

(4) other miscellaneous expenses.

F. Qualified expert: the director shall determine the process and the requirements for a person to be designated a qualified expert for each applicable species.

(1) The director may require an applicant to provide specific qualifications including, but not limited to the following: professional references, experience, training, education and facility specifications.

(2) The determination to approve or deny a qualified expert designation by the director is final and is not subject to appeal.

G. Application notices and documents.

(1) The director shall determine required forms, applications and documents to carry out the provisions of this rule.

(2) The director shall determine noticing and posting provisions to carry out the provisions of this rule.

(3) The director shall determine the permit and application conditions and requirements to carry out the provisions of this rule.

H. The director shall determine the process and requirements for re-entry into the state.

I. The director shall determine the process for expediting applications and permits including an additional application fee of \$25.00.

[19.35.7.10 NMAC - N/E, 7-9-10]

19.35.7.11 [Reserved]

19.35.7.12 APPLICATION FOR IMPORTATION:

A. Any applicant requesting an importation permit for non-domesticated animals must submit the following information with the application:

(1) a containment or confinement plan indicating where and how the species will be maintained;

(2) a current and valid certificate from an accredited veterinarian certifying that each animal or rearing facility of origin

has been inspected and is in good general health, disease free or that each animal or rearing facility of origin tests disease free for any specific disease(s) following the testing requirements and procedures as identified by the department during the application process, except;

(a) the department may approve an animal supplier that is currently enrolled in an accredited animal breeding program or facility health monitoring standards such as NPPI, AZA, or other government sanctioned program;

(b) the department may approve detailed and verifiable facility of origin health monitoring plans and records to be submitted by an organization(s) in lieu of a health or rearing facility inspection certificate from an accredited veterinarian;

(3) proof from the county and city into which the animal will be imported and held that possession of the animal is allowed;

(4) proof that all necessary federal permits have been obtained;

(5) proof that the requested species does not possess or have the immediate potential to carry infectious or contagious diseases; and

(6) confirmation by the applicant or person in authority representing the applicant agreeing to any conditions and provisions listed on the respective permit; and

(7) any importing person or entity must notify the department of game and fish within 24 hours of any disease indications or symptoms that manifest themselves among the imported animals.

B. Additional conditions for the importation of a dangerous animal; applicant shall agree to the following provisions before an importation permit is approved:

(1) enter into a department approved written agreement releasing the department from liability;

(2) agree to meet all department approved posted warning requirements;

(3) agree to provide a department approved written warning to any person receiving such animal;

(4) government agencies or other entities as designated by the director may be exempted from the liability or warning requirements in this subsection.

C. All application fees are non-refundable.

[19.35.7.12 NMAC - N/E, 7-9-10]

19.35.7.13 TEMPORARY IMPORTATION: Importation into the state for exhibition, advertising, movies etc. may be approved on an expedited basis provided that the animal will not be in the state for a period of more than 30 days. Specific requirements for the animals will be listed on the application and permit. Specific

requirements for importation may be listed on the application. The department will have the final authority to list all conditions on the permit that will be required prior to final approval.

[19.35.7.13 NMAC - Rp/E, 19.35.7.17 NMAC, 7-9-10]

19.35.7.14 IMPORTATION OF CERTAIN FISH OR FISH EGGS INTO NEW MEXICO:

All fish species or eggs of the families salmonidae, esocidae, percichthyidae, ictaluridae, centrarchidae, percidae, may be imported into the state provided that all conditions stated on the application and permit are met, including the following:

A. the name of department approved supplier pursuant to this regulation;

B. description of water into which fish will be released is provided; description must include: legal owner of water; legal description of location (township, range, section); county; name of water; size of water (surface acres-lake; miles-stream); source and discharge of water; major use of water; a map of sufficient size and detail to allow the water to be located by someone unfamiliar with the area shall be included;

C. species, size, pounds, and number of fish to be imported will be specified;

D. purpose of importation will be specified;

E. full description of person or persons requesting importation, to include: name, address, telephone number, name of contact person;

F. GPS coordinates (latitude and longitude in degree decimal minutes (DDM) using WGS 84 datum for each location where fish are stocked.

[19.35.7.14 NMAC - Rp/E, 19.35.7.11 NMAC, 7-9-10]

19.35.7.15 APPROVED SUPPLIERS OF FISH OR FISH EGGS FOR IMPORTATION INTO NEW MEXICO:

A. The department will maintain a listing of approved fish suppliers.

B. All approved fish suppliers or their agent must carry a department-issued copy of the importation permit while transporting fish to the approved release site in New Mexico.

C. Approved supplier or their agent must notify the department of intended port of entry for importation of fish or fish eggs into New Mexico.

D. Approved supplier may be required to provide a presence/absence disease history (e.g., furunculosis bacterium, enteric redmouth bacterium, proliferative kidney disease, ceratomyxosis of salmonids, etc.) of the hatchery facility if requested by

the New Mexico department of game and fish.

E. Approved suppliers shall meet the criteria and provide pathogen-free certification as specified herein.

F. Salmonids:

(1) For the infectious hematopoietic necrosis virus (IHNV), infectious pancreatic necrosis virus (IPNV), and viral hemorrhagic septicemia (VHS).

(a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(b) Disease testing on fish must use American fisheries society (AFS) blue book procedures - "suggested procedures for the detection and identification of certain finfish and shellfish pathogens, 4th edition 1994".

(c) Disease testing will be conducted on an annual basis; annual inspection must have occurred within the previous 12 months of application date.

(d) 60 fish per lot will be sampled.

(e) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

(2) Salmonids -for the whirling disease pathogen and bacterial kidney disease.

(a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(b) Lots of fish older than six months will be sampled.

(c) 60 fish per lot will be sampled.

(d) Inspection will include at least one lot of susceptible salmonids (rainbow trout, cutthroat trout, rainbow-cutthroat hybrids) which has been on the hatchery's water source for at least 10 months.

(e) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

(f) Positive findings of whirling disease by pepsin-trypsin digestion shall be considered presumptive; positive findings of whirling disease by histology shall be considered confirmatory.

(g) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

(h) Supplier may be required to provide a whirling disease history of the hatchery facility if requested by the New

Mexico department of game and fish.

(i) Presumptive findings: Any presumptive findings of disease with no confirmatory testing shall be deemed a positive finding of the disease.

(j) Positive findings of disease: Any facility deemed to have tested positive, by confirmatory findings or presumptive findings without confirmatory testing, under this rule shall be barred from importation into the state of New Mexico until the facility is shown to be pathogen free for a minimum of two consecutive years and has met all other requirements.

(k) Renovated facilities: A facility that has been deemed positive under this rule and has undergone complete renovation may apply for importation privileges as a new facility once it has had at least one annual inspection and has met all other requirements. Complete renovation for the purposes of this rule shall be defined as a facility that has: 1) closed, secured, and sanitized all water sources, 2) confined all water conveyance to closed sealed pipes, and 3) constructed all rearing spaces out of hard surfaced materials. Proof of renovation must be provided with the application for importation privileges. On-site inspection of the facility after renovation may be required prior to authorization to import.

G. Warm water fish: For channel catfish imported into New Mexico.

(1) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(2) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

(3) Channel catfish will be tested for *Edwardsiella ictaluri* (hole in the head disease).

(4) Approved supplier will document whether fish on the facility have ever been diagnosed with channel catfish virus.

H. Triploid grass carp: A notarized certificate of triploidy issued by another state wildlife agency, United States fish and wildlife service, USDA certified source or other source approved by the New Mexico department of game and fish must be provided for all grass carp imported into New Mexico.

I. Approved suppliers shall provide signed written assurance to the department that the fish rearing facilities are free of aquatic nuisance species (ANS) and aquatic invasive species (AIS). Failure to provide this assurance shall be reason to deny importation privileges. Approved suppliers shall be liable for any introduction of ANS or AIS caused by their actions.

[19.35.7.15 NMAC - Rp/E, 19.35.7.12 NMAC, 7-9-10]

19.35.7.16 [Reserved]

19.35.7.17 IMPORTATION CONDITIONS FOR THE FAMILIES BOVIDAE, ANTILOCAPRIDAE AND CERVIDAE: All live protected wildlife species of the families Bovidae, Antilocapridae, and Cervidae imported in the state of New Mexico shall meet the following criteria.

A. Be permanently and uniquely tattooed in at least one ear and tagged with USDA metal ear tags. The numbers shall be registered with the department of game and fish.

B. Be examined by an accredited veterinarian prior to importation. Each animal shall be accompanied by a pre-approved health certificate, certifying a disease-free status.

C. Test negative for brucellosis. Serum testing shall be done not more than 30 days prior to importation. All serum samples shall be tested by a cooperative state federal brucellosis laboratory.

D. Test negative for bovine tuberculosis not more than 90 days prior to importation. Animals to be imported must originate from a herd that had a negative whole-herd tuberculosis test not more than 12 months prior to importation or have a current "tuberculosis free herd" certificate issued from the state of origin through a department of agriculture accreditation program. Bovine tuberculosis testing must be performed with the current U.S. department of agriculture approved method and be conducted by a federally accredited veterinarian. Exception: Wild sheep are exempt from this testing requirement.

E. Test negative for para tuberculosis (Johne's disease) with serologic testing methods. Test results must be verified by the attending veterinarian.

F. All cervids to be imported into the state must come from a facility where whole herd or complete monitoring occurs by verifiable proof, and the animal(s) must have shown no sign of chronic wasting disease for 60 months prior to time of importation. All cervids entering New Mexico must have the following statement signed by the owner: "The animals on this application originate from a herd which has complete monitoring and in which chronic wasting disease has not been diagnosed in the last 60 months. These animals originate from a herd that has not been identified as a trace or source herd for chronic wasting disease. These animals have no history and no evidence of ever having been exposed to chronic wasting disease."

(1) No cervid shall be allowed to

enter the state if it has had any contact with a CWD suspect, exposed, positive, trace-forward or trace-back animal within 60 months prior to time of importation.

(2) No cervid coming through closed herd sales, a mixed herd or mixed herd sales shall be allowed to enter the state if the herd or auction facility has had any CWD suspect, exposed, positive, trace-forward or trace-back animal on the premises within 60 months prior to time of importation.

(3) No cervid shall enter the state in a conveyance that has held CWD suspect, exposed, positive, trace-forward or trace-back animal within 60 months prior to time of importation.

(4) No cervid shall enter the state, unless it comes from a herd which has complete monitoring.

G. All elk to be imported into the state of New Mexico shall be tested for genetic purity. Only Rocky Mountain elk (*Cervus elaphus nelsoni*) will be allowed to be imported into the state of New Mexico. Any elk showing red deer hybridization or hybridization of other elk subspecies will not be allowed into the state. All testing shall be done ONLY by a New Mexico department of game and fish approved laboratory.

H. All progeny from female elk impregnated prior to importation into New Mexico shall be tested for hybridization of red deer and other elk subspecies.

I. White-tailed deer subspecies to be imported into the state of New Mexico must have originated and must exist west of the 100th meridian and test negative for meningeal worm.

J. Be permitted in compliance with Subsection A of 19.31.1.10 NMAC.

(1) Cost of testing: All testing will be at owner's expense.

(2) After entering the state, all animals shall be held in a separate facility by the owner and/or importer. All imported animals, prior to release, may be inspected at any time by a department of game and fish official or designee.

(3) Owners/importers must notify the department of game and fish within 24 hours of any disease indications or symptoms that manifest themselves among the imported animals prior to final inspection.

(4) Animals shall be held in isolation in the event of an animal health emergency as declared by the director.

(5) Final inspection / permit validation: No animals may be released from the separate facility into the class A park or other enclosure until the owner has received a release approval signed by a department of game and fish official.

[19.35.7.17 NMAC - Rp/E, 19.35.7.9 NMAC, 7-9-10]

19.35.7.18

I N T R A S T A T E

TRANSPORTATION FOR THE FAMILIES BOVIDAE, ANTILOCAPRIDAE AND CERVIDAE:

A. Transporting requirements - All live cervids transported within the state of New Mexico shall;

(1) be permanently identified with a unique tattoo and any one of the following: electronic identification device, tamper-proof ear tags, USDA metal ear tags; the numbers shall be registered with the department of game and fish; and

(2) shall be legally possessed.

B. The director may suspend intrastate movement in an animal health emergency.

[19.35.7.18 NMAC- Rp/E, 19.35.7.10 NMAC, 7-9-10]

19.35.7.19 RELEASE FROM CAPTIVITY FOR IMPORTED ANIMALS: No person shall release from captivity an imported animal into New Mexico except by obtaining a release permit from the director. The transfer of an imported animal from one person to another person does not constitute a release from captivity.

A. Prior to approval by the director an applicant must:

(1) submit a plat of the release area;

(2) submit verification that landowners, tribal officials, state officials, federal officials and county officials that may be directly affected by the release have been notified of the potential release in writing and have been given 20 days to respond to the release; responses must be submitted with the application; it is the responsibility of the applicant to notify the above and submit responses to the department; failure to notify as indicated herein or to submit responses will result in the application being rejected until this condition is met and any compliance fees are paid;

(3) demonstrate that the intended release is provided for in state or federal resource or species management plans or strategies (CWCS).

B. Any individual or group of isolated animals in which signs of infectious or contagious disease is evident will not be released, will remain in isolation, and, at the recommendation of the state veterinarian:

(1) the animals shall be treated and restored to health until they no longer pose a threat of infection to wild, free ranging wildlife or to other captive animals in the facility; or

(2) the isolated animals shall be destroyed and remains will be disposed in a manner conforming to state, federal or local rules and regulations.

C. The director shall not approve any release permit that conflicts

with current conservation management.

[19.35.7.19 NMAC - Rp/E, 19.35.7.14 NMAC, 7-9-10]

19.35.7.20 [Reserved]

19.35.7.21 DENIAL OF PERMIT APPLICATION: The appropriate department division chief shall notify the applicant of a denial to import non-domesticated animals in writing. A denied application will not be further considered unless the applicant is granted an allowance through the director's review or the commission appeal process.

[19.35.7.21 NMAC - Rp/E, 19.35.7.16 NMAC, 7-9-10]

19.35.7.22 IMPORTATION PERMIT APPEAL PROCESS: The denial of an importation permit may only be set aside if each step in the application and appeal process is adhered to sequentially and the appeal is conducted in accordance with the following procedures.

A. Director's review: any applicant whose importation permit application has been denied may request a review by the director in accordance with the following procedures.

(1) The applicant must submit by certified mail a written request to the director within 30 days of denial.

(2) A request for the director's review must contain the reason for the objection.

(3) The director will consider any additional evidence and information that was not previously considered in the initial denial.

(4) The director will consider any conflicts with native wildlife, threats to human health, domestic animals or livestock and qualified expert designation when making a determination.

(5) The designation within a specified group on the director's species importation list cannot be used as the basis for review or appeal.

(6) The director shall make a determination and send the applicant his decision within 45 days.

(7) The determination to approve or deny a qualified expert designation by the director is final and is not subject to appeal.

B. Commission appeal: any applicant may appeal the decision by the director in accordance with the following procedures.

(1) The applicant must submit by certified mail a written appeal to the chairman of the state game commission within 20 days of denial by the director.

(2) The appeal to the chairman must contain the reason for the objection.

C. Basis for decision: The commission may set aside the decision of the

director only if;

(1) the commission determines that the decision of the director was arbitrary or capricious;

(2) the decision of the director was not based on law or regulation;

(3) the appellant provides additional data or proves significant evidence that contradicts the data of the department;

(4) the decision of the commission shall be final.

D. An appeal filed with the commission will be heard at the next scheduled commission meeting subject to agenda item availability and related time constraints.

[19.35.7.22 NMAC- Rp/E, 19.35.7.18 NMAC, 7-9-10]

19.35.7.23 EXCEPTIONS: Employees of the New Mexico department of game and fish and other state agencies acting in the course of their official duties are not required to have an importation permit. However, all disease testing requirements specified in this rule must be met prior to importation.

[19.35.7.23 NMAC- Rp/E, 19.35.7.19 NMAC, 7-9-10]

HISTORY OF 19.35.7 NMAC:

NMAC History:

19 NMAC 31.1, Hunting and Fishing - Manner and Method of Taking, filed 3-1-95. 19.35.7 NMAC, Importation of Live Non-Domesticated Animals, Birds and Fish, filed 3-17-00.

History of Repealed Material:

19.35.7 NMAC, Importation of Live Non-Domesticated Animals, Birds and Fish, filed 3-17-00 - Repealed effective 7-9-10.

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency amendment to 19.30.9 NMAC, Section 9, effective 7-9-10.

19.30.9.9 ESTABLISHING CERTAIN LICENSES, PERMITS, CERTIFICATES AND FEES:

Licenses, permit, or certificate	Fee
A. Airborne hunting	\$10.00
B. Call pen	15.00
C. Class A lake	101.00
D. Additional Class A lake	26.00
E. Class A park	501.00
F. Field trial/importation	15.00
G. Falconry	25.00
H. Game bird propagation	10.00
I. Importation	
(1) protected ungulate:	
(a) initial 500.00/source & up to 2 animals (valid 6 months)	
(b) for additional animals, not to exceed 30 ungulates from the same source property/owner 50.00 per animal (if no acquisitions to source herd during 6 month period of validity)	
(c) for greater than 30 ungulates from the same source property/owner 5.00 per animal (if no acquisitions to source herd during 6 months period of validity).	
[(2) furbearer 40.00/animal]	
[(5) (2) fish 6.00]	
<u>(a) annual application processing fee</u>	<u>25.00</u>
<u>(b) additional stocking and shipment fee</u>	<u>6.00</u>
(3) [non-game 25.00/animal] non-domesticated animals per calendar year (1/1 to 12/31) except protected ungulates, game birds, fish or other:	
<u>(a) class 1: importation of 1 to 5 animals</u>	<u>25.00</u>
<u>(b) class 2: importation of 6 to 99 animals</u>	<u>75.00</u>
<u>(c) class 3: importation of greater than 100 animals</u>	<u>300.00</u>
(4) other [15.00] (i.e., temporary importation, exhibition, game birds, restoration/recovery, etc.)	20.00
J. Protected mammal	10.00
K. Shooting preserve	200.00
L. Zoo	15.00
M. Scientific collecting/bird banding	15.00
N. Bait dealers	21.00
O. Transportation	0.00
P. Retention	1.25
Q. Triploid grass carp	25.00
R. Commercial fishing	25.00
S. Certificate of application:	
(1) NM resident (2009-2010)	9.00
(2) NM resident (2010-2011 and subsequent license years)	10.00
(3) Non-resident (2009-2010)	12.00
(4) Non-resident (2010-2011 and subsequent license years)	27.00
T. Wildlife conservation stamp	10.00
U. Duplicate license	6.00
V. Landowner authorization certificate	9.00
W. Additional antelope permit tag	25.00
X. Migratory bird permit	0.00
Y. Big game depredation damage stamp resident	3.00
Z. Big game depredation damage stamp non-resident	10.00
AA. Public land user stamp	5.00
BB. Commercial collecting permit	50.00

[12-20-94, 3-31-98; 19.30.9.9 NMAC - Rn, 19 NMAC 30.1.9 & A, 7-16-01; A, 10-31-01, A, 12-28-01; A, 08-01-03; A, 3-16-09; A, 6-15-09; A/E, 7-9-10]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.34.6 NMAC, Section 4, effective July 30, 2010

19.34.6.4 DURATION: March 31, [2011] 2021.

[19.34.6.4 NMAC - Rp, 19 NMAC 34.1.4, 12-28-01; A, 07-30-10]

NEW MEXICO GENERAL SERVICES DEPARTMENT RISK MANAGEMENT DIVISION**TITLE I G E N E R A L GOVERNMENT ADMINISTRATION CHAPTER 6 R I S K MANAGEMENT****PART 6 TORT CLAIMS COVERAGE FOR COMMUNITY LAND GRANTS; EXCLUDING COVERAGE FOR BUSINESS ENTERPRISE ACTIVITIES**

1.6.6.1 ISSUING AGENCY: General Services Department, Risk Management Division.

[1.6.6.1 NMAC - N, 7/30/2010]

1.6.6.2 SCOPE: This rule applies to community land grants governed as a political subdivision of the state in making application to and obtaining coverage from the risk management division of the general services department for coverage for any risk for which immunity has been waived under the Tort Claims Act, through the public liability fund.

[1.6.6.2 NMAC - N, 7/30/2010]

1.6.6.3 S T A T U T O R Y AUTHORITY: This rule is statutorily authorized and promulgated pursuant to NMSA 1978, Section 15-7-3(A)(7)(which authorizes the risk management division to issue certificates of coverage in accordance with the rulemaking procedures contained in NMSA 1978, Section 9-17-5(E), granting the secretary of the general services department the general power to make and adopt such reasonable administrative and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions, including the risk management division). In addition, Section 41-4-23(D) of the Tort Claims Act authorizes the general services department, risk management division to regulate claims made against the public liability fund. Pursuant to NMSA 1978, Section 41-4-30, community land grants governed as political subdivisions of the state may obtain Tort Claims Act coverage from the risk management

division, exclusive of coverage for activities determined by the director to be a business enterprise.

[1.6.6.3 NMAC - N, 7/30/2010]

1.6.6.4 DURATION: Permanent.

[1.6.6.4 NMAC - N, 7/30/2010]

1.6.6.5 EFFECTIVE DATE: July 30, 2010, unless a later date is cited at the end of a section.

[1.6.6.5 NMAC - N, 7/30/2010]

1.6.6.6 OBJECTIVE: This rule describes the activities of community land grants that are business enterprise activities, and that are thereby excluded from coverage through the public liability fund of risks for which immunity has been waived under the Tort Claims Act. Coverage will be provided to community land grants governed as political subdivisions of the state, for such official activities as are typically undertaken by governmental entities in New Mexico.

[1.6.6.6 NMAC - N, 7/30/2010]

1.6.6.7 DEFINITIONS:

A. "Approved activities" means activities conducted at a community center that are approved through procedures established by the board of trustees.

B. "Board of trustees" means the governing body of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

C. "Certificate of coverage" means the liability certificate issued by the director pursuant to Title 1, Chapter 6, Part 5 NMAC.

D. "Community center" means any structure that is owned by a community land grant and managed by and at the direction of the community land grant's board of trustees for the benefit of the community land grant as a whole, and excludes any structure used or designated for habitation, whether or not currently inhabited.

E. "Community land grant" means a land grant governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

F. "Coverage" means the type of protection provided against specific risks or losses.

G. "Director" means the general services department, risk management division director.

H. "Division" means the general services department, risk management division.

I. "Member" means a person who is a member of a community land grant that is governed as a political subdivision of the state pursuant to 1978

NMSA, Chapter 49, Article 1.

J. "Official activity" or "official activities" means activities of the community land grant that are approved by, and undertaken at the direction of, the board of trustees of the community land grant, for the governance and operation of the community land grant as a governmental entity, and that are the type of activity typically undertaken by governmental entities in New Mexico.

K. "Public liability fund" means the fund described in 1978 NMSA, Section 41-4-23 of the Tort Claims Act.

L. "Trustee" means a member of a board of trustees of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

[1.6.6.7 NMAC - N, 7/30/2010]

1.6.6.8 PROVIDING COVERAGE UPON APPLICATION AND PAYMENT FOR OFFICIAL ACTIVITIES AND APPROVED ACTIVITIES OF COMMUNITY LAND GRANTS GOVERNED AS A POLITICAL SUBDIVISION OF THE STATE:

A. Community land grants that wish to obtain tort claims coverage from the division shall make application for such coverage by providing information requested by the director.

B. The director shall annually determine the assessment which the community land grant is to pay for tort claims coverage to the public liability fund. In conjunction with this assessment, the director may require purchase of supplemental events coverage for specified approved activities, such as an event with large attendance.

C. Tort claims coverage for any community land grant is contingent upon prompt payment of the annual assessment by the community land grant to the public liability fund.

D. Tort claims coverage for any community land grant is contingent upon the community land grant continuing to be managed, controlled and governed by a board of trustees consistent with 1978 NMSA, Chapter 49, Article 1.

E. Tort claims coverage for any community land grant is limited to:

(1) official activities of the community land grant as explicitly authorized by its board of trustees for the governance and operation of the community land grant as a governmental entity, and that are the type of activity typically undertaken by governmental entities in New Mexico, and that are not excluded by virtue of being business enterprise activity; and

(2) approved activities of the community land grant that are not excluded

by virtue of being business enterprise activity.

F. The tort claims coverage provided to a community land grant for any risk for which immunity has been waived under the Tort Claims Act, shall be as described in the liability certificate of coverage promulgated by the division.

[1.6.6.8 NMAC - N, 7/30/2010]

1.6.6.9 EXCLUDING COVERAGE OF INDIVIDUAL MEMBERS:

Tort claims coverage for any community land grant does not include coverage for any enterprise or activities undertaken by any of the individual members of the community land grant, whether singly or in association with others.

[1.6.6.9 NMAC - N, 7/30/2010]

1.6.6.10 EXCLUDING COVERAGE OF BUSINESS ENTERPRISE ACTIVITIES:

A. Tort claims coverage for a community land grant does not include coverage for any liability attributable to the business enterprise activities of a community land grant.

B. Business enterprise activities include the following:

(1) any activity undertaken for purposes of earning a monetary profit for the community land grant or for any of its members; the term "monetary profit" as used herein does not include reasonable incidental charges or fees, such as may be made to recoup costs of furnishing meals or refreshments at official activities, or such as a reasonable fee for conducting an approved activity at the community center;

(2) any activity involving the lease or sale of any property of the community land grant;

(3) any activity organized to operate on a non-profit basis, which activity is typically operated on a for-profit basis when conducted by non-governmental entities, such as, but not limited to, the operation of a restaurant or inn, unless the director upon application specifically gives prior approval of coverage for such activity, and only in accordance with such conditions as the director may require; or

(4) any activity involving the provision, sale, or consumption of alcoholic beverages.

C. Business enterprise activities are excluded from coverage regardless of whether they are authorized by the board of trustees, and regardless of whether they are undertaken by individual trustees, or by members, individually, as partnerships or as other types of associations, or in any corporate form.

[1.6.6.10 NMAC - N, 7/30/2010]

HISTORY OF 1.6.6 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.310.7 NMAC, Sections 1, 3, 5, 6, 8-15, 17 and 18, effective August 1, 2010.

8.310.7.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[1/1/95; 8.310.7.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 10/1/02; A, 8/1/10]

8.310.7.3 STATUTORY AUTHORITY: ~~[The New Mexico~~ medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended and by the state human services department pursuant to state statute. See NMSA 1978, Sections 27-2-12 et seq. (Repl. Pamp. 1991):] The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under the Social Security Act as amended or by state statute. See NMSA 1978, Sections 27-2-12 et seq.
[1/1/95; 8.310.7.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 10/1/02; A, 8/1/10]

8.310.7.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.
[1/1/95, 2/1/95; 8.310.7.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 10/1/02; A, 8/1/10]

8.310.7.6 OBJECTIVE: ~~[The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.] The objective of this rule is to provide instructions for the service portion of the New Mexico medicaid program.~~
[1/1/95, 2/1/95; 8.310.7.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 10/1/02; A, 8/1/10]

8.310.7.8 MISSION STATEMENT: ~~[The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.] To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.~~
[2/1/95; 8.310.7.8 NMAC - Rn, 8 NMAC 4.MAD.002, 10/1/02; A, 8/1/10]

8.310.7.9 DENTAL SERVICES: Dental services are covered as an optional medical service ~~[for New Mexico medicaid program (medicaid) recipients] for eligible recipients.~~ Dental services are defined as those diagnostic, preventive or corrective procedures to the teeth and associated structures of the oral cavity furnished by, or under the supervision of, a dentist that affect the oral or general health of the recipient [42 CFR Section 440.100(a)]. ~~[Medicaid] MAD~~ also covers dental services, dentures and special services for recipients who qualify for services under the early and periodic screening, diagnosis and treatment (EPSDT) program ~~[[42 CFR Section 440.120(3)(b); 42 CFR Section 441.55(c)(2). This section describes covered dental services, service requirements, covered services, service restrictions and general reimbursement methodology.]]~~ 42 CFR Section 441.55.
[2/1/95; 8.310.7.9 NMAC - Rn, 8 NMAC 4.MAD.716, 10/1/02; A, 8/1/10]

8.310.7.10 ELIGIBLE PROVIDERS:

A. ~~[Upon approval of New Mexico medical assistance program provider participation agreements by the New Mexico human services department, medical assistance division (HSD/MAD) or its designee, individuals and those in professional corporations, associations or other types of group dental practices licensed to practice dentistry are eligible to participate as medicaid dental providers.] Health care to eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners of facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instruction, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing and utilization review instructions and other pertinent material, and to obtain answers to questions related~~

to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only. Providers must supply necessary information in order for payment to be made. Eligible providers include the following:

(1) Dental hygienists certified for collaborative practice as defined by NMSA 1978 Section 61-5A-4(D&E) may be enrolled to provide any of those services specified for collaborative practice dental hygienists in 8.310.7.12 NMAC. Certified collaborative practice dental hygienists must be in good standing with the New Mexico board of dental health care and the New Mexico dental hygienist committee and must verify their current certificate with the New Mexico board of dental health care annually.

~~[(2) Certified collaborative practice dental hygienists must be in good standing with the New Mexico board of dental health care and the New Mexico dental hygienist committee and must reverify their certificate with the New Mexico board of dental health care annually.]~~

(2) Individuals who are licensed and those in professional corporations, associations or other types of group dental practices licensed to practice dentistry are eligible to participate as medicaid dental providers.

B. ~~[Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from HSD/MAD or its designee. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from HSD/MAD or its designee.] When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.~~
[2/1/95; 8.310.7.10 NMAC - Rn, 8 NMAC 4.MAD.716.1 & A, 10/1/02; A, 11/1/06; A, 8/1/10]

8.310.7.11 PROVIDER RESPONSIBILITIES:

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

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

health insurance:

C. Providers must maintain records which are sufficient to fully disclose the extent and nature of the services furnished to recipients. See Part 8.302.1 NMAC, *General Provider Policies*, for documentation requirements.]

A. A provider who furnishes services to an eligible recipient must comply with all federal and state laws, regulations and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and centers for medicaid and medicare services (CMS) correct coding initiatives, including not improperly unbundling or upcoding services. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.

B. A provider must verify that an individual is eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient. See 8.302.1 NMAC, *General Provider Policies*.

C. Services must be provided within the scope of practice, licensure and must be in compliance with the statutes, rules and regulations of the applicable practice act.

[2/1/95; 8.310.7.11 NMAC - Rn, 8 NMAC 4.MAD.716.2, 10/1/02; A, 8/1/10]

8.310.7.12 COVERED SERVICES AND SERVICE LIMITATIONS: [Medicaid] MAD covers the following types of dental services with the specified limitations.

A. **Emergency services:** [Medicaid] MAD covers emergency care for all eligible recipients. "Emergency" care is defined as services furnished when immediate treatment is required to control hemorrhage, relieve pain or eliminate acute infection. For eligible recipients under the age of 21 years care includes operative procedures necessary to prevent pulpal death and the imminent loss of teeth, and treatment of injuries to the teeth or supporting structures, such as bone or soft tissue contiguous to the teeth.

(1) Routine restorative procedures and root canal therapy are not emergency

procedures.

(2) Prior authorization requirements are waived for emergency care, but the claims can be reviewed prior to payment to confirm that an actual emergency existed at the time of service.

B. **Diagnostic services:** [Medicaid] MAD coverage for diagnostic services is limited to the following:

(1) for recipients under twenty-one (21) years of age, diagnostic services are limited to one clinical oral examination every six (6) months; medicaid covers one additional clinical oral examination by a second dental provider for recipients under twenty-one (21) years of age; for recipients twenty-one (21) years of age and over, coverage is limited to one clinical oral examination per year; and

(2) medicaid covers emergency oral examinations which are performed as part of an emergency service to relieve pain and suffering.]

(1) for an eligible recipient under 21 years of age, diagnostic services are limited to one clinical oral examination every six months and upon referral one additional clinical oral examination by a different dental provider every six months;

(2) one clinical oral examination every 12 months for an eligible recipient 21 years and over; and

(3) MAD covers emergency oral examinations which are performed as part of an emergency service to relieve pain and suffering.

[C. **Radiology services:** Medicaid coverage of radiology services is limited to the following:

(1) One (1) intraoral complete series every three (3) years per recipient. This series includes bitewing x-rays. Collaborative practice dental hygienists may provide this service.

(2) Additional bitewing x-rays once every twelve (12) months per recipient. Collaborative practice dental hygienists may provide this service.

(3) Panoramic films performed can be substituted for an intraoral complete series, which is limited to one every three (3) years per recipient. Collaborative practice dental hygienists may provide this service.]

C. **Radiology services:** MAD coverage of radiology services is limited to the following:

(1) one intraoral complete series every 60 months per eligible recipient; this series includes bitewing x-rays;

(2) additional bitewing x-rays once every 12 months per eligible recipient; and

(3) panoramic films performed can be substituted for an intraoral complete series, which is limited to one every 60 months per eligible recipient.

D. **Preventive services:**

[Medicaid] MAD coverage of preventive services is subject to certain limitations.

(1) **Prophylaxis:** [Medicaid covers one prophylaxis service per recipient every six (6) months for recipients under twenty-one (21) years of age. For recipients twenty-one (21) years of age or older, medicaid covers one prophylaxis per recipient per year. Medicaid covers one prophylaxis service per recipient every six (6) months for recipients twenty-one (21) years of age or older who have developmental disabilities as defined in 8.314.5.12 NMAC, *Eligible Recipients*. Collaborative practice dental hygienists may provide this service after diagnosis by a dentist.] MAD covers for an eligible recipient under the age of 21 years one prophylaxis service every six months. MAD covers for an eligible recipient 21 years of age or older who has a developmental disability as defined in 8.314.12 NMAC, *Eligible Recipients*, one prophylaxis service every six months. For an individual 21 years of age or older without a developmental disability as defined in 8.314.12 NMAC, *Eligible Recipients*, MAD covers one prophylaxis service once in a 12 month-period.

(2) **Fluoride treatment:** [Medicaid covers one fluoride treatment per recipient per provider every six (6) months furnished in the office to recipients under twenty-one (21) years of age. For recipients twenty-one (21) years of age or older, medicaid does not reimburse providers for fluoride treatments unless it is deemed medically necessary by MAD or its designee. Collaborative practice dental hygienists may provide this service.] MAD covers for an eligible recipient under the age of 21 years, one fluoride treatment every six months. For an individual 21 years of age or older, MAD covers one fluoride treatment once in a 12-month period.

(3) **Molar sealants:** [Medicaid only covers sealants for permanent molars for recipients under twenty-one (21) years of age. Each eligible recipient can receive one treatment per tooth every five (5) years. Medicaid does not cover sealants when an occlusal restoration has been completed on the tooth. Replacement of a sealant within the five (5)-year periods requires prior authorization. Collaborative practice dental hygienists may provide this service after diagnosis by a dentist.] MAD only covers for an eligible recipient under the age of 21 years, sealants for permanent molars. Each eligible recipient can receive one treatment per tooth every 60 months. MAD does not cover sealants when an occlusal restoration has been completed on the tooth. Replacement of a sealant within the 60-month period requires a prior authorization. For an individual 21 years of age or older, MAD does not reimburse sealant services.

(4) **Space maintenance:** [~~Medicaid covers fixed unilateral and fixed bilateral space maintainers (passive appliances).~~] MAD covers for an eligible recipient under the age of 21 years fixed unilateral and fixed bilateral space maintainers (passive appliances). For an individual 21 years of age or older, MAD does not reimburse for space maintenance services.

E. **Restorative services:** [~~Medicaid~~] MAD covers the following restorative services:

(1) amalgam restorations (including polishing) on permanent and deciduous teeth;

(2) resin restorations for anterior and posterior teeth;

(3) one prefabricated stainless steel crown per permanent or deciduous tooth;

(4) one prefabricated resin crown per permanent or deciduous tooth; and

(5) one recementation of a crown or inlay.

F. **Endodontic services:** [~~Medicaid~~] MAD covers therapeutic pulpotomy for [~~recipients~~] an eligible recipient under [~~twenty-one (21)~~] 21 years of age if performed on a primary or permanent tooth and no periapical lesion is present on a radiograph.

G. **Periodontic services:** [~~Medicaid~~] MAD covers for an eligible recipient certain periodontics surgical, non-surgical and other periodontics services subject to certain limitations:

(1) collaborative practice dental hygienists may provide periodontal scaling and root planning, per quadrant after diagnosis by a dentist; and

(2) collaborative practice dental hygienists may provide periodontal maintenance procedures with prior authorization.

H. **Removable prosthodontic services:** [~~Medicaid covers two denture adjustments per calendar year per recipient.~~] MAD covers two denture adjustments per every 12 months per an eligible recipient. MAD also covers repairs to complete and partial dentures.

I. **Fixed prosthodontics services:** [~~Medicaid~~] MAD covers one recementation of a fixed bridge.

J. **Oral surgery services:** [~~Medicaid~~] MAD covers the following oral surgery services:

(1) simple and surgical extractions for [all—recipients:] an eligible recipient; coverage includes local anesthesia and routine post-operative care; “erupted surgical extractions” are defined as extractions requiring elevation of mucoperiosteal flap and removal of bone, [and/or] or section of tooth and closure;

(2) autogenous tooth

reimplantation of a permanent tooth for [~~recipients~~] an eligible recipient under [~~twenty-one (21)~~] 21 years of age; and

(3) incision and drainage of an abscess for [~~all—recipients~~] an eligible recipient.

K. **Adjunctive general services:** [~~Medicaid covers emergency palliative treatment of dental pain for all—recipients. Medicaid covers general anesthesia and intravenous sedation for Medicaid recipients. Documentation of medical necessity must be available for review by MAD or its designee. Medicaid covers nitrous oxide analgesia for recipients under twenty-one (21) years of age.~~] MAD covers emergency palliative treatment of dental pain for an eligible recipient. MAD covers general anesthesia and intravenous sedation for an eligible recipient. Documentation of medical necessity must be available for review by MAD or its designee. MAD covers nitrous oxide analgesia for an eligible recipient under 21 years of age. For an individual 21 years of age or older, MAD does not reimburse for nitrous oxide analgesia.

[2/1/95; 8.310.7.12 NMAC - Rn, 8 NMAC 4.MAD.716.3 & A. 10/1/02; A. 7/1/04; A. 11/1/06; A. 8/1/10]

8.310.7.13 P R I O R AUTHORIZATION AND UTILIZATION

REVIEW: [~~Dental services are subject to utilization review for medical necessity and program compliance. These reviews can be performed before services are furnished; after services are furnished and before payment is made, after payment is made, or at any point in the service or payment process. See Part 8.302.5 NMAC, Prior Authorization and Utilization Review. Once enrolled, providers receive utilization review instructions and documentation forms which assist in the receipt of prior authorization and claims processing from HSD/MAD or its designee.~~] All MAD services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished, and before payment is made, or after payment is made. See 8.302.5 NMAC, Prior Authorization and Utilization Review. Once enrolled, a provider receives instructions on how to access utilization review documents necessary for prior approval and claims processing.

A. **Prior authorization:** [~~Medicaid~~] MAD covers certain services, including some diagnostic, preventive, restorative, endodontic, periodontic, removable prosthodontics, maxillofacial prosthetic, oral surgery, and orthodontic services only when prior authorization is received from MAD or its designee. [~~Medicaid covers medically necessary orthodontic services to treat handicapping~~

~~malocclusions for recipients under twenty-one (21) years of age with prior authorization.~~] MAD covers medically necessary orthodontic services to treat handicapping malocclusions for an eligible recipient under 21 years of age with prior authorization.

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

C. **Reconsideration:** [~~Providers or recipients who are dissatisfied with a utilization review decision or action can request a re-review and a reconsideration.~~] A provider who disagrees with prior authorization denials or other review decisions can request a re-review and a reconsideration. See Part 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions.*

[2/1/95; 8.310.7.13 NMAC - Rn, 8 NMAC 4.MAD.716.4, 10/1/02; A. 7/1/04; A. 11/1/06; A. 8/1/10]

8.310.7.14 HOSPITAL CARE:

[~~Medicaid~~] MAD covers dental services normally furnished in an office setting if they are performed in an inpatient hospital setting only with prior authorization, unless one [(+)] of the following conditions exist:

A. the eligible recipient is under [~~twenty-one (21)~~] 21 years of age; or

B. the eligible recipient under 21 years of age has a documented medical condition for which hospitalization for even a minor procedure is medically justified;

C. any service which requires prior authorization in an outpatient setting must be prior authorized if performed in an inpatient hospital.

[2/1/95; 8.310.7.14 NMAC - Rn, 8 NMAC 4.MAD.716.5, 10/1/02; A. 11/1/06; A. 8/1/10]

8.310.7.15 NON COVERED SERVICES:

Dental services are subject to the limitations and coverage restrictions, which exist for other [~~Medicaid~~] MAD services. See Part 8.301.3 NMAC, *General Noncovered Services.* [~~Medicaid~~] MAD does not cover the following specific dental services:

A. [~~Surgical trays:~~] surgical trays are considered part of the

surgical procedure; [Medicaid] MAD does not reimburse separately for trays;

B. **[Sterilization of dental instruments and equipment:]** sterilization is considered part of the dental procedure and is not reimbursed separately for sterilization;

C. oral preparations, including topical fluorides dispensed to [recipients] an eligible recipient for home use;

D. permanent fixed bridges [for recipients twenty-one (21) years of age and over];

E. procedures, appliances or restorations solely for aesthetic, or cosmetic purposes;

F. procedures for desensitization, re-mineralization or tooth bleaching;

G. occlusal adjustments, diskings, overhang removal or equilibration;

H. mastique or veneer procedures;

I. treatment of TMJ disorders, bite openers and orthotic appliances;

J. services furnished by non-certified dental assistants, such as radiographs;

K. implants and implant-related services; or

L. removable unilateral cast metal partial dentures.

[2/1/95; 8.310.7.15 NMAC - Rn, 8 NMAC 4.MAD.716.6, 10/1/02; A, 8/1/10]

8.310.7.17 REIMBURSEMENT:

[A. ~~Dental providers must submit claims for reimbursement on the dental claim form. See Part 8.302.2 NMAC, *Billing for Medicaid Services*. Upon enrolled, providers receive information on billing, documentation requirements, and claims processing from HSD/MAD or its designee.~~

B. ~~Reimbursement for dental covered services is made at the lesser of the following:~~

~~— (1) the provider's billed charge; or~~

~~— (2) the MAD fee schedule for the specific service or procedure;~~

~~— (3) the provider's billed charge must be their usual and customary charge for services;~~

~~— (4) "usual and customary charge" refers to the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service.]~~

Dental providers must submit claims for reimbursement on the dental claim form. See 8.302.2 NMAC, *Billing for Medicaid Services*. Upon enrollment, a provider receives instructions on documentation, billing, and claims processing. Reimbursement to a provider for covered services is made at the lesser of the following:

A. the billed charge which must be the provider's usual and customary charge for service; "usual and customary charge" refers to the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service; or

B. the MAD fee schedule for the specific service or procedure.

[2/1/95; 8.310.7.17 NMAC - Rn, 8 NMAC 4.MAD.716.8, 10/1/02; A, 11/1/06; A, 8/1/10]

8.310.7.18 REIMBURSEMENT RESTRICTIONS:

A. **Services performed in violation of dental rules:** [Providers are] A provider is not reimbursed for services performed in violation of the New Mexico Dental Health Care Act, or the rules of the New Mexico board of dental health care, code of ethics of the American dental association or the American dental hygienists' association or accepted principles of good dental and dental hygienist practices.

B. **Services furnished by another provider:** Coverage of dental services can be restricted or limited. [~~Dental providers must try~~] It is a dental provider's responsibility to determine if a proposed service has already been furnished by another provider.

C. **Direct recipient payment for services:** [~~If dental providers believe that a service is medically necessary but limits or restrictions apply to the proposed service, dentists must advise recipients of the limitation. Providers can make arrangements for direct payment from recipients for noncovered or limited services. Recipients can be billed for services if:~~] A provider can make arrangements for direct payment from an eligible recipient or their personal representative for noncovered services. An eligible recipient or their personal representative can only be billed for noncovered services if:

~~(1) [recipients are advised by dental providers of the necessity of the service;] an eligible recipient or their personal representative is advised by a dental provider of the necessity of the service;~~

~~(2) [recipients are] an eligible recipient or their personal representative is given options to seek treatment at a later date or from a different provider; [and]~~

~~(3) [recipients agree] an eligible recipient or their personal representative agrees in writing to be responsible for payment; and~~

~~(4) the provider fully complies with the requirements as stated in Subsection C of 8.302.2.11 NMAC, *billing and claims filing limitations*.~~

D. **Services considered part of the total treatment:** [Providers] A provider cannot bill separately for the

services included in the payment for the examination, another service, or routine post-operative or follow-up care. See 8.310.7 BI, *Billing Instructions For Dental Services*, for the list of these services.

[2/1/95; 8.310.7.18 NMAC - Rn, 8 NMAC 4.MAD.716.9 & A, 10/1/02; A, 8/1/10]

NEW MEXICO STATE PERSONNEL BOARD

In accordance with 1.7.13.11 NMAC, "Emergency Rules" shall not be effective for longer than 120 calendar days. This is the re-promulgation of the rule within the 120 day limit to make it permanent. This is an amendment to 1.7.4 NMAC Section 12 effective 7-30-10, adopted by the State Personnel Board at their meeting on 7-9-10.

1.7.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:

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

B. **Legislative authorized salary increase:**

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

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

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

D. **Salary upon promotion:** Upon promotion, an employee's salary subject to budget availability, should reflect appropriate placement within the pay band. A salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the director.

A salary increase greater than fifteen percent (15%) to bring an employee's salary to the minimum of the pay band or less than five percent (5%) to prevent an employee's salary from exceeding the maximum of the pay band does not require the approval of the director. The salary of a promoted employee shall be in accordance with **Subsection B of 1.7.4.11 NMAC**.

E. Salary upon demotion: Upon demotion, an employee's salary shall be decreased to an hourly rate of pay which does not result in more than a fifteen percent (15%) decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new pay band or the decrease is being made in accordance with **Paragraph (2) of Subsection F of 1.7.4.12 NMAC**.

F. Pay allowance for performing first line supervisor duties:

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

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

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

G. Salary upon transfer:

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

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

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

through in pay band adjustment unless otherwise allowed by statute.

I. Salary upon reduction:

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

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

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

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

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

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

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

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

[1.7.4.12 NMAC - Rp, 1.7.4.10 NMAC, 11/14/02; A, 7-15-05; 1.7.4.12 NMAC - Rn,

1.7.4.13 NMAC & A, 12-30-05; A/E, 1-30-06; A, 3-31-06; A, 3-31-10; A/E, 5-19-10; Re-pr, 7-30-10]

NEW MEXICO STATE PERSONNEL BOARD

In accordance with 1.7.13.11 NMAC, "Emergency Rules" shall not be effective for longer than 120 calendar days. This is the re-promulgation of the rule within the 120 day limit to make it permanent. This is an amendment to 1.7.5 NMAC Sections 10 and 12 effective 7-30-10, adopted by the State Personnel Board at their meeting on 7-9-10.

1.7.5.10 APPLICATIONS:

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

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

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

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

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

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

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

[1.7.5.10 NMAC - Rp, 1 NMAC 7.5.10, 07/07/01; A, 11/14/02; A/E, 5/19/10; Re-pr, 7/30/10]

1.7.5.12 SELECTION:

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

service shall be justified in writing and made from employment lists.

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

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

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

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

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

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

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

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

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

[H-] I. Emergency appointments: Emergency appointments

shall be made in accordance with *1.7.2.12 NMAC*.

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

[J-] K. Physical examinations: Agencies may require physical examinations of candidates who have been selected for appointment contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the agency.

[K-] L. Human immunodeficiency virus-related (AIDS) test: No agency shall require a candidate or employee to take the human immunodeficiency virus-related (AIDS) test or disclose the results of same test as a condition of selection, promotion or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question. Agencies must adhere to the provisions of the *Human Immunodeficiency Virus Test Act NMSA 1978 Sections 24-2B-1 to 24-2B-8 Cum. Supp. 1993*.

[1.7.5.12 NMAC - Rp, 1 NMAC 7.5.12, 07/07/01; A, 11/14/02; A, 7-15-05; A/E, 5-19-10; Re-pr, 7-30-10]

NEW MEXICO STATE PERSONNEL BOARD

In accordance with 1.7.13.11 NMAC, "Emergency Rules" shall not be effective for longer than 120 calendar days. This is the re-promulgation of the rule within the 120 day limit to make it permanent. This is an amendment to 1.7.11 NMAC Section 13, effective 7-30-10, adopted by the State Personnel Board at their meeting on 7-9-10.

1.7.11.13 EMPLOYEES IN CAREER STATUS:

A. Notice of contemplated action:

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

in writing to the notice or to request an opportunity for an oral response.

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

B. Response to notice of contemplated action:

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

(2) If there is a request for an oral response to the notice of contemplated action, the agency shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the agency agree in writing to an extension of time. A representative of the employee's choosing may represent the employee.

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

C. Notice of final action:

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

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

(3) The notice of final action shall:

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

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

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

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

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

(4) Appeal rights:

(a) an employee, not covered by a collective bargaining agreement, may appeal a final disciplinary action to the board by delivering a written statement of the grounds for appeal to the state personnel director

at 2600 Cerrillos Road, [P.O. Box 26127,] Santa Fe, New Mexico 87505 no later than 30 calendar days from the effective date of the final disciplinary action; the employee must submit a copy of the notice of final disciplinary action with the notice of appeal;

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

[1.7.11.13 NMAC - Rp, 1 NMAC 7.11.13, 07/07/01; A, 11/14/02; A, 7-15-05; A/E, 6/19/09; A, 9/15/09; A/E, 4/27/10; Re-pr, 7/30/10]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.1 NMAC, Section 1 and addition of new Section 12, effective 08-16-2010.

16.19.1.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy, [4650 University Blvd, NE - Ste. 400B,] Albuquerque, NM [87102; (505) 841-9102].

[02-15-96; 16.19.1.1 NMAC - Rn, 16 NMAC 19.1.1, 03-30-02; A, 08-16-10]

16.19.1.12 PROTECTED ACTIONS AND COMMUNICATIONS:

A. All written and oral communication made by any person to the board or any committee of the board relating to actual or potential disciplinary action, which includes complaints made to the board or the committee, shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. All data, communications and information acquired, prepared or disseminated by the board or a committee relating to actual or potential disciplinary action or its investigation of complaints shall not be disclosed except to the extent necessary to carry out the purposes of the board or the committee or in a judicial appeal from the actions of the board or the committee or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards.

B. Information contained in complaint files is public information and subject to disclosure when the board or the committee acts on a complaint and issues a notice of contemplated action or reaches a settlement prior to the issuance of a notice of contemplated action.

[16.19.1.12 NMAC - N, 08-16-10]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC, Sections 1, 7, 10 and 17, effective 08-16-2010.

16.19.4.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy, Albuquerque, NM [; (505) 841-9102].

[02-15-96; 16.19.4.1 NMAC - Rn, 16 NMAC 19.4.1, 03-30-02; A, 12-15-02; A, 08-16-10]

16.19.4.7 DEFINITIONS:

A. "A year" begins with the first day of the pharmacist's birth month and ends the last day of the pharmacist's birth month the following year.

B. "Activity" as used in the ACPE criteria for quality and these regulations, the term refers to an individual educational experience or program such as a lecture, home study course, workshop, seminar, symposium, etc.

C. "Alternate supervising physician" means a physician who holds a current unrestricted license, is a cosignatory on the notification of supervision, agrees to act as the supervising physician in the supervising physician's absence, or expand the "scope of practice and/or sites of practice" of the pharmacist clinician and is approved by the board.

D. "Approved provider" means an institution, organization or agency that has been recognized by the [American council on pharmaceutical education] **accreditation council for pharmaceutical education** (ACPE) as having met it's criteria indicative of the ability to provide quality continuing pharmaceutical education, and is listed in the ACPE annual publication of approved providers.

E. "Board" means the New Mexico board of pharmacy.

F. "Consultation" means communication in person, telephonically, by two-way radio, by e-mail or by other electronic means.

G. "Contract hour" means a unit of measure equivalent to [approximately 50] **sixty (60)** minutes of participation in an approved organized learning experience or activity.

H. "Continuing education unit (CEU)" means ten contact hours of participation or it's equivalent in an organized continuing education activity sponsored by an approved provider.

I. "Continuing pharmacy education (CPE)" means a structured education activity offered by an approved provider, designed or intended to support the continuing development of

pharmacies or pharmacy technicians to maintain and enhance their competence. Continuing pharmacy education should promote problem-solving and critical thinking and be applicable to the practice of pharmacy.

J. "Continuing professional development (CPD)" means the responsibility of individual pharmacists for systematic maintenance, development and broadening of knowledge, skills and attitudes, to ensure continuing competence as a professional, throughout their careers.

[F:]K. "Criteria for quality" means continuing education provider shall show evidence of adherence to the criteria adopted by the American council on pharmaceutical education as indicative of the ability to provide continuing pharmaceutical education activities; areas include: administrative & organization; budget & resources; teaching staff; educational content management of activity; method of delivery; facilities; evaluation mechanism.

[F:]L. "Dangerous drug" means a drug that, because of any potentiality for harmful effect or the methods of its use or the collateral measures necessary to its use, is not safe except under the supervision of a physician licensed by law to direct the use of such drug and the drug prior to dispensing is required by federal law and state law to bear the manufacturer's legend "Caution: Federal law prohibits dispensing without a prescription".

[K:]M. "Guidelines or protocol" means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a physician or group of physicians that delegates prescriptive authority.

[F:]N. "Initial pharmacist licensure" [menas] means the license issued shall be valid for no less than 24 months. The license will expire the last date of his/her birth month that immediately follows the minimum 24 month time period.

O. "Live programs" means CPE activities that provide for direct interaction between faculty and participants and may include lectures, symposia, live teleconferences, workshops, etc.

[M:]P. "Mediated forms" means learning transmitted via intermediate [mechnism] mechanism such as audio and/visual tape, telephonic transmission, etc.

[N:]Q. "Monitor dangerous drug therapy" [menas] means to review the dangerous drug therapy regimen of patients by a pharmacist clinician for the purpose of evaluating and rendering advice to the prescribing physician regarding adjustment of the regimen. "Monitor dangerous drug therapy" includes:

(1) collecting and reviewing

patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration;

(3) ordering and [evaluationg] evaluating the results of laboratory tests relating to [dnagerous] dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting and;

(4) evaluating situations that require the immediate attention of the physician and instituting or modifying treatment procedures when necessary.

[O:]R. "Oversight committee" means a joint committee made up of (4) members to hear issues regarding pharmacist clinicians' prescriptive authority activities and supervising physicians' direction of these activities.

S. "Patient safety" means the prevention of healthcare errors and the elimination or mitigation of patient injury caused by healthcare errors.

[P:]T. "Pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems;

[Q:]U. "Pharmacist" means a person duly licensed by the board to engage in the practice of pharmacy pursuant to the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978.

[R:]V. "Pharmacist clinician" means a pharmacist with additional training required by regulations adopted by the board in consultation with the New Mexico medical board and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol.

[S:]W. "Pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel.

[T:]X. "Practice of pharmacy" means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the administering or "practitioner" means

a physician prescribing of dangerous drug therapy; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and labeling of drugs and devices; the proper and safe storage of drugs and devices; and the maintenance of proper records.

[U:]Y. "Practitioner" means a physician duly authorized by law in New Mexico to prescribe dangerous drugs including controlled substances in schedules II through V.

[V:]Z. "Prescriptive authority" means the authority to prescribe, administer, monitor or modify dangerous drug therapy.

[W:]AA. "Professional judgment" means a cognitive process, by alicensed pharmacist, that takes education, experience and current standards of practice into consideration when drawing conclusions and reaching decisions.

[X:]BB. "Renewal period" means continuing education programs or activities must be completed during the 24 month time period occurring between the first day of the pharmacist's birth month and the last day of his/her birth month 2 years later.

[Y:]CC. "Scope of practice" means those duties and limitations of duties placed upon a pharmacist clinician and/or the alternate supervising physician(s) and the board; includes the limitations implied by the field of practice of the supervising physician and/or the alternate supervising physician(s) and the board.

[Z:]DD. "Supervising physician" means a doctor, or group of doctors, of medicine or osteopathy approved by the respective board to [supervise] supervise a pharmacist clinician; "supervising physician includes a physician approved by the respective board as an alternate supervising physician.

[02-15-96; 16.19.4.7 NMAC - Rn, 16 NMAC 19.4.7, 03-30-02; A, 01-31-07; A, 08-16-10]

16.19.4.10 CONTINUING PHARMACY EDUCATION REQUIREMENTS:

A. Continuing **pharmacy** education (**CPE**) shall include study in one or more of the general areas of socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology; characteristics and therapeutics of the disease state, or such other subjects as the board may from time to time approve. Continuing **pharmacy** education approved in New Mexico shall be limited to programs and activities offered by an ACPE approved provider or pharmacy law programs offered by the N.M. board of pharmacy.

B. [Effective ——— date:] Continuing **pharmacy** education, certified

as completed by an approved provider will be required of a registered pharmacist who applies for renewal of New Mexico registration as follows: 3.0 CEU (30 contact hours) every two years. Effective [date January 1, 2003:] **January 1, 2013, pharmacist and pharmacist clinician renewal applications shall document:**

(1) A minimum of 1.0 CEU (10 contact hours) excluding the law requirement, per renewal period shall be obtained through "live programs" that are approved as such by the ACPE or the accreditation council for continuing medical education (ACCME). Live programs provided by other providers (such as continuing nursing education) may be acceptable based on review and approval of the board.

(2) A minimum of 0.2 CEU (2 contact hours) per renewal period shall be in the area of patient safety as applicable to the practice of pharmacy.

(3) A minimum of 0.2 CEU (2 contact hours) per renewal period shall be in the subject area of pharmacy law offered by the New Mexico board of pharmacy.

C. The number of CEU's to be awarded for successful completion shall be determined by the approved provider in advance of the offering of the activity.

D. The board of pharmacy will accept [any continuing] **CPE** education units for programs or activities completed outside the state; provided, the provider has been approved by the [American council on pharmaceutical education] **ACPE** under its' criteria for quality at the time the program was offered.

E. Continuing **pharmacy** education will be required of all registrants holding an in-state status and out-of-state active status license. (61-11-13D). Pharmacists granted New Mexico initial licensure are exempt from [C-E:] **CPE** requirements [until the first full year renewal period]. Inactive status licensees will be required to furnish [continuing education:] **CPE** for the current licensing period, 1.5 CEU for each year the licensee was inactive, only for the purpose of reinstating to active status.

F. Not less than 10% of the registrants will be randomly selected each year by the board of pharmacy for audit of certificates by the state drug inspectors. **Pharmacists and pharmacist clinicians without sufficient documentation of completion of CPE requirements shall:**

(1) Be subject to a fine of not less than \$1000.00.

(2) Be required to complete the deficient CPE in a satisfactory time period as determined by the board.

G. In the event a pharmacist makes an application for renewal and does

not furnish necessary proof of compliance upon request, the board will afford the applicant opportunity for hearing pursuant to the Uniform Licensing Act.

H. [RESERVED]

I. [RESERVED]

J. Pharmacy law requirement for:

(1) Active Status: A minimum of 0.2 CEU (2 contact hours) of the 3.0 CEU (30 contact hours) required for registration renewal, shall be in the subject area pharmacy law as offered by the N.M. board of pharmacy. In lieu of a board program, pharmacists not residing and not practicing pharmacy in New Mexico, may complete an ACPE accredited course, in the subject area pharmacy law, meeting the CEU requirements of this paragraph.

(2) Effective date. Registration renewals due June 1996 and thereafter.

(3) Licensees may obtain 0.1 CEU (1 contact hour) per year, in the subject area pharmacy law, by attending one full day of a regularly scheduled New Mexico board of pharmacy board meeting or serving on a board approved committee.

(4) Licensees who successfully complete an open book test, administered by the board, shall receive credit for 0.2 CEU (2 contact hours) in the subject area pharmacy law.

K. Board of pharmacy law programs:

(1) Pharmacy law programs shall be offered in each of the five pharmacy districts, as defined in NMSA 61-11-4.E, a minimum of once every calendar year (January through December).

(2) Pharmacy law programs shall offer 0.2 CEU and be two contact hours in length.

[02-26-95; 16.19.4.10 NMAC - Rn, 16 NMAC 19.4.10, 03-30-02; A, 12-15-02; A, 01-31-07; A, 08-16-10]

16.19.4.17 PHARMACIST CLINICIAN:

A. Purpose: The purpose of these regulations is to implement the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 through 61-11B-3 NMSA 1978 by providing minimum standards, terms and conditions for the certification, registration, practice, and supervision of pharmacist clinicians. These regulations are adopted pursuant to Section 61-11B-3 of the Pharmacist Prescriptive Authority Act.

B. Initial certification and registrants:

(1) The board may certify and register a pharmacist as a pharmacist clinician upon completion of an application for certification and satisfaction of the requirements set forth in these regulations.

(2) A pharmacist who applies for certification and registration as a pharmacist

clinician shall complete application forms as required by the board and shall pay a fee. The fee shall be set by the board to defray the cost of processing the application, which fee is not returnable.

(3) To obtain initial certification and registration as a pharmacist clinician, she/he must submit the following:

(a) proof of completion of sixty (60) hour board approved physical assessment course, followed by a 150 hour, 300 patient contact preceptorship supervised by a physician or other practitioner with prescriptive authority, with hours counted only during direct patient interactions;

(b) the applicant will submit a log of patient encounters as part of the application;

(c) patient encounters must be initiated and completed within 2 years of the application.

(4) The board shall register each pharmacist certified as a pharmacist clinician.

(5) Upon certification and registration by the board, the name and address of the pharmacist clinician, (name of the supervising physician if applicable), and other pertinent information shall be enrolled by the board on a roster of pharmacist clinicians.

C. Biennial renewal of registration:

(1) Renewal applications shall be submitted prior to the license expiration.

(2) Applications for renewal must include:

(a) After January 1, 2013, documentation of continuing education hours, including proof of completion of 2.0 CEU twenty (20) contact hours of [~~American council of pharmaceutical education~~] live CPE or continuing medical education (CME) approved by (ACPE) or [~~category I of the American medical association approved (AMA), (live continuing education meeting, seminar, workshop, symposium)]~~ AACME (live programs provided by other continuing education providers may be submitted for review and approval to the board), beyond the required hours in 16.19.4.10 NMAC (as amended), as required by the board; and

(b) a current protocol of collaborative practice signed by the supervising physician (if prescriptive authority is sought); and

(c) a copy of the pharmacist clinicians registration with the supervising physicians board (if prescriptive authority is sought); and

(d) other additional information as requested by the board.

D. Prescriptive authority, guidelines or protocol:

(1) Only a registered pharmacist clinician with current protocols, registered

with the New Mexico medical board or the New Mexico board of osteopathic medical examiners, may exercise prescriptive authority.

(2) A pharmacist clinician seeking to exercise prescriptive authority shall submit an application to the board. The application must include the supervising physicians' name and current medical license, protocol of collaborative practice and other information requested by the board. A pharmacist may submit the application with the initial application for certification or as a separate application after becoming certified and registered as a pharmacist clinician.

(3) The protocol will be established and approved by the supervising physician as set forth in these regulations and will be kept on file at each practice site of the pharmacist clinician and with the board.

(4) The protocol must include:

(a) name of the physician(s) authorized to prescribe dangerous drugs and name of the pharmacist clinician;

(b) statement of the types of prescriptive authority decisions the pharmacist clinician is authorized to make, including, but not limited to:

(i) types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case;

(ii) procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) activities to be followed by the pharmacist clinician while exercising prescriptive authority, including documentation of feedback to the authorizing physician concerning specific decisions made; documentation may be made on the prescriptive record, patient profile, patient medical chart or in a separate log book;

(d) description of appropriate mechanisms for consulting with the supervising physician, including a quality assurance program for review of medical services provided by the pharmacist clinician, (this quality assurance program will be available for board review); and

(e) description of the scope of practice of the pharmacist clinician.

E. Scope of practice:

(1) A pharmacist clinician shall perform only those services that are delineated in the protocol and are within the scope of practice of the supervising physician and/or alternate supervising physician(s).

(2) A pharmacist clinician may practice in a health care institution within the policies of that institution.

(3) A pharmacist clinician may prescribe controlled substances provided that the pharmacist clinician (i) has obtained a New Mexico controlled substances

registration and a drug enforcement agency registration, and (ii) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Section 3, A. of the Pharmacist Prescriptive Authority Act.

(4) The board may, in its discretion after investigation and evaluation, place limitations on the tasks a pharmacist clinician may perform under the authority and direction of a supervising physician and/or alternate supervising physician(s).

F. Collaborative professional relationship between pharmacist clinicians and supervising physician(s):

(1) The direction and supervision of pharmacist clinicians may be rendered by approved supervising physician/designated alternate supervising physician(s).

(2) This direction may be done by written protocol or by oral consultation. It is the responsibility of the supervising physician to assure that the appropriate directions are given and understood.

(3) The pharmacist clinician must have prompt access to consultation with the physician for advice and direction.

(4) Upon any change in supervising physician between registration renewals, a pharmacist clinician shall submit to the board, within ten (10) working days, the new supervising physician's name, current medical license, and protocol; notification to and completion of requirements for the supervising physicians' board shall be completed per that board's requirements. This notice requirement does not apply to an alternate supervising physician who is designated to cover during the absence of the supervising physician.

G. Complaints and appeals:

(1) The chair of the board will appoint two (2) members of the board, and the president of the supervising physician respective board will appoint (2) members of the respective board to the oversight committee; the oversight committee will review complaints concerning the pharmacist clinician practice; the oversight committee will make a report that may include non-binding recommendations to both the board and respective board(s) regarding disciplinary action. Each board can accept or reject the recommendations.

(2) Any applicant for certification or any pharmacist clinician may appeal a decision of the board in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[03-14-98; 16.19.4.17 NMAC - Rn, 16 NMAC 19.4.17, 03-30-02; 16.19.4.17 NMAC - Rn, 16.19.4.18 NMAC, 12-15-02; A, 09-30-03; A, 01-31-07; A, 05-14-10; A, 08-16-10]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.2 NMAC Section 8, effective 8/16/10.

16.20.2.8 REQUIREMENTS FOR THE NATIONAL PHYSICAL THERAPY EXAMINATION:

A. All applicants for licensure must take the national physical therapy examination (NPTE), or show proof of having taken the NPTE in another state. The examination must be taken in English, without the use of an interpreter, and without the aid of an English/foreign language dictionary.

B. A complete [notarized] licensure application, all required fees, and [a complete computer based testing (CBT) application] verification of successful completion of a physical therapy or physical therapy assistant program MUST be received by the board for verification of eligibility for licensure in New Mexico prior to registering to sit for the exam.

C. The federation of state boards of physical therapy (FSBPT) will notify applicants, in writing, of the procedure to follow in order to register for the exam with an approved computer based testing (CBT) company.

(1) Applicants MUST take the exam within sixty (60) days from the date of notification to register by [FSBPT].

(2) Applicants will register in New Mexico, but may take the exam in any state.

(3) Applicants will be scheduled to sit for the exam within thirty (30) days from the time they call the computer based testing (CBT) company.

(4) Applicants may change their appointment up to two (2) days prior to the test date.

D. Effective August 28, 1995, an applicant for licensure as a physical therapist shall obtain a score on the NPTE for physical therapists that equals or exceeds the criterion-referenced passing point of 600, based on a scale ranging from 200 to 800.

(1) For applicants who took the NPTE during the period from June 10, 1971 to August 28, 1995, the passing score for the national examination shall be 1.5 standard deviation below the national mean on the date the exam was taken by the applicant.

(2) Exams taken prior to June 10, 1971 may be reviewed on a case-by-case basis or the applicant may qualify under 16.20.3.10 NMAC (Licensure by Endorsement).

E. Effective August 28, 1995, an applicant for licensure as a physical therapist assistant shall obtain a score on the NPTE for physical therapist assistants that

equals or exceeds the criterion-referenced passing point of 600, based on a scale ranging from 200 to 800.

(1) For applicants who took the NPTE during the period from June 10, 1971 to August 28, 1995, the passing score for the national examination shall be 1.5 standard deviation below the national mean on the date the exam was taken by the applicant.

(2) Exams taken prior to June 10, 1971 may be reviewed on a case-by-case basis or the applicant may qualify under 16.20.3.10 NMAC (Licensure by Endorsement).

F. Any applicant who fails the NPTE may retake the exam at the next available opportunity.

G. Any applicant who has failed the NPTE will not be issued a temporary license, or if a temporary license has been issued, it will automatically be revoked. The revocation is effective upon recording of the test results by the registrar. The registrar will promptly notify the applicant of results by certified mail.

H. An applicant who fails the NPTE twice must complete and submit proof of completion of remedial work as recommended by the board before being permitted to take subsequent NPTE's.

[03-29-83; 02-19-88; 08-01-89; 05-08-91; 06-03-94; 07-28-95; 05-15-96; 16.20.2.8 NMAC - Rn & A, 16 NMAC 20.2.8, 08-31-00; A, 7-28-01; A, 8-16-10]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.3 NMAC Sections 8, 10, 12, and 14, effective 8/16/10.

16.20.3.8 APPLICATION FOR LICENSURE.

A. The board may issue a license to an applicant, other than one applying for licensure by endorsement, who fulfills the following requirements:

(1) completes the application;

(2) includes a passport-size photograph taken within the preceding twelve months and affixes it to the application;

(3) pays the non-refundable application fee in full as provided in Part 5;

(4) passes the jurisprudence exam (as specified in 16.20.2.10) and pays the non-refundable exam fee as provided in Part 5;

(5) official college or university transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE) verifying one of the following:

(a) post-baccalaureate degree in physical therapy;

(b) associate degree in physical

therapy assistant;

(6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:

(a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;

(b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;

(c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;

(7) passes the national physical therapy licensure examination (NPTE) (as specified in 16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.

B. For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three (3) consecutive years, full licensure requires fulfilling the following requirements:

(1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;

(2) provides proof of having taken fifteen (15) continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);

(3) provides evidence of additional competency to practice as required by the board.

C. Felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but is not limited to: certified proof of completion of probation or parole supervision, payment of fees, community

service or any other court ordered sanction.

D. A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.

E. Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC as well as those requirements listed in 16.20.9 NMAC.

F. Initial application is valid for a period of twelve (12) months.

[16.20.3.8 NMAC - Rp, 16.20.3.8 NMAC, 11-01-04; A, 03-02-06; A, 1-12-08; A, 8/1/09; A, 8/16/10]

16.20.3.10 REINSTATEMENT OF LICENSURE:

A. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for less than one (1) year one must:

(1) complete the renewal form;
(2) pay the late fee;
(3) pay the current year renewal fee;

(4) submit proof of the required continuing education contact hours; and

(5) submit a notarized statement by the therapist that they have not practiced physical therapy in the state of New Mexico while their physical therapy license was expired.

B. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than one (1) year, where there is evidence of continued practice with an unrestricted license in another state one must:

(1) complete the initial application;
(2) pay the application fee;
(3) pay the jurisprudence exam fee;

(4) submit verification of all licenses from other U.S. jurisdictions; verifications may be sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

(a) name and address of the applicant;
(b) license number and date of issuance;
(c) current status of the license;
(d) expiration date of the license;
(e) a statement as to whether the applicant was denied a license by the agency;
(f) a statement as to whether any disciplinary action is pending or has been taken against the applicant;

(5) submit verification of employment from the applicant's most recent physical therapy employer; the applicant must use the board approved verification of employment form;

(6) pass the jurisprudence examination; and

(7) meet the continuing education requirement in the state of practice during the period of lapse.

C. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than one (1) year, where there is no evidence of continued practice with an unrestricted license in another state one must:

(1) complete the initial application;
(2) pay the application fee;
(3) pay the jurisprudence exam fee;

(4) submit verification of all licenses from other U.S. jurisdictions; verifications may be sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

(a) name and address of the applicant;
(b) license number and date of issuance;
(c) current status of the license;
(d) expiration date of the license;
(e) a statement as to whether the applicant was denied a license by the agency;
(f) a statement as to whether any disciplinary action is pending or has been taken against the applicant;

(5) pass the jurisprudence examination; and

(6) take continuing education hours in the amount of ~~[15 CEU's]~~ fifteen (15) contact hours for each year the New Mexico license had lapsed.

D. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than three (3) years, where there is no evidence of practice in another state one must:

(1) complete and submit a new application form satisfying all requirements for original licensure pursuant to 16.20.3.8 NMAC; and

~~[(2) pay the required late fees;]
[(3)] (2) the board [may also] will~~ require fifteen (15) contact hours for each year the New Mexico license has lapsed as well as an additional course of study ~~[or continuing education,]~~ on a case-by-case basis, to ensure competence and fitness to practice.

[16.20.3.10 NMAC - Rp, 16.20.3.10 NMAC, 11-01-04; A, 03-02-06; A, 1-12-08; 16.20.3.10 NMAC - Rn, 16.20.3.9 NMAC & A, 8/1/09; A, 8/16/10]

16.20.3.12 PROVISIONS FOR EMERGENCY LICENSURE:

A. Physical therapists and physical therapist assistants currently

licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon:

(1) completing a signed [~~and notarized~~] application accompanied by proof of identity, which may consist of a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) submitting documentation of graduation from an [~~accredited (CAPTE)~~] educational program approved by the commission on accreditation in physical therapy education (CAPTE), proof of successful completion of the national physical therapy examination (NPTE) and jurisprudence exam as specified in 16.20.3.8 NMAC, of these rules (verification may be obtained by email, online verification from the testing agency or university, mail or by fax);

(3) verification of licenses held in other states and verification of employment if applicable (verification may be sent to the board by mail, fax or email, through online verification from the state of licensure);

(4) proof or documentation of residency and or employment in the area of the federal disaster.

B. The board may waive the following requirements for licensure:

(1) application fee's prorated for four months;

(2) the specific forms required under 16.20.3.8 if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in the board's rules and regulations.

D. Licenses issued under (this emergency provision) shall expire four months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before February 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.20.3.12 NMAC - N/E, 11-16-2005; Repr & A, 03-02-06; 16.20.3.12 NMAC - Rn, 16.20.3.11 NMAC, 8/1/09; A, 8/16/10]

16.20.3.14 INACTIVE LICENSE:

A. A license in good standing may be transferred to inactive status upon written request to the board. Such request shall be made prior to the expiration of the license.

B. Until the inactive license has been reactivated, the licensee may not practice physical therapy in New Mexico unless employed by the federal government.

C. An annual inactive fee must be submitted to the board as set forth in 16.20.5.8 NMAC.

D. A licensee may reactivate the license upon submission of the following:

(1) the renewal form for the year in which the licensee wishes to reactivate;

(2) payment of the annual renewal fee for the year in which the licensee wishes to reactivate;

(3) proof of fifteen (15) continuing education [units] contact hours for each year of inactive status;

~~[(4) additional proof of competency as requested and prescribed by the board will be required after five (5) years of an inactive license;]~~

~~[(5)](4)~~ passage of the jurisprudence examination;

~~[(6)](5) [completion of a verification of employment form for licensees that have practiced outside New Mexico while on inactive status.]~~ submit verification of licenses from other U.S. jurisdictions; verifications may be sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

(a) name and address of the applicant;

(b) license number and date of issuance;

(c) current status of the license;

(d) expiration date of the license;

(e) a statement as to whether the applicant was denied a license by the agency; and

(f) a statement as to whether any disciplinary action is pending or has been taken against the applicant.

E. A license can only be placed in an inactive status for four (4) years. [16.20.3.14 NMAC - Rn, 16.20.3.13 NMAC, 8/1/09; A, 8/16/10]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.4 NMAC Sections 8 and 10, effective 8/16/10.

16.20.4.8 TEMPORARY LICENSES FOR U.S. TRAINED APPLICANTS:

A. Upon receipt of an application form which evidences satisfactory completion of all application requirements for licensure as provided in Section 61-12-10 NMSA, of the Physical Therapy Act except passage of the NPTE,

the registrar of the board may issue to the applicant a non-renewable temporary license to practice physical therapy in New Mexico.

B. Under no circumstance will the non-renewable temporary license be valid for a period longer than 180 days.

C. Issuance of a temporary license may be denied if:

(1) the applicant has worked as a physical therapist or physical therapist assistant without a license in New Mexico;

(2) the applicant has violated the code of ethics of the American physical therapy association; or

(3) the applicant has failed the licensure examination in any state.

D. The holder of a temporary license **must** sit for the NPTE within 180 days after issuance of the temporary license. Failure to sit for the examination within 180 days, automatically voids the temporary license. Where the holder of the temporary license is a foreign national, the 180 days begin to run once the foreign national has entered the United States.

E. The holder of a temporary license may work only under the direct supervision of a New Mexico unrestricted licensed physical therapist who is on-site. The supervising physical therapist may **not** hold a temporary license. The supervising physical therapist shall be licensed in New Mexico with a minimum of six months experience in a clinical setting. Prior to the issuance of an applicant's temporary license, the supervising physical therapist shall file with the board a written statement assuming full responsibility for the temporary licensee's professional activities. Filing is effective upon receipt by the board. This statement shall remain in effect until licensure of the temporary licensee, or until expiration of the temporary license.

F. The temporary licensee may not provide physical therapy services until the temporary license is received and is posted in a conspicuous place at the temporary licensee's principle place of practice.

G. No supervising physical therapist shall be responsible for the simultaneous supervision of more than two temporary licensees.

H. The supervising physical therapist shall co-sign all evaluations, progress notes, and discharge summaries written by the temporary licensee.

I. The temporary license shall state the name and address of the licensee's place of employment. Should the place of employment [~~and/or~~] or the employer change during the period of temporary licensure, the temporary licensee **must** notify the board of any such change within five (5) work days of termination of employment. A new temporary supervisory

form from the new employer will be required before a revised temporary license is issued. The board will issue a revised temporary license as per the fee schedule as set forth in 16.20.5 NMAC, for each issuance; however, the date of issue and expiration will remain the same as the first temporary license.

J. The temporary supervisory form may be obtained from the board office.
[03-29-83; 02-19-88; 08-01-89; 09-03-92; 02-01-95; Rn & A, 16 NMAC 20.4, 10-15-97; 16.20.4.8 NMAC - Rn & A, 16 NMAC 20.4.8, 08-31-00; A, 03-02-06; A, 1-12-08; A, 8/1/09; A, 8/16/10]

16.20.4.10 TEMPORARY LICENSES FOR PT'S OR PTA'S TEACHING AN EDUCATIONAL SEMINAR:

A. Completion of an instructor license application and pay the non-refundable application fee as provided in Part 5.

[A:] B. The instructing physical therapist must provide the board with proof of a valid current license to practice from the state in which they are currently practicing. This verification of licensure must be received by the New Mexico board directly from the state board where the instructing therapist is licensed.

[B:] C. A temporary license may not be used to practice physical therapy for any other purposes than for the continuing education program for which it was issued.

[C:] D. This section applies only to educational seminars which include hands-on demonstrations.

[D:] E. A temporary license for an instructor shall only be valid through the end of the calendar year in which the license is issued.

[10-15-97; 16.20.4.10 NMAC - Rn & A, 16 NMAC 20.4.10, 08-31-00; A, 03-02-06; A, 8/16/10]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.5 NMAC Section 8, effective 8/16/10.

16.20.5.8 SCHEDULE OF FEES: The following fees shall be nonrefundable.

A. Application for full licensure:

- (1) physical therapist: \$250.00;
- (2) physical therapist assistant: \$200.00.

B. Request for temporary license: \$35.00; revised temporary license: \$10.00.

C. Jurisprudence exam: \$25.00; applicants who fail to pass this exam

will need to pay the fee for each subsequent exam taken.

D. National physical therapy examination: contact the board for the current fees set by the testing contractor for both physical therapists and physical therapist assistants.

E. Biennial renewal:
(1) physical therapist: \$160.00;
(2) physical therapist assistant: \$120.00.

F. Penalty for late renewal:
(1) physical therapist: \$250.00;
(2) physical therapist assistant: \$200.00.

G. Replacement license: \$25.00; a replacement license may be provided subject to administrative review.

H. Mailing list (paper copy): \$250.00.

I. Electronic list: \$250.00.
J. Verification of licensure by endorsement: \$30.00.

K. Continuing education approval for course provider: to be determined by board designee.

L. Copy charge for public records (per page): \$0.25.

M. Returned check charge (per check): \$25.00.

N. Other administrative fees, i.e., credit card transactions, bank fees.

O. Inactive status fees:
(1) inactive status fee: \$20.00;
(2) reactivation fee for physical therapists: \$160.00;

(3) reactivation fee for physical therapist assistants: \$120.00;

P. Instructor license fee:
\$50.00

[10-15-97; 16.20.5.8 NMAC - Rn & A, 16 NMAC 20.5.8, 08-31-00; A, 11-01-04; A, 03-02-06; A, 1-12-08; A, 8/1/09; A, 8/16/10]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.6 NMAC Section 8, effective 8/16/10.

16.20.6.8 PHYSICAL THERAPIST ASSISTANTS:

A. A physical therapist assistant may work only under the direction and supervision of a New Mexico physical therapist who is licensed pursuant to Section 61-12-10, (A) and (B) of the Physical Therapy Act. The referring physical therapist shall assume full responsibility for the professional activities of the assistant which are undertaken pursuant to his/her direction or supervision.

B. A physical therapist may not be responsible for the direction and supervision of more than two full-time physical therapist assistants or two FTE's

(full-time equivalency, totaling eighty (80) work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, or full-licensed physical therapist assistants.

C. A physical therapist may supervise more than two physical therapist assistants provided combined FTE's do not exceed (80) hours per week.

D. The direction and supervision of the physical therapist assistant shall require the following:

(1) the referring physical therapist is responsible for the patient's care;

(2) when physical therapy services are being provided, a licensed physical therapist must be on call and readily available for consultation by phone, electronic mail or cellular phone when the referring physical therapist leaves the immediate area of his/her practice;

(3) the referring physical therapist will formulate a current written plan of care for each patient; the referring physical therapist will review the plan of care periodically, within ninety (90) days;

(4) ~~the scope of practice for a physical therapist assistant is described in the American physical therapy association documents HOD-P06-05-18-26 and HOD-P06-00-30-36;~~ the physical therapist should only delegate interventions to physical therapist assistant's that are competent and trained in these interventions; the physical therapist assistant shall not:

(a) interpret referrals;

[~~(a)~~] ~~(b)~~ specify [~~and/or~~] or perform definitive (initial, progress/re-evaluation, discharge) evaluative and assessment procedures; [~~or~~]

[~~(b)~~] ~~(c)~~ alter goals or a plan of care; or

~~(d) determine when to utilize the physical therapist assistant to perform selected interventions of physical therapy care.~~

(5) the physical therapist assistant may sign daily notes without the physical therapist's co-signing; each daily treatment note in a patient's permanent record completed by a [PTA] physical therapist assistant must include the name of the referring physical therapist; and

(6) the physical therapist assistant shall respond to acute changes in the patient's physiological state; the physical therapist assistant shall notify the referring physical therapist of those changes prior to the next treatment session.

[03-29-83; 02-19-88; 08-01-89; 05-08-91; 09-03-92; 05-01-96; 16 NMAC 20.6.8 - Rn & A, 16 NMAC 20.7, 10-15-97; 16.20.6.8 NMAC - Rn, 16 NMAC 20.6.8, 08-31-00; A, 03-02-06; A, 1-12-08; A, 4-15-10; A, 8/16/10]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.7 NMAC Sections 7 and 9, effective 8/16/10.

16.20.7.7 DEFINITIONS:

~~[RESERVED]~~ "Unlicensed physical therapy assistive personnel (physical therapy aide or other assistive personnel)" means a person trained under the direction of a physical therapist who performs designated and supervised routine physical therapy tasks related to physical therapy services.

[10-15-97; 16.20.7.7 NMAC - Rn, 16 NMAC 20.7.7, 08-31-00; A, 1-12-08; A, 08/01/09; A, 8/16/10]

16.20.7.9 SUPERVISION OF UNLICENSED ~~[PHYSICAL THERAPY AIDES]~~ ASSISTIVE PERSONNEL ~~(PHYSICAL THERAPY AIDE/TECHNICIAN/ATTENDANT):~~

A licensed physical therapist may only supervise unlicensed aides working as caregiving assistive personnel, provided the assistive personnel's combined full time equivalency does not exceed 80 hours per week.

[10-15-97; 16.20.7.9 NMAC - Rn, 16 NMAC 20.7.9, 08-31-00; A, 1-12-08; A, 08/01/09; A, 8/16/10]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.8 NMAC Sections 9 and 12, effective 8/16/10.

16.20.8.9 CONTINUING EDUCATION REQUIREMENT:

Continuing education is required for license renewal of physical therapists and physical therapist assistants in order to ensure that New Mexico licensees are providing the highest quality professional services.

A. Thirty (30) hours of continuing education will be required biennially. All continuing education hours must be earned during the current two (2) year renewal period of February 1 through January 31.

~~[B. The licensee is responsible to retain all documentation of attendance for a minimum of two (2) years immediately preceding the current renewal.]~~

~~[C.]B.~~ The board shall audit a percentage of renewal applications each year to verify the continuing education requirement. If the licensee is audited, proof of participation in or presentation of continuing education activity must be submitted along with a renewal form.

(1) If a notice of audit is received with the ~~[annual]~~ license renewal notice, the

licensee must submit evidence of continuing education hours earned during the current biennial renewal cycle to the board as requested and as required in the Physical Therapy Act and by this rule.

(2) If the licensee is **not audited**, the licensee will have to sign an affidavit attesting to the completion of the required hours of continuing education and ~~[all documentation of attendance and agendas should be retained by the licensee for a minimum of two (2) years]~~ the licensee shall retain all documentation of attendance for the previous cycle immediately preceding the current renewal.

(3) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

~~[D.]C.~~ Licensees serving in the armed forces reserve or national guard.

(1) The license of a physical therapist or physical therapist assistant who does not earn the required continuing education contact hours as provided in this section due to his or her call to active duty in the armed forces reserves or the New Mexico national guard, will not lapse for failure to earn continuing education hours.

(2) A physical therapist or physical therapist assistant who was or is called to active duty in the armed forces reserves or New Mexico national guard is required to provide official documentation that the licensee is a member of the armed forces reserves or the national guard and was or is being called to active duty.

(3) Upon the physical therapist or physical therapist assistant's return to civilian status, the licensee shall pay the license renewal fee and resume earning continuing education contact hours prorated according to the licensee's months of service as required to maintain his or her licensure as a physical therapist or physical therapist assistant.

[10-15-97; 16.20.8.9 NMAC - Rn & A, 16 NMAC 20.8.9, 08-31-00; A, 02-15-04; A, 03-02-06; A, 1-12-08; 16.20.8.9 NMAC - Rn, 16.20.8.8 NMAC & A, 08/01/09; A, 8/16/10]

16.20.8.12 APPROVAL OF CONTINUING EDUCATION CONTACT HOURS:

A. The process for approval of continuing education is as follows:

(1) the board or its designee will approve each request for continuing education credit; course approval must be requested by the course sponsor prior to the course or retroactively; however, licensee's are not required to obtain approval but can request approval prior to a course or retroactively to ascertain that a course is acceptable as continuing education;

(2) the party requesting approval will be informed of the board's or designee's determination within sixty (60) calendar days of receipt of the request;

(3) the course sponsor or licensee whose request has been denied may appeal the denial at the next board meeting; and

(4) the same program may be provided more than one time and at different locations within the calendar year in which the fee was paid without the payment of additional fees.

~~[A.] B.~~ Programs must follow the criteria and guidelines established by the board as follows to receive continuing education credit ~~[on courses that have not received prior approval from the board]:~~

(1) each program adheres to the board's American physical therapy association (APTA) definition for continuing professional education;

(2) each program addresses needs (problems and issues) faced by physical therapists and physical therapist assistants;

(3) each program has specific written learning outcomes (objectives) based on identified needs;

(4) each program is planned and conducted by qualified individuals;

(5) program content and instructional methods for each program are based on learning objectives; and

(6) participants demonstrate their attainment of the learning outcomes, (i.e., various methods can be used such as: questions, discussions, written oral exercises, problems, case studies, etc.); and

(7) ~~[the same program may be provided more than one time and at different locations within the calendar year in which the fee was paid without the payment of additional fees.]~~ programs approved by the APTA will be automatically accepted by the board.

~~[B. Prior approval of continuing education is not required; however, prior approval may be obtained upon request by the licensee.]~~

~~[C. Programs approved by the APTA will be automatically accepted by the board. Prior approval is not required.]~~

~~[D. Credit screening procedures as follows:]~~

~~(1) the board or its designee, must approve each request for continuing education credit;~~

~~(2) the party requesting approval will be informed of the board's determination within sixty (60) calendar days of receipt of the request; and~~

~~(3) an individual whose request has been denied may appear at the next board meeting following notice of denial to ask the board to reconsider its determination.]~~

~~[E.] C.~~ Final determination of values of continuing education will remain at the discretion of the board.

[F-] D. Programs considered appropriate for continuing education, include, but are not limited to those listed below.

(1) Live programs, (i.e., various programs such as workshops, seminars, two-way video conferencing, etc.) awarded by providing the board with the following:

- (a) certificate of completion;
 - (b) course schedule;
 - (c) learning outcomes (objectives);
- and
- (d) name of instructor and credentials; (up to thirty (30) contact hours will be accepted).

[H+] (2) In the case of university or college courses taken for credit, provide the board with:

- (a) name of course;
- (b) number of course credit hours;
- (c) inclusive dates of attendance;
- (d) name of instructor and instructor's credentials;
- (e) published course description from college or university;
- (f) completed transcript or grade report with a passing grade of "C" or better;
- (g) name of institution; and
- (h) brief course summary demonstrating the course's relationship to physical therapy; (maximum twenty (20) contact hours are awarded for each 3 credit course).

[F-] (3) Physician in-service programs or regular physical therapy staff in-service programs, provide the board with:

- (a) name of program;
- (b) number of hours spent in program;
- (c) inclusive dates of attendance;
- (d) name of instructor or supervisor of program; documentation of instructor background and expertise;
- (e) name of institution; and
- (f) brief course summary demonstrating the course's relationship to physical therapy; (maximum allowed [per year] biennially is [four (4)] eight (8) contact hours).

[F-] (4) Management courses: (maximum allowed [per year] biennially is [ten (10)] fifteen (15) contact hours.)

[F-] ~~(4) Published works, includes abstracting for professional journal, awarded on an individual basis, provide the board the following:~~

- ~~(a) provide a copy of the publication written which will be returned to the licensee upon request; and~~
- ~~(b) publication must be published in the year for which the contact hours are requested; (maximum allowed per year is twenty (20) contact hours);~~

(5) Preparation [and/or] or presentation of a workshop/in-service, awarded on a case by case basis for any one given presentation, by providing the board

the following:

(a) proof of preparation may be an outline, copy of handouts, copy of overheads or transparencies, and

(b) a copy of the agenda showing name of licensee as presenter; (maximum allowed [per year] biennially is [ten (10)] fifteen (15) contact hours);

(c) contact hours for the presenter will be calculated at three (3) times the number of hours of audience participation (e.g., a two hour workshop equals 6 hours for the presenter).

(6) Certificate courses for an advanced specialty, provide the board a certificate of completion signed by the program sponsor. (Maximum allowed [per year] biennially is [twenty (20)] thirty (30) contact hours.)

~~[(7) Video tapes, cassettes, or satellite programs, provide the board the following:~~

- ~~(a) name of video;~~
- ~~(b) name of instructor;~~
- ~~(c) instructor's credentials;~~
- ~~(d) number of minutes;~~
- ~~(e) summary (subject of video, what was learned, and how it related to the physical therapy scope of practice or the licensee's position; and~~
- ~~(f) signature (the licensee's and a supervisor's); (maximum allowed per year is ten (10) contact hours);~~

[(8)] (7) Reading [a book] journal articles, provide the board the following:

- (a) [name of book] title of article and journal;
- (b) author and author's credentials; and
- [(c)] (c) summary (subject of [book] article, what was learned, and how it relates to the physical therapy scope of practice or the licensee's position; [and] (maximum allowed per article is one-half (.5) contact hour); (maximum allowed biennially is fifteen (15) contact hours).

~~[(e)] (e) signature (the licensee's and a supervisor's); (maximum allowed per book is two (2) contact hours); (maximum allowed per year is four (4) contact hours);~~

[(9)] (8) Conducting physical therapy research, provide the board the following:

(a) title and description of research project, including brief timeline;

(b) names of other persons involved in project (i.e., co-investigators or supervisors);

(c) a brief statement indicating how participation in the project is related to the licensee's present or future position in the field of physical therapy;

(d) a brief statement indicating how participation in the project is benefiting the applicant's therapy skills or research skills; and

(e) provide a copy of the research report (if project has been completed); (if report is incomplete), credit will be allowed by providing the listed information or by receipt of the college transcript; (the board will determine the number of contact hours allowed); (maximum allowed biennially is thirty (30) contact hours).

~~[(10)] (9) Home study courses, [provide the board a copy of the certificate of completion provided by the program provider;] awarded by providing the board with the following:~~

- ~~(a) certificate of completion;~~
 - ~~(b) course schedule;~~
 - ~~(c) learning outcomes (objectives);~~
- and

~~(d) name of instructor and credentials; (maximum allowed biennially is fifteen (15) contact hours).~~

~~[(11)] (10) Internet courses, [provide the board a copy of the certificate of completion provided by the program provider;] awarded by providing the board with the following:~~

- ~~(a) certificate of completion;~~
 - ~~(b) course schedule;~~
 - ~~(c) learning outcomes (objectives);~~
- and

~~(d) name of instructor and credentials; (maximum allowed biennially is fifteen (15) contact hours).~~

[(12)] (11) Alternative medicine seminars, provide the board a letter from the licensee explaining how the course relates to the physical therapy scope of practice. The board will approve these courses on a case by case basis.

[(13)] (12) Courses where certificates of attendance are not issued, provide the board the following:

(a) a canceled check for the course registration fee (submit copy of front and back of check);

(b) proof of transportation (i.e., copy of plane ticket and hotel receipt); and

(c) list of courses attended and hours attended (i.e., copy descriptions of courses and hours from program agenda).

[(14)] (13) Credit for supervising a student in clinical education, provide the board with a copy of the cover and signature page (with student's name blacked out to maintain confidentiality) of the student evaluation completed by the licensee-supervisor. One (1) continuing education contact hour may be approved for each forty (40) contact hours of supervision in clinical education. The maximum number of continuing education contact hours approved for supervision in clinical education is [ten (10)] sixteen (16) contact hours [per year] biennially. [A licensee may receive credit for clinical supervision under this provision only one time throughout the licensee's practice as a physical therapist or physical therapist assistant in the state of

New Mexico:]

[(15)] (14) **Residencies, fellowships, and examinations.**

(a) Successful completion of a specialty examination may be submitted for continuing education consideration. A list of the specialty examinations that qualify for continuing education will be maintained by the board. The maximum number of continuing education contact hours is thirty (30) [per-year] biennially.

(b) Successful completion of an American physical therapy association (APTA) credentialed residency or fellowship program may be submitted for continuing education consideration. The maximum number of continuing education contact hours is thirty (30) [per-year] biennially.

(c) Successful completion of an examination of the federation of state boards of physical therapy pertaining to continued competence may be submitted for continuing education consideration. The maximum number of continuing education contact hours is [fifteen (15) per-year] thirty (30) biennially.

(15) The American physical therapy association code of ethics for physical therapists and standards of ethical conduct for physical therapist assistants, online course or live program, awarded by providing the board with the following:

(a) certificate of completion;
(b) course schedule;
(c) learning outcomes (objectives);
and

(d) name of instructor and credentials; (the maximum number of contact hours awarded will be accepted).

(16) Education presentations on state and federal legislative updates, and APTA house of delegates at NMAPTA business meetings, awarded by providing the board with the following:

(a) proof of attendance;
(b) outline of agenda; and
(c) name of instructor and instructor's credentials; (maximum allowed biennially is eight (8) contact hours or four (4) contact hours annually).

[G.] E. Ineligible activities include, but are not limited to:

(1) orientation and in-service programs dealing with organizational structures, processes, or procedures;

(2) meetings for purposes of policy making;

(3) annual association, chapter, district, or organizational and non-educational meetings;

(4) entertainment or recreational meetings or activities;

(5) committee meetings, holding of offices, serving as an organizational delegate;

(6) visiting exhibits; and

[(7)] individual self-directed studies unless approved by APTA; and]

[(8)](7) CPR education.

[16.20.8.12 NMAC - Rn, 16.20.8.9 NMAC, 08/01/09; A, 8/16/10]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.10 NMAC Section 7, effective 8/16/10.

16.20.10.7 DEFINITIONS:

"Primary health care provider" means a health care professional who is licensed in the U.S. and provides the first level of basic or general health care for individual's health needs, including diagnostic and treatment services, and includes, but is not limited to, a physician (M.D., D.O., D.P.M.), doctor of veterinary medicine (D.V.M.), doctor of chiropractic (D.C.), doctor of dental surgery (D.D.S.), doctor of oriental medicine (D.O.M.), certified nurse practitioner (C.N.P.), certified nurse-midwife (C.N.M.), licensed midwife (L.M.), and physician assistant (P.A.) practicing under the auspices of one of the providers listed herein.

[12-15-97; 16.20.10.7 NMAC - Rn, 16 NMAC 20.10.7, 08-31-00; A, 02-15-04; A, 8/16/10]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

TITLE 13 INSURANCE CHAPTER 2 I N S U R A N C E COMPANY LICENSING AND OPERATION PART 9 PROPERTY AND CASUALTY ACTUARIAL OPINIONS

13.2.9.1 ISSUING AGENCY: Public Regulation Commission, Insurance Division.

[13.2.9.1 NMAC - N, 07/30/2010]

13.2.9.2 SCOPE: This rule applies to property and casualty insurance companies conducting business in New Mexico.

[13.2.9.2 NMAC - N, 07/30/2010]

13.2.9.3 STATUTORY AUTHORITY: Sections 59A-2-9 and 59A-5-29 NMSA 1978.

[13.2.9.3 NMAC - N, 07/30/2010]

13.2.9.4 DURATION: Permanent.

[13.2.9.4 NMAC - N, 07/30/2010]

13.2.9.5 EFFECTIVE DATE:

July 30, 2010 unless a later date is cited at the end of a section.

[13.2.9.5 NMAC - N, 07/30/2010]

13.2.9.6 OBJECTIVE: The purpose of this rule is to require the annual filing of a statement of actuarial opinion by the appointed actuary of each property and casualty insurance company doing business in New Mexico, and the annual filing of an actuarial opinion summary by the appointed actuary of each property and casualty insurance company domiciled in New Mexico.

[13.2.9.6 NMAC - N, 07/30/2010]

13.2.9.7 DEFINITIONS: For the purpose of this rule:

A. "actuarial board for counseling and discipline" means the board established by the American academy of actuaries and related U.S. actuarial organizations to strengthen their members' adherence to recognized standards of ethical and professional conduct;

B. "actuarial opinion" means the opinion of an appointed actuary regarding the adequacy of the reserves in accordance with applicable actuarial standards of practice;

C. "actuarial report" means a document or other presentation, prepared as a formal means of conveying the actuary's professional conclusions and recommendations, of recording and communicating the methods and procedures, of assuring that the parties addressed are aware of the significance of the actuary's opinion or findings and that documents the analysis underlying the opinion;

D. "annual statement" means that statement required by Section 59A-5-29 NMSA 1978 to be filed by the company with the office of the superintendent annually;

E. "appointed actuary" means a qualified actuary who was appointed by the company's board of directors, or its equivalent, or by a committee of the board, by December 31 of the calendar year for which the opinion is rendered;

F. "company" means an insurer authorized to write property or casualty insurance under the laws of any state and who files on the property and casualty blank;

G. "qualified actuary" means a person who is either a member in good standing of the casualty actuarial society, or a member in good standing of the American academy of actuaries who has been approved as qualified for signing casualty loss reserve opinions by the casualty practice council of the American academy of actuaries.

[13.2.9.7 NMAC - N, 07/30/2010]

**13.2.9.8 ACTUARIAL
OPINION OF RESERVES AND
SUPPORTING DOCUMENTATION:**

A. Statement of actuarial opinion. Every property and casualty insurance company doing business in New Mexico, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled "statement of actuarial opinion." This opinion shall be filed in accordance with the appropriate national association of insurance commissioners property and casualty annual statement instructions.

B. Actuarial opinion summary.

(1) Every property and casualty insurance company domiciled in New Mexico that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate national association of insurance commissioners property and casualty annual statement Instructions and shall be considered as a document supporting the actuarial opinion required in Subsection A of this section.

(2) A company licensed but not domiciled in New Mexico shall provide the actuarial opinion summary upon request.

C. Actuarial report and workpapers.

(1) An actuarial report and underlying workpapers as required by the appropriate national association of insurance commissioners property and casualty annual statement instructions shall be prepared to support each actuarial opinion.

(2) If the insurance company fails to provide a supporting actuarial report or workpapers at the request of the superintendent or the superintendent determines that the supporting actuarial report or workpapers provided by the insurance company is otherwise unacceptable to the superintendent, the superintendent may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers.

D. The appointed actuary shall not be liable for damages to any person (other than the insurance company and the superintendent) for any act, error, omission, decision or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

[13.2.9.8 NMAC - N, 07/30/2010]

13.2.9.9 CONFIDENTIALITY:

A. The statement of actuarial opinion shall be provided with the annual statement in accordance with the appropriate national association of insurance

commissioners property and casualty annual statement instructions and shall be treated as a public document.

B. Documents, materials and other information.

(1) Documents, materials or other information in the possession or control of the insurance division that are considered an actuarial report, workpapers or actuarial opinion summary provided in support of the opinion, and any other material provided by the company to the superintendent in connection with the actuarial report, workpapers or actuarial opinion summary, shall be confidential by law and privileged, shall not be a public record, shall not be subject to inspection, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(2) This provision shall not be construed to limit the superintendent's authority to release the documents to the American academy of actuaries' actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and that the actuarial board for counseling and discipline establishes procedures satisfactory to the superintendent for preserving the confidentiality of the documents, nor shall this section be construed to limit the superintendent's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the superintendent's official duties.

C. Neither the superintendent nor any person who received documents, materials or other information while acting under the authority of the superintendent shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection B of this section.

D. In order to assist in the performance of the superintendent's duties, the superintendent:

(1) may share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection B of this section with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality; and

(2) may receive documents, materials or information, including otherwise confidential and privileged documents,

materials or information, from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in Subsection D of this section.

[13.2.9.9 NMAC - N, 07/30/2010]

HISTORY OF 13.2.9 NMAC:
[RESERVED]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF REGIONAL HAZE STATE IMPLEMENTATION PLAN HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing commencing on October 4, 2010, and continuing until completed, at Room 317, State Capitol Building (Roundhouse), 490 Old Santa Fe Trail, Santa Fe, New Mexico, for the purpose of hearing the matter in EIB No. 10-05 (R), the New Mexico Environment Department's ("NMED") proposal to adopt revisions to the New Mexico State Implementation Plan for Regional Haze. The proposed Plan establishes requirements for New Mexico to meet the requirements of 40 CFR Section 51.308, including a determination of Best Available Retrofit Technology for nitrogen oxides for the San Juan Generating Station. The Department also believes and will advocate to the U.S. EPA that the proposed plan satisfies New Mexico's obligation to prohibit emissions that would interfere with measures adopted by other states to protect visibility, in accordance with the federal Clean Air Act, 42 U.S.C. Section 7410 (a) (2)(D)(i)(II).

The proposed plan may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Road, Building B, Santa Fe, New Mexico, on NMED's web site at www.nmenv.state.nm.us, or by contacting Rita Bates at (505) 476-4304 or rita.bates@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9, NMSA 1978, the Air Quality Control Act Section, 74-2-6, NMSA 1978, scheduling, procedural, and other orders entered by the Board or its Hearing Officer, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses.

Persons wishing to present technical testimony must file a written notice of intent including the following:

(1) identify the person for whom the

witness(es) will testify;

(2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;

(3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

(4) list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules; and

(5) attach the text of any recommended modifications to the proposed regulatory change.

The notice of intent should also identify the docket number, EIB No. 10-05(R). Notices of intent must be received in the Board's Office no later than 5:00 p.m. on September 3, 2010. The Board's office address is provided below:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Any person, including a member of the public, who wishes to present non-technical public comment, testimony, or exhibit may do so without prior notification either in writing at any time before the conclusion of the hearing or in person at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by September 17, 2010 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-9872. TDY users may access her number via the New Mexico Relay Network at (800) 659-8331.

The Board may make a decision on the proposed regulation at the conclusion of the hearing or may convene another meeting for that purpose.

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
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

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