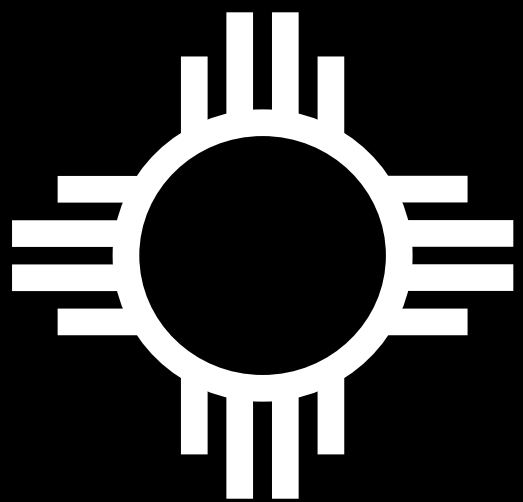


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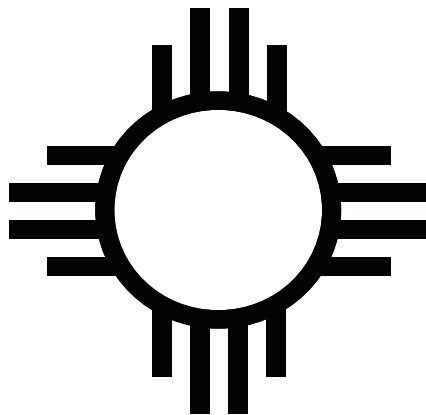


Volume XXII  
Issue Number 14  
July 29, 2011



# **New Mexico Register**

**Volume XXII, Issue Number 14**  
**July 29, 2011**



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  
2011

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# New Mexico Register

Volume XXII, Number 14

July 29, 2011

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### Adopted Rules

#### Effective Date and Validity of Rule Filings

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

*A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered*

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

#### NOTICE TO INTERESTED PARTIES

Notice is hereby given that the New Mexico Board of Chiropractics will hold a Rule Hearing and Regular Board Meeting on **August 30, 2011**. Following the Rule Hearing, the New Mexico Board of Chiropractics will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Chiropractics Rule Hearing will begin at 10:00 a.m. and the Regular Board Meeting will convene following the Rule Hearing. Portions of the regular meeting may be closed to the public while the Board is in Executive Session Pursuant to §10-15-1.H of the Open Meetings Act.

The meetings will be held at the Regulation and Licensing Department, **2550 Cerrillos Road, Santa Fe, NM 87505**.

The purpose of the Rule Hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules and Regulations in Title 16, Chapter 4 NMAC: Part 1 General Provisions, Part 3 Requirements for Licensure, Part 4 License without Examination, Part 9 License Renewal Procedures, Part 10 Continuing Education, Part 12 Classification of Chiropractic Licensure, Part 13 Reinstatement of Chiropractic Licensure, Part 15 Chiropractic Advanced Practice certification Registry.

Copies of the proposed rule changes may be obtained by contacting the board office in writing at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4695, or from the board's website: <http://www.rld.state.nm.us/chiropractic> after **August 1, 2011**. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board office in writing no later than **August 23, 2011**. Persons wishing to present their comments at the hearing will need (9) copies of any comments or proposed changes for distribution to the Board and staff.

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

Board office at (505) 476-4695 at least two weeks prior to the meeting or as soon as possible.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 3, 2011 at 9:00 a.m. in Room 317 at the State Capital in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 11-06(R), proposed revisions to the New Mexico State Implementation Plan (SIP) regarding Air Quality Control Regulation 20.2.99 New Mexico Administrative Code (NMAC) (Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects).

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED regarding proposed revisions to 20.2.99 NMAC. These proposed revisions would incorporate provisions necessary to make 20.2.99 NMAC consistent with the federal transportation conformity rule, 40 CFR Part 93 - Determining Conformity of Federal Actions to State or Federal Implementation Plans - which was amended by the U.S. Environmental Protection Agency (EPA) on March 24, 2010. To meet the requirements of Section 176(c) of the Clean Air Act, 20.2.99 NMAC must comply with the revisions to the federal transportation conformity rule. Upon adoption by the Board, the proposed revisions to 20.2.99 NMAC would be submitted to EPA for incorporation into New Mexico's SIP.

The NMED will host an informational open house on the proposed revisions to 20.2.99 NMAC at the NMED Air Quality Bureau Office, 1301 Siler Rd, Building B, Santa Fe, New Mexico 87507, from 12:00p.m.-3:00p.m. on August 24, 2011. To attend the informational open house, please contact Gail Cooke at 505-476-4319 or [gail.cooke@state.nm.us](mailto:gail.cooke@state.nm.us).

The proposed revised regulation may be reviewed during regular business hours at

the NMED Air Quality Bureau office, 1301 Siler Road, Building B, Santa Fe, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Gail Cooke at (505) 476-4319 or [gail.cooke@state.nm.us](mailto:gail.cooke@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, 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 with the Board a written notice of intent to do so. The notice of intent shall:

- (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, each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on September 16, 2011 and should reference the docket number, EIB 11-06 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Felicia Orth, Acting Board Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room 3056-N  
Santa Fe, NM 87502  
Phone: (505) 827-0339, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with

his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by September 16, 2011 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 please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### Notice of Public Meeting and Rulemaking Hearing

The New Mexico Environmental Improvement Board (Board) will hold a public hearing at its regularly convened meeting on October 3, 2011 at 9 a.m. and continuing on October 4, 2011, if necessary, in Room 317, State Capitol, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501. The hearing location may change prior to October 3, and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oots/eib.htm> prior to the hearing. The purpose of the hearing in the matter EIB No. 11-13 (R) is to consider proposed amendments to Petroleum Storage Tank Regulations, 20.5.1 NMAC (General Provisions), 20.5.2 NMAC (Registration of Tanks), 20.5.4 NMAC (New and Upgraded Storage Tank Systems), 20.5.5 NMAC (General Operating Requirements), 20.5.6 NMAC (Release Detection), 20.5.7 NMAC (Reporting and Investigation of Suspected and Confirmed Releases), 20.5.10 NMAC (Administrative Review), 20.5.12 NMAC (Corrective Action for Storage Tank Systems Containing Petroleum Products), 20.5.13 NMAC (Corrective Action for UST Systems Containing Other Regulated Substances), 20.5.14 NMAC (Certification of Tank Installers), 20.5.16 NMAC (Qualification of Persons Performing Corrective Action), and 20.5.18 NMAC (Operator Training). The Board is also considering the adoption

of a proposed new rule, 20.5.19 NMAC (Delivery Prohibition). The New Mexico Environment Department (NMED) is the proponent of the amendments and new rule.

The federal Energy Policy Act of 2005, 42 U.S.C. sec. 15801 et seq., requires that states implement programs to prohibit the delivery, deposit, or acceptance of product to an underground storage tank that has been determined to be ineligible. The New Mexico State Legislature provided the statutory authority for compliance with this requirement in 2010, including above ground storage tanks in the delivery prohibition program (HB 81). A proposed new rule would implement these requirements, establishing mandatory and discretionary classifications for ineligible facilities; providing opportunity to correct violations before a facility is deemed ineligible; requiring removal of regulated substances within a specified timeframe; providing a red-tag mechanism for identification of ineligible facilities; allowing prompt return to operation upon reclassification; authorizing a deferral for rural and remote facilities; authorizing deferral in emergency situations and for tank testing; prohibiting tampering; and providing an expedited appeal process.

In addition to complying with these federal and state requirements, HB 81 also eliminated the exemption for emergency generator tanks and expanded the exemption for heating oil tanks in the Hazardous Waste Act and the Groundwater Protection Act, which are included as proposed rule amendments. Other major changes to the proposed rules would clarify and expand on secondary containment requirements for underground storage tanks (UST) and above ground storage tanks (AST), including extending the deadline for closing or upgrading existing AST secondary containment; clarify the support and concrete foundation requirements for installation of AST tanks; extend tank tightness testing requirements; clarify visual inspection requirements for AST systems; add reporting requirements for leak detector testing; add threshold standards for reporting a release; expand the list of persons who may seek review of NMED determinations; change clean up requirements to reduce the costs that the Corrective Action Fund will pay; change vapor mitigation standards to meet federal requirements; streamline and clarify the renewal process for certified tank installers; add an operator training exemption for temporarily closed tanks; extend timelines for NMED review of trainer applications; and add provisions providing for revocation or suspension of a trainer's certificate.

Please note that formatting and minor

technical changes in the regulations other than those proposed by petitioners may be proposed at the hearing. In addition, the Board may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. In addition, a copy of the Bureau's proposed amendments and Petition and Statement of Reasons are posted on the NMED website at <http://www.nmenv.state.nm.us/ust/draftregs.html>.

Written comments regarding the proposed revisions may be addressed to Ms. Felicia Orth at the above address, and should reference docket number EIB 11-13 (R).

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 Hazardous Waste Act, Section 74-4-5 NMSA 1978, 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. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing. A witness may participate by telephone when an emergency or other circumstances dictate, and must receive permission from the hearing officer sufficiently in advance of the hearing.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so on or before 5:00 pm on September 15, 2011. The notice of intent shall:

1. identify the person or entity 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 his or her 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. attach the text of any recommended modifications to the proposed changes; and
5. list and describe, or attach, each exhibit anticipated to be offered by that person at the



hearing, including any proposed statement of reasons for adoption of the rules.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on September 15, 2011, and should reference the name of the regulation, the date of the hearing, and docket number EIB 11- 13(R). Notices of intent to present technical testimony shall be submitted to:

Felicia Orth, Acting Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2153  
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley at the Human Resources Bureau by September 15, 2011. The Human Resources Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network at 1-800-659-1779.

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

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## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.1.1 NMAC.

The New Mexico Environmental Improvement Board will hold a public hearing beginning at 9:00 a.m. on October 3, 2011 at the New Mexico State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico to consider proposed amendments to the Board's Rulemaking Procedures, 20.1.1 NMAC, proposed by Felicia Orth in EIB Docket Number 11-14(R).

The proposed rule changes include earlier filing of rulemaking petitions to allow greater time for Board review, enhanced requirements for filing notices of intent to present technical testimony and public comment, a new section on motions and other changes intended to standardize procedures used in rulemaking and make possible the effective presentation of evidence. The Board may make other changes as necessary to accomplish its purpose of assuring that hearings are conducted in a fair and equitable manner in response to public comments and evidence presented at the hearing.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. In addition, copies of the proposed amendments are posted on the NMED website at <http://www.nmenv.state.nm.us/eib/index.html>.

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, and other applicable procedures. Written comments regarding the proposed revisions may be addressed to Ms. Felicia Orth at the above address; reference docket number EIB 11-14(R).

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

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The requirements for a notice of intent can be found at 20.1.1 NMAC and may be modified by procedural orders entered in this matter, which may be obtained from the Administrator. Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on September 16, and should reference the name of the regulation, the date of the hearing, and the docket number EIB 11-14 (R).

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by September 16, 2011. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

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**NEW MEXICO HUMAN SERVICES DEPARTMENT**  
INCOME SUPPORT DIVISION

Notice of Public Hearing

This Human Services Register requests public comments on the annual 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) 2012 and to make any adjustments to the LIHEAP Federal poverty guidelines (FPG) as required by federal statute.

The Department proposes to administer LIHEAP in FFY 2012 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 2012 LIHEAP State Plan.

The current regulations can be viewed on the internet at [http://www.nmcpr.state.nm.us/nmac/ title08/T08C150.htm](http://www.nmcpr.state.nm.us/nmac/title08/T08C150.htm)

Individuals wishing to request a copy of the current 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 87195-2495, or by calling 1-888-523-0051.

The Department proposes to implement these regulations effective October 1, 2011.

A public hearing to receive testimony on these proposed regulations will be held September 6, 2011 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:

Sidonie Squier, Secretary  
State of New Mexico  
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](mailto:loretta.williams@state.nm.us)

These comments must be received no later than 5:00 P.M., on September 6, 2011. 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 15, 2011 by:

Sidonie Squier, Secretary  
Human Services Department

NM LIHEAP Proposed Income/Points Guide FFY 2012  
October 2011 - September 2012

Household Eligibility

- \* ID
- \* Heating or Cooling Expense
- \* Reside in New Mexico
- \* US Citizenship or Qualified Immigrant
- \* Social Security Number
- \* Income no more than 150% of poverty

Income Eligibility - 150% of Poverty

Household Size	Monthly	Annual
1	\$1362	\$16,335

2	\$1839	\$22,065
3	\$2317	\$27,795
4	\$2794	\$33,525
5	\$3272	\$39,255
6	\$3749	\$44,985
7	\$4227	\$50,715
8	\$4704	\$56,445
Each +	\$ 478	\$ 5,730

Benefit Points

A -Energy

Highest Energy Bill divided by Income

16% or greater	3 Points
11% - 15%	2 Points
6% - 10%	1 Point
5% <	0 Points
Propane additional	2 Points

Energy Standard Allowance \$160 (FFY 2011)  
(to be determined for FFY 2012)

B - Income

HH Size	3 Points	2 Points
1	\$ 908	\$ 1362
2	\$ 1226	\$ 1839
3	\$ 1545	\$ 2317
4	\$ 1863	\$ 2794
5	\$ 2181	\$ 3272
6	\$ 2500	\$ 3749
7	\$ 2818	\$ 4227
8	\$ 3136	\$ 4704
Each +	\$ 319	\$ 478

C - Vulnerable Members

Age 5 or younger	2 Points
Age 60 or older	2 Points
Disabled	2 Points

Point Values - \$16 per point

Points	HH Benefit Amount
2	\$ 32
3	\$ 48
4	\$ 64
5	\$ 80
6	\$ 96
7	\$ 112
8	\$ 128
9	\$ 144
10	\$ 160
11	\$ 176
12	\$ 192
13	\$ 208
14	\$ 224

**NEW MEXICO HUMAN SERVICES DEPARTMENT**  
MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on Wednesday, August 31, 2011, at 9:00 a.m. in the South Park Conference Room, Ste. 500-590 in Santa Fe, NM.

The subject of the hearing is Newborn Eligibility: 12 Months Continuous Eligibility; and Family Planning. The Human Services Department is proposing a change to Newborn Medicaid (Category 031). The Children's Health Insurance Program Reauthorization Act (CHIPRA) eliminates the Medicaid requirement that to receive coverage the newborn has to live with the mother.

Additionally, the 12 month continuous eligibility provision is being revised to clarify that it does not apply when there is a death of a household member, the member or family moves out of state, or a child turns 19 years of age. Medicaid Eligibility - Pregnancy or Family Planning Services Category (Category 035) is being revised to remove language of age restriction and creditable health coverage.

Interested persons may submit written comments no later than 5:00 p.m., August 31, 2011, to Sidonie Squier, 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/2011](http://www.hsd.state.nm.us/mad/registers/2011) or by sending a self-addressed

stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF A RULEMAKING TO )  
DELEGATE TO THE TRANSPORTATION )  
DIVISION THE AUTHORITY TO ASSESS )  
ADMINISTRATIVE PENALTIES AND )  
SUSPEND OPERATING AUTHORITY )  
\_\_\_\_\_ )**

**Case No. 11-00277-TR-P**

**NOTICE OF PROPOSED RULEMAKING**

**THIS MATTER** comes before the Commission on its own motion. The New Mexico Public Regulation Commission (“Commission”), as provided for under the Motor Carrier Act NMSA 1978, Section 8-8-4(B)(2), proposes to adopt rules regarding the delegation of the Commission’s authority to assess administrative penalties and suspend operating authorities to the Commission’s Transportation Division under Motor Carrier Act NMSA 1978, Sections 65-2A-4, 65-2A-27, and 65-2A-32.

**THE COMMISSION FINDS AND CONCLUDES:**

- 1. The Motor Carrier Act (“the Act”) at NMSA 1978, Section 65-2A-32 authorizes the Commission to assess an administrative fine of not more than ten thousand dollars (\$10,000) for each violation of the Act’s provisions or of a lawful rule or order of the Commission.
- 2. NMSA 1978, Section 65-2A-27 of the Act authorizes, and in certain cases requires, the Commission to suspend the operating authority of a motor carrier for failure to comply with a provision of the Act, including the failure to continuously maintain the forms and amounts of financial responsibility prescribed by Commission rule.
- 3. NMSA 1978, Section 65-2A-4(B)(1) of the Act authorizes the Commission to “designate inspectors... who shall have the authority of peace officers in the state’s political subdivisions with respect to a law or rule that the commission is empowered to enforce...”
- 4. NMSA 1978, Section 8-8-4(B)(2) expressly authorizes the Commission to delegate its authority to subordinates as it deems necessary and appropriate, clearly delineating such delegated authority and any limitations.
- 5. The Commission finds that it would be beneficial in terms of administrative efficiency to delegate certain enforcement powers to the Transportation Division. Under current practices all enforcement cases must go through a resource intensive process involving preparation of a formal complaint, Commission evaluation, issuance of an order to show cause, and then a hearing and issuance of a Commission final order. This tends to discourage staff from pursuing all but the most severe violations. In addition, when staff does pursue an enforcement action it causes respondent to incur legal and other expenses that are often disproportionate to the underlying violation.
- 6. The Commission should commence a rulemaking proceeding for the purpose of permitting staff to issue modest administrative penalties for violations of the Motor Carrier Act and Transportation Rules. The rules should preserve the motor carriers’ due process rights in the event they choose to dispute staff’s findings of a violation or protest the penalty, while allowing for resolution of the matter with a minimum of expense when violations are not contested.
- 7. The proposed addition of 18.3.5.16 NMAC “Assessment of Administrative Penalties” would allow the Investigators of the Transportation Compliance Bureau the ability to enhance the enforcement of the Motor Carrier Act.
- 8. The Commission should publish as proposed rules the language in Exhibit 1.

**Procedural Schedule**

- 9. The Commission will accept written comments on the rules contained in Exhibit 1 and proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments on the proposed rules no later than August 30, 2011. Any response comments shall be filed no later than September 9, 2011. Comments suggesting changes to the proposed rule 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 in legislative format. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice.
- 10. Written comments or written response comments shall be sent to:  
Melanie Sandoval  
New Mexico Public Regulation Commission  
Records and Docketing Division  
Attention: Case No. 11-00251-TRP  
P.O. Box 1269  
Santa Fe, NM 87504-1269
- 11. Copies of the proposed rules may be downloaded from the Commission’s website, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us).
- 12. The Commission will review all timely submitted written comments and will hold public comment hearings on the following date and at the following time and place:  
Thursday, September 15, 2011, at 2:00 p.m.  
4th Floor Hearing Room  
PERA Building  
1120 Paseo de Peralta  
Santa Fe, New Mexico
- 13. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.
- 14. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios

at 827-4501 at least 48 hours prior to the commencement of the hearing.

**15.** Commission Rule 1.2.3.7(B) (“Ex Parte Communications”) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as “ex parte communications.” In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be September 29, 2011. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission’s proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

**16.** Copies of this Notice should be sent to all persons on the attached Certificate of Service.

**IT IS THEREFORE ORDERED:**

A. The proposed rule, attached to this Notice of Proposed Rulemaking as Exhibit 1, are the proposed amendments for adoption as a permanent rule as provided by this Notice.

B. Initial comments on the proposed rule must be filed by August 30, 2011, and response comments must be filed by September 9, 2011.

C. A public comment hearing shall be held on **Thursday, September 15, 2011, at 2:00 p.m** at the offices of the Commission in Santa Fe, New Mexico, PERA Building, 1120 Paseo de Peralta, 4th Floor Hearing Room.

D. A copy of this Notice, including Exhibit 1, shall be mailed to all persons listed on the attached Certificate of Service. This Notice, excluding Exhibit 1, shall be published in two newspapers of general circulation in the State and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission’s web site.

E. 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 September 13, 2011 hearing date to all persons who have made a written request for advance notice.

F. This Notice is effective immediately.

**ISSUED** under the Seal of the Commission at Santa Fe, New Mexico, on this 14<sup>th</sup> day of July, 2011.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**PATRICK H. LYONS, CHAIRMAN**

**JEROME D. BLOCK, VICE CHAIRMAN**

**JASON A. MARKS, COMMISSIONER**

**THERESA BECENTI-AGUILAR, COMMISSIONER**

**BEN L. HALL, COMMISSIONER**

**End of Notices and Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.16.5 NMAC, Section 14, effective 08/01/2011

#### 21.16.5.14 PLACE-IN-SERVICE REPORT:

A. Within five (5) calendar days after a new or used device is installed, or a device that has been officially rejected has been repaired, the original of the properly executed place-in-service report shall be [mailed] sent to the department. The duplicate copy of the report shall be retained by the registered service establishment and the triplicate copy of the report shall be given to the owner or operator of the device.

~~B. Within five (5) calendar days after repairing a device that has been officially rejected, the bottom portion of the out-of-order form shall be completed by the registered service technician performing the repair and the form mailed to the department.~~

~~C.] B.~~ A place-in-service report for the types of devices specified below shall be accompanied by the registered service establishment's test report which shows the device was tested and performing within applicable tolerances at the time the device was placed into service:

(1) For scales above two thousand (2,000) pounds or one thousand (1,000) kilograms capacity, a test report shall be required which shows that certified test weights were applied to test the scale to used capacity or ten thousand (10,000) pounds or five thousand (5,000) kilograms whichever is less.

(2) For meters (liquid measuring devices) with a capacity of more than twenty (20) gallons or seventy five (75) liters per minute, a test report shall be required which shows that a volumetric prover of sufficient capacity to receive a test draft as specified in *NIST handbook 44* for the device under test was used to test and calibrate the device.

(3) For devices other than those described above, test reports may be required by the director if it is determined at his discretion that test reports are in the best interest of all concerned.

[7/1/97; 21.16.5.14 NMAC - Rn, 21 NMAC 16.5.14; A, 01/31/07; A, 08/01/11]

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 11 ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD PART 80 ADJUDICATORY PROCEDURES - ADMINISTRATIVE ENFORCEMENT HEARINGS BY DIRECTOR

**20.11.80.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[20.11.80.1 NMAC - N, 8/15/11]

#### **20.11.80.2 SCOPE:**

A. Except as otherwise specifically provided by statute or by another applicable board regulation, 20.11.80 NMAC governs:

(1) administrative appeals of administrative compliance orders as defined in Subsection D of 20.11.80.7 NMAC; and

(2) all other adjudicatory enforcement proceedings conducted by or on behalf of the department director if a board regulation establishes that 20.11.80 NMAC governs the proceeding.

B. 20.11.80 NMAC does not govern adjudicatory proceedings of the board regarding:

(1) petitions for variance and related stays, which are governed by 20.11.7 NMAC, *Variance Procedure*, as authorized by Section 74-2-8 NMSA 1978;

(2) petitions for a hearing on the merits before the board made by a permit applicant, permittee or person who participated in a permitting action before the department and who believes that the petitioner is adversely affected by the permitting action, which are governed 20.11.81 NMAC, *Adjudicatory Procedures - Air Quality Control Board*, as authorized by Section 74-2-7 NMSA 1978; and

(3) adoption, amendment and repeal of board regulations, which are governed by 20.11.82 NMAC, *Rulemaking Procedures - Air Quality Control Board*, as authorized by Section 74-2-6 NMSA 1978.

C. **Exempt:** 20.11.80 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the board lacks jurisdiction, or to administrative enforcement actions that

involve air care inspection stations, fleet air care stations, air care inspectors or the decentralized or centralized motor vehicle inspection program, which are governed by 20.11.100 NMAC and 20.11.101 NMAC respectively.

[20.11.80.2 NMAC - N, 8/15/11]

**20.11.80.3 STATUTORY AUTHORITY:** 20.11.80 NMAC is adopted pursuant to the authority of the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, specifically Sections 74-2-5, 74-2-5.1 and 74-2-12 NMSA 1978.

[20.11.80.3 NMAC - N, 8/15/11]

**20.11.80.4 DURATION:** Permanent.

[20.11.80.4 NMAC - N, 8/15/11]

**20.11.80.5 EFFECTIVE DATE:** August 15, 2011, unless a later date is cited at the end of a section.

[20.11.80.5 NMAC - N, 8/15/11]

**20.11.80.6 OBJECTIVE:** To govern the adjudicatory proceedings of the department and the director regarding administrative enforcement, provide due process for all parties and give an orderly structure to the proceedings.

[20.11.80.6 NMAC - N, 8/15/11]

**20.11.80.7 DEFINITIONS:** In addition to the definitions in 20.11.80 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definitions in 20.11.80 NMAC shall govern.

A. **"Act"** means the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978 and its subsequent amendments and successor provisions.

B. **"Air program"** means the board program within the municipal limits of Albuquerque and within the boundaries of Bernalillo county with a staff that is authorized to administer and enforce air quality pursuant to the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978.

C. **"Board"** means the Albuquerque-Bernalillo county air quality control board or its successor board under the act.

D. **"Compliance order"** means a written administrative compliance order, compliance determination or other administrative order or document that is issued by the manager of the air program or by the department, and which may include any combination of an allegation of violation, demand for penalty payment, or suspension or revocation of all or part of

a permit as authorized by the Air Quality Control Act, Section 74-2-12 NMSA 1978.

**E. "Complainant"** means the manager of the air program, also known as the air program manager, or other person designated by the director of the department to perform the functions of an air program manager.

**F. "Days"** means consecutive days except as otherwise specified.

**G. "Department"** means the city of Albuquerque environmental health department or the successor local agency as defined and authorized by the act.

**H. "Director"** means the administrative head of the department, the director's designee or a person who assumes the role of the director for purposes of 20.11.80 NMAC in the event of the director's disqualification or withdrawal.

**I. "Division"** means the air quality division of the department or the division's successor organizational unit.

**J. "Hearing clerk"** means the department employee designated by the director to provide staff support to the hearing officer and the director regarding the proceedings, issue subpoenas, and maintain the official record of the proceeding.

**K. "Hearing officer"** means the person appointed by the director to conduct a proceeding pursuant to 20.11.80 NMAC.

**L. "Party"** means the respondent, the air program and any person who is allowed by the hearing officer or director to intervene in the hearing pursuant to Rule 1-024 NMRA of the New Mexico rules of civil procedure for the district courts.

**M. "Record proper"** or "record" means all documents filed by or with the hearing clerk during the proceeding authorized by 20.11.80 NMAC and includes:

(1) the verbatim record of the hearing in the form of a transcript, tapes or other digital recording, as applicable, and all exhibits offered into evidence at the hearing, whether or not admitted;

(2) the hearing officer's findings of fact and conclusions regarding all material issues of law and discretion and the reasons therefor, the recommended decision and the proposed final order, as required by Subsection C of 20.11.80.16 NMAC; and

(3) the director's final order and reasons, as required by Subsection D of 20.11.80.16 NMAC.

**N. "Regulations"** means the rules promulgated by the board pursuant to the act.

**O. "Request for hearing"** means a written request to the department director for review of a compliance order pursuant to Subsection A of 20.11.80.13 NMAC.

**P. "Respondent"** means

the person to whom the air program manager has issued a compliance order.

[20.11.80.7 NMAC - N, 8/15/11]

**20.11.80.8 VARIANCES:** The variance procedures established in 20.11.7 NMAC shall not apply to 20.11.80 NMAC. [20.11.80.8 NMAC - N, 8/15/11]

**20.11.80.9 SAVINGS CLAUSE:** The filing of 20.11.80 NMAC, *Adjudicatory Procedures - Administrative Enforcement Hearings by Director*, and the filing of an amendment to 20.11.80 NMAC with the state records center and archives shall not affect an action pending for violation of the act, a city or county ordinance, a board regulation or a permit and shall not affect a compliance order that has been filed pursuant to 20.11.80 NMAC. Prosecution for violation of a prior statute, ordinance, regulation, part or permit shall be governed and prosecuted under the statute, ordinance, regulation, part or permit wording in effect at the time the violation was committed. [20.11.80.9 NMAC - N, 8/15/11]

**20.11.80.10 SEVERABILITY:** If for any reason any section, subsection, sentence, phrase, clause or wording of 20.11.80 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.80 NMAC. [20.11.80.10 NMAC - N, 8/15/11]

**20.11.80.11 DOCUMENTS:** Documents incorporated and cited in 20.11.80 NMAC may be viewed at the Albuquerque environmental health department, Suite 3023, One Civic Plaza, 400 Marquette NW, Albuquerque, New Mexico. [20.11.80.11 NMAC - N, 8/15/11]

**20.11.80.12 GENERAL PROVISIONS:**

**A. Applicability of rules of civil procedure and rules of evidence:** In the absence of a specific provision in 20.11.80 NMAC governing an action, the hearing officer may look to the New Mexico Rules of Civil Procedure, NMRA 1-001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for guidance. No provision of the rules of civil procedure shall be construed to extend or otherwise modify the authority and jurisdiction of the director.

**B. Liberal construction:** 20.11.80 NMAC shall be liberally construed to carry out its purpose.

**C. Director and hearing officer - powers and duties - disqualification and withdrawal:**

(1) **Director:** The director shall

exercise all powers and duties authorized and required by the act and 20.11.80 NMAC that are not otherwise delegated by 20.11.80 NMAC to the hearing officer or the hearing clerk. The director or hearing officer may specify procedures in addition to, or that vary from, the procedures provided in 20.11.80 NMAC in order to expedite the efficient resolution of the action or to avoid obvious injustice.

(2) **Hearing officer:** The director shall appoint a hearing officer or hearing officers to perform the functions described in Subparagraph (b) of Paragraph (2) of Subsection C of 20.11.80.12 NMAC.

(a) **Qualifications and disqualifications:** A hearing officer may be an independent contractor, a hearing officer at the city of Albuquerque office of administrative hearings or similar successor city organizational unit, an employee of the department who is not air program staff, or an employee of a different city department. A hearing officer shall not be:

(i) an employee of or staff for the air program;

(ii) an employee of or staff for the department unless employed by the department as a hearing officer;

(iii) a person who has a personal bias or prejudice concerning a party, has personal knowledge of disputed facts concerning the proceeding, is related to a party within the third degree of relationship or has a financial interest in the proceeding;

(iv) a person who has performed prosecutorial or investigative functions in connection with the matter at issue in the proceeding; or

(v) an officer, director or trustee of a party to the proceeding.

(b) **Hearing officer functions:** The hearing officer shall exercise all powers and duties required or delegated by the director pursuant to the act and 20.11.80 NMAC. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary to maintain order and the efficient, fair and impartial adjudication of issues arising in proceedings governed by 20.11.80 NMAC, including, but not limited to:

(i) conducting hearings authorized by 20.11.80 NMAC;

(ii) ruling upon motions, procedural requests and offers of proof, and issuing all necessary orders;

(iii) administering oaths and affirmations, examining witnesses and admitting or excluding evidence;

(iv) requiring parties to attend conferences for the settlement or simplification of issues, or for expediting proceedings;

(v) imposing sanctions,



subject to review and approval by the director, on parties who cause undue delay or fail to cooperate in the proceeding; and

(vi) filing with the hearing clerk all original documents received by the hearing officer.

**(3) Director and hearing officer; disqualification or withdrawal:**

(a) The director may not perform functions authorized by 20.11.80 NMAC regarding any matter in which the director:

(i) has a personal bias or prejudice concerning a party, has personal knowledge of disputed facts concerning the proceeding, is related to a party within the third degree of relationship or has a financial interest in the proceeding;

(ii) has performed prosecutorial or investigative functions in connection with the matter at issue in the proceeding; or

(iii) is an officer, director or trustee of a party to the proceeding.

(b) The director shall not be disqualified solely because the director has been briefed on the matter before a compliance order is issued.

(c) A party may request the withdrawal or disqualification of the director or the hearing officer by filing a motion that includes a reason for disqualification listed in either Subparagraph (a) of Paragraph (3) of Subsection C of 20.11.80.12 NMAC or Subparagraph (a) of Paragraph (2) of Subsection C of 20.11.80.12 NMAC, as applicable. The motion shall be filed within 10 days after the later of the date the compliance order has been docketed or the hearing officer has been designated, or, if a new director or new hearing officer is appointed, within 10 days after the new director takes office or the new hearing officer is appointed, as applicable.

(d) A motion seeking withdrawal or disqualification of the director or the hearing officer shall be ruled upon by the director. If the director withdraws or is disqualified, the duties of the director shall be assumed by an associate director, deputy director or other person who would not be subject to disqualification and does not directly oversee the air program.

**D. Recording of hearings:**

All hearings on the merits shall be recorded by a court reporter unless otherwise directed by the director or hearing officer. The recording made by the court reporter will be the sole official recording of the hearing. The hearing clerk shall make the transcription part of the record proper, which is a public record except as otherwise provided by law.

**E. Computation and extension of time:**

(1) **Computation of time:** In computing any period of time prescribed or allowed by 20.11.80 NMAC, except as otherwise specifically provided, the day of

the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal city of Albuquerque holiday, in which event, the time shall be extended until 5:00 p.m. on the next day that is not a Saturday, Sunday or legal city of Albuquerque holiday. Whenever a party must act within a prescribed period after service upon that party and service is by mail, three days shall be added to the prescribed period. The three-day extension does not apply to a deadline established by the act.

(2) **Extensions of time:** When a motion is filed, the hearing officer or director, as appropriate for the stage of the proceeding at the time the motion is filed, may grant an extension of time for filing a document or may grant continuance of a hearing. No extension shall be granted regarding a deadline established by the act.

**F. Ex parte contact.** Between the time a compliance order has been issued and the time the director issues a final order or the request for hearing has been withdrawn, no person shall have ex parte contact with the director or the hearing officer regarding the merits of a pending compliance order or motion filed pursuant to 20.11.80 NMAC. The ex parte restriction established in the immediately-preceding sentence does not apply to the director, the hearing officer or the hearing clerk.

**G. Document - filing, service, form and examination:**

**(1) Filing of documents:**

(a) except as otherwise provided, the original of all documents served in the proceeding shall be filed with the hearing clerk; and

(b) the party that files a document shall serve a copy of the document on all other parties. All documents shall be filed at least 15 days before the hearing at which the hearing officer or director will consider the matter unless otherwise ordered by the hearing officer. A certificate of service like the certificate of service shown in Subsection J of 20.11.80.12 NMAC shall accompany each filed document.

(2) **Service of Documents:** Except as otherwise provided or ordered by the hearing officer, all documents shall be served personally, mailed by express or first class mail, or, if the person being served has agreed in writing, sent by facsimile or by electronic transmission. Service by mail is complete when the document is mailed. Service by facsimile or electronic transmission is accomplished when transmission of the document is complete. If the person being served is represented by an attorney, service shall be made on the attorney. Delivery receipts shall be kept as proofs of service and shall be produced immediately upon the request of the hearing officer, the director or another party.

**(3) Form of documents:**

(a) If feasible, all documents in paper form shall be prepared on 8 1/2 inch x 11 inch white paper, printed double-sided. Where appropriate, the first page of every document shall include the caption or heading required by Subsection J of 20.11.80.12 NMAC. The contents, except quotations and footnotes, shall be double spaced.

(b) The original of each document, except exhibits, shall be signed by the party or the party's attorney or other representative, and shall include the address, e-mail address if any, and telephone number of the person who signed. The signature constitutes a certification that the signer has read the document; that, to the best of the signer's knowledge, information and belief, there are good grounds to support the document; and that, except for motions for extension of time, the document is not interposed or submitted for purposes of delay.

(c) A notice of service that is required by 20.11.80 NMAC shall be deemed adequate if made to the most recent address provided by the person upon whom service is made.

**H. Filing and service of documents issued by director or hearing officer:**

Every document issued by the director and the hearing officer shall be filed with the hearing clerk. The hearing clerk shall promptly serve copies of the document upon all parties.

**I. Examination of documents filed:** Pursuant to the New Mexico Inspection of Public Records Act at Chapter 14, Article 2 NMSA 1978 and all applicable city of Albuquerque ordinances and administrative instructions, during normal business hours and subject to the provisions of law restricting public disclosure of confidential information, any person may inspect and copy any document filed in any proceeding pursuant to 20.11.80 NMAC. The documents shall be made available by the hearing clerk, as authorized.

**J. Samples - caption; certificate of service:**

CITY OF ALBUQUERQUE

ENVIRONMENTAL HEALTH DEPARTMENT

CITY OF ALBUQUERQUE

ENVIRONMENTAL HEALTH DEPARTMENT

AIR QUALITY DIVISION

Complainant,

v.

Administrative Compliance Order No.  
[year] - [indiv. order # ]

[Note: Confirm the compliance order number with the hearing clerk before filing.]

[NAME OF RESPONDENT],  
Respondent.

[TITLE OF DOCUMENT: COMPLIANCE ORDER, MOTION FOR ..., etc.]

By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print or type name]

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing [insert: name of document] was [mailed by first class mail/express mail/hand delivered/ sent by facsimile/ sent by electronic transmission] to [insert: names of persons upon whom service was made: attorney/party] on this \_\_\_\_ day of [month], 20\_\_\_\_.

[List names of persons served:]

By \_\_\_\_\_  
[Signature of person certifying service]

\_\_\_\_\_  
[Print or type name]

[20.11.80.12 NMAC - N, 8/15/11]

20.11.80.13 PREHEARING PROCEDURES:

A. Initiation of process:

(1) **Filing a request for hearing:** As required by the act at Subsection C of Section 74-2-12 NMSA 1978, no later than 30 days after a compliance order is served on a respondent, the respondent shall submit a written request for a hearing to the director. If a timely request for hearing is not submitted, the compliance order shall be final. The process governed by 20.11.80 NMAC shall be initiated by the respondent filing a timely request for hearing and serving the request on the department director, the air program manager or his or her designee and every other party.

(2) **Request for hearing:** The request for hearing shall include an answer to the compliance order. The answer shall:

(a) in separately-numbered paragraphs that sequentially reference the numbered paragraphs in the compliance order, clearly and directly admit or deny each of the factual assertions contained in the compliance order; however, if the respondent has no knowledge of a particular factual assertion and so states, the assertion may be denied on the basis of a lack of knowledge; every allegation in the compliance order that is not specifically denied shall be deemed admitted by the respondent;

(b) indicate every affirmative defense upon which the respondent intends to rely; every affirmative defense that is not asserted in the request for hearing shall be deemed waived, except a defense asserting lack of subject matter jurisdiction;

(c) be signed under oath or affirmation that the information contained in the answer is to the best of the signer's knowledge and belief true and correct; and

(d) have a copy of the compliance order attached.

B. Notice of docketing; notice of hearing officer assignment:

(1) **Notice:** As soon as practical after the hearing clerk receives a request for hearing, the hearing clerk shall issue a notice of docketing that includes the caption or heading required by Subsection J of 20.11.80.12 NMAC, the docket number of the case, the date upon which the request for hearing was received by the hearing clerk and the name of the hearing officer if one has been designated. If a hearing officer has not been designated, the hearing clerk shall notify the parties of the name and address of the hearing officer as soon as one is assigned. The hearing clerk shall include a copy of 20.11.80 NMAC with the notice of docketing that is sent to the respondent.

(2) **Untimeliness:** The hearing clerk shall docket every request for hearing that is delivered to the hearing clerk without regard to whether it appears to be timely. Any party

may move to dismiss an untimely request for hearing.

C. Scheduling the hearing:

(1) In consultation with the hearing officer, but no later than 30 days before the date of the hearing, the hearing clerk shall issue and serve upon the parties a notice of hearing setting forth the date, time and location of the hearing.

(2) After consideration of prejudice to the parties, the hearing officer shall not grant a request to postpone a hearing unless all parties consent or the hearing officer determines good cause has been shown.

(3) Location of the hearing; attendance by the public: The hearing shall be held in a public facility within Bernalillo county with seating available for members of the public, who can attend and listen, but who shall not testify unless identified as a witness by a party as required by Subsection B of 20.11.80.14 NMAC.

D. Motions:

(1) **General:** Except for motions made orally during a hearing, all motions shall be in writing, specify the grounds for the motion, state the relief sought and state whether the motion is opposed or unopposed. Each motion that is not made orally during a hearing shall be filed no fewer than 30 days before the hearing at which the hearing officer or director will consider the matter unless a different deadline is established by the hearing officer; shall be accompanied by an affidavit, certificate or other evidence relied upon; and shall be served as required by Paragraph (2) of Subsection G of 20.11.80.12 NMAC.

(2) **Unopposed motions:** An unopposed motion shall state that concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review with the motion.

(3) **Opposed motions:** Every opposed motion shall state either that concurrence was sought and denied or why concurrence was not sought. A memorandum brief in support of an opposed motion may be filed with the motion. The moving party shall submit a proposed order for the hearing officer's review with the motion.

(4) **Response to motions:** Unless a different deadline is established by the hearing officer, every party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party who fails to file a timely response shall be deemed to have waived any objection to the granting of the motion.

(5) **Reply to response:** Unless a different deadline is established by the hearing officer, the moving party may submit a reply to a response within 10 days after service of the response, but is not required to submit a reply.

(6) **Decision regarding motions:** All motions shall be decided by the hearing officer without a hearing, unless the hearing officer decides to hold a hearing or unless a party requests a hearing and the hearing officer consents to a motion hearing.

(7) **Procedural motions:** The hearing officer may rule upon a procedural motion before the expiration of the time for response. A response regarding the procedural motion received after the decision is made shall be treated as a request for reconsideration of the ruling.

(8) The hearing officer may refer a motion to the director with the hearing officer's recommendation if the motion would result in a final determination of the merits or an essential element of the compliance order.  
[20.11.80.13 NMAC - N, 8/15/11]

**20.11.80.14 DISCOVERY:** Formal discovery is not a right in an administrative enforcement procedure and, therefore, is discouraged. If a party wishes to conduct discovery in addition to the methods of discovery provided in 20.11.80.14 NMAC, additional discovery shall only be allowed by order of the hearing officer.

**A. Scope of discovery:**

(1) **Criteria:** Discovery of information that is not privileged or exempt may be permitted if:

(a) the discovery will not unreasonably delay the proceeding;

(b) the information to be obtained is not unreasonably cumulative or duplicative, or not otherwise reasonably obtainable elsewhere;

(c) the discovery is not unreasonably burdensome; and

(d) there is a substantial reason to believe that the information sought will be admissible at the hearing or will be likely to lead to the discovery of admissible evidence.

(2) **Request:** Unless otherwise directed by the hearing officer, a party requesting discovery shall:

(a) serve the discovery request directly upon the party from whom discovery is sought; and

(b) file a notice with the hearing clerk; the notice shall include the caption or heading required by Subsection J of 20.11.80.12 NMAC and state the date of service of the discovery request, the type of discovery sought and the party from whom discovery is sought.

(3) **Response to discovery request:** A party responding to a discovery request shall:

(a) serve the response, including any objections, upon the party making the discovery request; and

(b) file a notice with the hearing clerk; the notice shall include the caption or heading required by Subsection J of

20.11.80.12 NMAC and state the date of service of the response, the type of discovery request being responded to and the party upon whom the response was served.

(4) **Continuing obligation to supplement responses:** Every party from whom discovery is sought has a continuing obligation, subject to any objections interposed that are not overruled by the hearing officer, to supplement responses with relevant information obtained after service of the initial response and any previous supplemental responses. Unless otherwise ordered by the hearing officer, supplemental responses shall be served as soon as practical, but no later than five days after the information became available. If the information becomes available fewer than five days before the hearing or during the hearing, the information shall be brought to the attention of the hearing officer for direction and ruling on use of the information.

(5) **Privilege:** A list of privileged or exempt documents, identified by titles, author, date and privilege or protection claimed, shall be provided in response to discovery.

(6) **Protective order:** Upon motion and for good cause show, the hearing officer may protect the discovery from disclosure. If the motion is granted, the moving party shall not present the protected discovery at the hearing.

(7) **Motion to compel; sanctions:** A party may move for an order compelling discovery if the party from whom discovery was requested has failed to respond in an adequate or timely manner. The hearing officer may order the response and may impose such sanctions as may be appropriate, including the following:

(a) refusal to allow the testimony of a witness not identified as required by Subsection B of 20.11.80.14 NMAC;

(b) denial of admission of a document that has not been provided as required by Subsection B of 20.11.80.14 NMAC or has not been produced for inspection and copying as required by Subsection C of 20.11.80.14 NMAC;

(c) drawing adverse inferences against the non-responsive party; and

(d) in an extreme case, dismissal or default judgment against the non-responsive party.

**B. Witness information; exhibits:** Unless otherwise ordered by the hearing officer, within 15 days after receipt of the notice of hearing on the merits or within no fewer than 45 days before the hearing on the merits, whichever is closer to the hearing date, each party shall provide to every other party:

(1) regarding each person who is expected to be called as an expert witness:

(a) the name and address of the

person expected to be called as an expert witness;

(b) a complete statement of all opinions the expert witness will express and the basis and reasons for the opinions;

(c) the data or other information considered by the expert witness in forming the opinions of the expert witness;

(d) an estimate of the length of the direct testimony of the expert witness;

(e) a list of exhibits, if any, to be offered into evidence at the hearing on the merits through testimony of the expert witness, and, regarding each exhibit, the name of each expert witness who is expected to testify regarding the exhibit; and

(f) a copy of each exhibit to be offered into evidence at the hearing on the merits through the testimony of the expert witness;

(2) regarding each person who is expected to be called by a party, but not as an expert witness:

(a) the name and address of the witness;

(b) a description of the general subject matter of the anticipated testimony of the witness;

(c) an estimate of the length of the direct testimony of the witness;

(d) a list of exhibits, if any, to be offered into evidence at the hearing on the merits through testimony of the witness; and

(e) a copy of each exhibit to be offered into evidence at the hearing on the merits through testimony of the witness; and

**C. Production of documents:**

(1) **Definition:** As used in Subsection C of 20.11.80.14 NMAC, "document" includes the following: any designated documents or electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and any other data or data compilations, that are stored in any medium from which information can be obtained either directly or, if necessary, after translation, including translation by a responding party, into a reasonably usable form.

(2) **Request:** If the criteria in Paragraph (1) of Subsection A of 20.11.80.14 NMAC are met, any party may inspect and make copies of any designated documents in the possession or control of a party after serving a written request on the party. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The party who has received the request for production shall specify a reasonable time, place and manner for inspecting and copying. Reasonable time means no more than 20 days after service of the request unless a different deadline is established by the hearing officer.

**D. Subpoenas:**

(1) A party that wishes to have a subpoena issued shall obtain a subpoena form from the hearing clerk. The subpoena form shall be completed by the requesting party and shall:

(a) include the caption or heading and the information required by Subsection J of 20.11.80.12 NMAC; and

(b) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information or other tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place specified in the subpoena.

(2) All subpoenas shall be issued by hearing clerk, who shall sign and date the subpoena.

(3) Pursuant to the authority that has been delegated by the director to the hearing clerk, the hearing clerk shall issue a subpoena, signed but otherwise in blank, to the party requesting the subpoena. The hearing clerk shall not issue a subpoena if the hearing officer issues a protective order as provided by Paragraph (6) of Subsection A of 20.11.80.14 NMAC.

(4) The requesting party shall complete the subpoena form before serving the subpoena. The subpoena shall be served as required by Paragraph (2) of Subsection G of 20.11.80.12 NMAC.

(5) The party that served the subpoena shall file an original proof of service with the record and shall serve a copy on all other parties.

(6) Duties in responding to subpoena.

(a) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business and shall organize and label them to correspond with the categories in the demand.

(b) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(c) A person responding to a subpoena is not required to produce the same electronically stored information in more than one form.

(d) A person responding to a subpoena is not required to provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is

not reasonably accessible because of undue burden or cost. The hearing officer may order discovery from such sources if the requesting party shows good cause, after taking into consideration the provisions of Paragraph (1) of Subsection A of 20.11.80.14 NMAC regarding scope of discovery and the requirements of Subsection B of 20.11.80.14 NMAC regarding witness information and exhibits.

(e) A party receiving documents under subpoena shall make them available for copying by other parties.

**E. Request for admissions:** If the criteria in Paragraph (1) of Subsection A of 20.11.80.14 NMAC are met, no fewer than 30 days before the hearing on the merits, any party may serve upon any other party a written request for the admission of any statement or opinion of fact or the application of law to fact, including the genuineness of any document, unless otherwise ordered by the hearing officer. If the request includes a request for admission of the genuineness of a document, the document shall be attached to the request unless it has been or is otherwise furnished or made available for inspection and copying. Each statement in the request for admissions shall be deemed admitted unless, within 20 days after service of the request for admission, or a longer or shorter period as the hearing officer may establish, the party to whom the request is directed serves upon the requesting party a sworn written response specifically denying the matter.

[20.11.80.14 NMAC - N, 8/15/11]

**20.11.80.15 HEARING PROCEDURES:****A. Evidence:**

(1) **General:** The hearing officer shall admit all evidence, unless the hearing officer determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that could be excluded in the courts under Rule 11-408 NMRA is not admissible.

(2) **Examination of witnesses:** Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in 20.11.80 NMAC, and may be examined by the hearing officer. In addition to the hearing officer, only parties shall have the right to cross-examine a witness. The hearing officer may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony of the witness.

(3) **Exhibits:** All exhibits in evidence shall be marked with a designation identifying the party by whom the exhibit is offered and shall be numbered serially in the sequence in which the exhibits are expected to be offered. Large charts and diagrams, models and other bulky exhibits are

discouraged. Exhibits should be limited to 8 ½ x 11 inches or be capable of being folded to that size, unless otherwise necessary for adequate presentation of evidence.

(4) **Official notice:** Official notice may be taken of any matter that may be judicially noticed in the New Mexico courts.

**B. Objections and offers of proof:**

(1) **Objection:** An objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of the grounds for the objection. The ruling by the hearing officer regarding an objection and the reasons given by the hearing officer for the ruling shall be part of the record.

(2) **Offer of proof:** Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what the evidence would have proved. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded. If the director decides the ruling of the hearing officer that excluded the evidence was both erroneous and prejudicial, the hearing may be reopened to allow the taking of the excluded evidence.

**C. Burden of persuasion:**

(1) **Compliance order:** The complainant has the burden of going forward with the evidence and proving by a preponderance of the evidence that the facts relied upon to show the violation occurred and that the proposed civil penalty is appropriate. After the complainant has established a prima facie case, the respondent shall have the burden of going forward with adverse evidence or a defense to the allegations.

(2) **Preponderance of evidence:** Each matter of controversy shall be determined by the hearing officer upon a preponderance of the evidence.

[20.11.80.15 NMAC - N, 8/15/11]

**20.11.80.16 POST-HEARING PROCEDURES:****A. Filing the transcript:**

Unless otherwise ordered by the director or hearing officer, the hearing shall be transcribed verbatim. The hearing clerk shall promptly notify all parties of the availability of the transcript. Any person who wants a copy of the transcript may order a copy from the reporter.

**B. Proposed findings and conclusions:** Within 30 days after the transcript is filed, or by the deadline established by the hearing officer, any party may submit to the hearing officer proposed

findings of fact and conclusions of law or discretion and a closing argument. All such submissions shall be in writing, filed, served on all parties and contain adequate references to the record and authorities relied upon. No new evidence shall be presented unless specifically allowed by the hearing officer.

**C. Recommended decision:**

(1) **Content:** Unless otherwise ordered by the director, the hearing officer shall issue a recommended decision within 30 days after the deadline established by Subsection B of 20.11.80.16 NMAC for filing proposed findings and conclusions has passed. The recommended decision shall contain:

(a) the hearing officer's findings of fact and conclusions regarding all material issues of law or discretion and the reasons for the findings and conclusions;

(b) if applicable, a review of the penalty to determine if the division acted within its discretion in setting the amount or nature of the penalty; if the hearing officer decides to recommend a civil penalty that is different in amount or nature from the penalty in the compliance order, the hearing officer shall set forth the hearing officer's recommended decision regarding the penalty and the reason for the change; and

(c) a proposed final order.

(2) **Comment on recommended decision:** Within 15 days after service of the recommended decision, any party may file comments regarding the recommended decision and may include argument for, against or for modification of the recommended decision.

(3) **Oral argument before the director:** Upon the request of a party or on the director's own initiative, the director may allow oral argument regarding the recommended decision. If oral argument is allowed, the director shall specify the time and place for the oral argument, after giving due consideration to the convenience of the parties and the need to expeditiously resolve the proceeding.

**D. Final order of director:** As soon as a practical, but no later than 30 days after the later of the deadline for filing comments on the recommended decision of the hearing officer or the conclusion of oral argument if oral argument is allowed, the director shall issue a written final order in the matter.

(1) **Decision:** The director may adopt, modify or set aside the hearing officer's recommended decision, and shall set forth the reasons for the action taken.

(2) **Penalty:** The director may change the amount and nature of the civil penalty, if any, that the hearing officer recommends assessing and shall set forth the reasons for the change.

**E. Payment of civil**

**penalty:** Within 60 days after the respondent receives the final order, the respondent shall pay the full amount of any monetary civil penalty that is assessed in the final order unless otherwise ordered by the director. Payment shall be made by delivering to the division a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the general fund as specified in the final order. The respondent shall attach a copy of the final order to the penalty payment.

**F. Judicial review:** Judicial review of the director's final order shall be by appeal to the court of appeals of the state of New Mexico as provided by the act Subsection A of Section 74-2-9 NMSA 1978.

**G. Preparation of record proper:** The preparation of the record proper for an appeal to the court of appeals of the state of New Mexico or for any other reason shall be the responsibility of the hearing clerk. Appellant shall make satisfactory arrangements with the hearing clerk, including arrangements regarding copying or transcript costs, before the hearing clerk begins to prepare the record proper. [20.11.80.16 NMAC - N, 8/15/11]

**20.11.80.17 ALTERNATE RESOLUTION:**

**A. Summary procedures:**  
(1) **Use of summary procedures:** Under the following limited circumstances, the director may dispose of a request for hearing after an expedited hearing as a result of:

(a) a motion by a party to dismiss the request for hearing because of jurisdictional defects, such as filing an untimely request for hearing; or

(b) a request by a party to decide the merits of the request for hearing on legal arguments presented in writing and oral argument.

(2) **Expedited hearing:** If the hearing officer determines that a request for an expedited hearing has a likelihood of success and could fairly expedite the resolution of the proceeding, then notice for a hearing shall be given in the manner set forth in Paragraph (1) of Subsection C of 20.11.80.13 NMAC. Following the expedited hearing, the hearing officer shall submit a recommended decision to the director. The director shall either follow Subsection D of 20.11.80.16 NMAC and issue a final order or remand the matter to the hearing officer with directions to proceed with a full hearing as otherwise required by 20.11.80 NMAC.

**B. Settlement:**  
(1) **Policy:** The director encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the act and the

regulations. Settlement conferences shall not affect any party's obligation to respond in a timely manner to any matter governed by 20.11.80 NMAC, including the respondent's obligation to file a timely request for hearing under Subsection A of 20.11.80.13 NMAC.

(2) **Stipulated final order:** The director may approve a stipulated final order signed by all the parties. The stipulated final order shall include all the terms and conditions agreed to by the parties and shall state that, for the purpose of this proceeding, the parties admit the jurisdictional allegations of the compliance order and consent to the relief specified, including the assessment of the civil penalty, if any is included in the stipulated final order. If the director disapproves the stipulated final order, the matter shall proceed as if there had been no stipulated final order or settlement.

(3) **Withdrawal:** The respondent may withdraw the request for hearing at any time before the director issues a final order. A notice of withdrawal shall be filed with the hearing clerk and served on all parties. Any party may file written objections to the notice of withdrawal within 10 days after receipt. If an objection is filed, the director shall rule on the notice of withdrawal. [20.11.80.17 NMAC - N, 8/15/11]

**HISTORY OF 20.11.80 NMAC: [Reserved]**

**NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 139 FOOD STAMP PROGRAM  
PART 504 NEW MEXICO  
EXTRA HELP SNAP**

**8.139.504.1 ISSUING AGENCY:** New Mexico Human Services Department [8.139.504.1 NMAC - N, 08/01/2011]

**8.139.504.2 SCOPE:** General public [8.139.504.2 NMAC - N, 08/01/2011]

**8.139.504.3 STATUTORY AUTHORITY:** The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the human services department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl.

1983).

[8.139.504.3 NMAC - N, 08/01/2011]

**8.139.504.4 D U R A T I O N :**

Permanent

[8.139.504.4 NMAC - N, 08/01/2011]

**8.139.504.5 EFFECTIVE DATE:**

August 1, 2011, unless a later date is cited at the end of a section.

[8.139.504.5 NMAC - N, 08/01/2011]

**8.139.504.6 OBJECTIVE:**

The objective of New Mexico Extra Help SNAP (NM Extra Help SNAP) is to increase access to the nutrition benefits offered by the food stamp program among elderly and disabled populations receiving assistance through the medicare saving program (MSP) through medicaid. The NM Extra Help SNAP will increase the ability to purchase food and meet dietary needs. The NM Extra Help SNAP is authorized by a grant funded by the food and nutrition services (FNS).

[8.139.504.6 NMAC - N, 08/01/2011]

**8.139.504.7 D E F I N I T I O N S :**

[RESERVED]

**8.139.504.8 P R O G R A M ELIGIBILITY**

**A.** An applicant can opt to receive NM Extra Help SNAP benefits if the applicant:

- (1) receives benefits through a MSP; and
- (2) is 22 years of age or older; and
- (3) resides in a NM Extra Help pilot county; and
- (4) is eligible for separate household status as defined at Subsection A of 8.139.400.9 NMAC; or
- (5) lives with a spouse who also receives MSP benefits; or
- (6) is living with others but buys and cooks food separately from others; and
- (7) the household has no earned income.

**B. Verification of information:** All information received by the department from the centers for medicaid and medicare (CMS) data interface will be deemed as true and accurate for purposes of initial verification.

[8.139.504.8 NMAC - N, 08/01/2011]

**8.139.504.9 A P P L I C A T I O N PROCESS**

**A. Opt in/out:** An applicant can opt out of NM Extra Help SNAP at any time. To be considered for regular SNAP benefits, the applicant must apply through the regular SNAP application process as defined at 8.139.110 NMAC.

**B. Application requirements:** The application at minimum

will contain:

- (1) the applicants name and address;
- (2) receipt of income and amount;
- (3) amount of applicable deductions, such as shelter and medical; and
- (4) must be signed by the applicant or authorized representative.

**C. Application filing:** Potential NM Extra Help SNAP recipients will receive applications from the department based on interface data supplied by CMS.

**D. Processing standards:** Applications are processed by the department and notice of disposition is sent to the applicant.

**(1) Standard processing:** An application shall be processed as soon as possible and the applicant afforded an opportunity to participate no later than 30 days from the date of application.

**(2) Expedited processing:** In the month of application NM Extra Help SNAP applicants shall be considered as standard food stamp program applicants and may qualify for expedited service in accordance with 8.139.110.16 NMAC.

**E. Authorized representatives:** The head of the household or the spouse may designate an individual who is a non-household member to act on its behalf in applying, obtaining or using food stamp benefits.

**(1)** The caseworker shall obtain a copy of the household's written authorization for the authorized representative and maintain it in the household's case record. No limit shall be placed on the number of households an authorized representative may represent.

**(2)** Even if the household member is able to make an application and obtain benefits, the household should be encouraged to name an authorized representative to use the food stamp benefits in case illness or other circumstances prevent household members from using the benefits themselves.

**(3)** The authorized representative's identity shall be verified and a copy of the document maintained in the household's case file.

[8.139.504.9 NMAC - N, 08/01/2011]

**8.139.504.10 C A S E MANAGEMENT**

**A. Interviews:** NM Extra Help SNAP applicants are not required to see an ISD caseworker or be otherwise subjected to an interview, although additional information or verification may be requested.

**B. Certification periods:** Eligible households shall be assigned to a 36-month certification period, and with no interim contact.

**C. Reporting requirements:** NM Extra Help SNAP recipients are subject only to the reporting standards of MSP and all data sent to the department monthly. All information received by the department from the CMS data interface will be deemed as true and accurate for reported changes.

**D. Actions on reported changes:** Within 10 days of receipt the department shall act on the following changes:

- (1) death of a household member;
- (2) loss of MSP eligibility;
- (3) changes in state residency;
- (4) a member of the household's institutional status has changed; or
- (5) receipt of earned income.

**E. Recertification:** NM Extra Help SNAP recipients shall not be subject to an interview to review eligibility at the end of the 36-month certification period. Recipients shall receive notice of expiration and recertification prior to closure. Continued eligibility will be evaluated based on the submission of a completed application. Participants that do not reapply by the end of certification period will be subject to case closure. Standards for timely submission of the recertification application will be in accordance with 8.139.120.8 NMAC.

[8.139.504.10 NMAC - N, 08/01/2011]

**8.139.504.11 BENEFIT DELIVERY**

**A. Benefit issuance:** NM Extra Help SNAP benefits shall be issued through a direct deposit into a household's electronic benefit transfer (EBT) food stamp account. EBT cards are issued and EBT accounts maintained as defined at 8.139.610 NMAC. A participating household has a definite issuance date so that food stamp benefits are received on or about the same time each month. The issuance date is based on the last two digits of the social security number of the individual to whom the food stamps are issued. Benefits for the month of application shall not be prorated.

**B. Benefit calculation:** Benefits are issued based on countable gross income and total combined shelter costs. Benefit amounts shall be subject to review and adjustment in coordination with the regular food stamp program and cost neutrality and may be adjusted each January. Monthly NM Extra Help SNAP benefit amounts are based on the following.

**(1) Benefits for a two person household:**

**(a)** The monthly benefit amount for a two person household with any amount of monthly shelter expense and a gross monthly income of less than \$800.00 is \$300.00.

**(b)** The monthly benefit amount

for a two person household with any amount of income and a monthly shelter expense of \$800.00 or more is \$300.00

(c) The monthly benefit amount for a two person household with a gross monthly income of \$800.00 or more and monthly shelter expenses between \$700.00 and \$799.00 is \$180.00.

(d) The monthly benefit amount for a two person household with a gross monthly income of \$800.00 or more and a monthly shelter expense between \$600.00 and \$699.00 is \$96.00.

(e) The monthly benefit amount for a two person household with a gross monthly income of \$800.00 or more and monthly shelter expenses less than \$600.00 is \$46.00.

**(2) Benefits for a one person household:**

(a) The monthly benefit amount for a one person household with any amount of monthly shelter expense and a gross monthly income of less than \$500.00 is \$180.00.

(b) The monthly benefit amount for a one person household with any amount of income and a monthly shelter expense of \$700.00 or more is \$180.00.

(c) The monthly benefit amount for a one person household with a gross monthly income of \$500.00 or more and monthly shelter expenses between \$600.00 and \$699.00 is \$96.00.

(d) The monthly benefit amount for a one person household with a gross monthly income of \$500.00 or more and monthly shelter expenses less than \$600.00 is \$46.00.

**C. Benefit correction:**  
Benefit corrections shall be determined and adjusted as defined at 8.139.640 NMAC. [8.139.504.11 NMAC - N, 08/01/2011]

**8.139.504.12 OVERPAYMENT AND RECOUPMENT**

**A. Overpayment:** A household that has received NM Extra Help SNAP benefits and has been determined ineligible or does not qualify for some or all of the NM Extra Help SNAP benefit shall have a claim established against the household for the NM Extra Help SNAP benefit amount in accordance with 8.139.640 NMAC.

**B. Recoupment:**

(1) The household shall be required to repay any amount of the NM Extra Help SNAP benefit due to an established claim or overpayment of the NM Extra Help SNAP benefit.

(2) The household shall remain subject to claim establishment and recoupment for the NM Extra Help SNAP benefit in accordance with 8.139.640 NMAC.

[8.139.504.12 NMAC - N, 08/01/2011]

**History of 8.139.504 NMAC: [Reserved]**

**NEW MEXICO HUMAN SERVICES DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an amendment to 8.102.500 NMAC, Section 8, effective July, 29, 2011**

**8.102.500.8 G E N E R A L REQUIREMENTS:**

**A. Need determination process:** Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

**B. Gross income limits:**  
The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

- |   |         |
|---|---------|
| (a) one person                            | \$ 768  |
| (b) two persons                           | \$1,033 |
| (c) three persons                         | \$1,297 |
| (d) four persons                          | \$1,562 |
| (e) five persons                          | \$1,828 |
| (f) six persons                           | \$2,092 |
| (g) seven persons                         | \$2,357 |
| (h) eight persons                         | \$2,622 |
| (i) add \$265 for each additional person. |         |

**C. Eligibility for support services only:** Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

- |                 |         |
|-----------------|---------|
| (1) one person  | \$903   |
| (2) two persons | \$1,215 |

- |   |         |
|---|---------|
| (3) three persons                         | \$1,526 |
| (4) four persons                          | \$1,838 |
| (5) five persons                          | \$2,150 |
| (6) six persons                           | \$2,461 |
| (7) seven persons                         | \$2,773 |
| (8) eight persons                         | \$3,085 |
| (9) add \$312 for each additional person. |         |

person.

**D. Standard of need:**

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately [~~\$91~~] \$79 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

- |  |        |
|--|--------|
| (a) one person                           | \$ 266 |
| (b) two persons                          | \$ 357 |
| (c) three persons                        | \$ 447 |
| (d) four persons                         | \$ 539 |
| (e) five persons                         | \$ 630 |
| (f) six persons                          | \$ 721 |
| (g) seven persons                        | \$ 812 |
| (h) eight persons                        | \$ 922 |
| (i) add \$91 for each additional person. |        |

person.

**E. Special needs:**

**(1) Special clothing allowance:**  
[In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100, subject to the availability of state or federal funds.] A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, or EWP cash assistance.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special circumstance:**  
Dependent upon the availability of funds

and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

**F. Non-inclusion of legal guardian in benefit group:** Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, Section 8, effective July 29, 2011

### 8.106.500.8 GA - GENERAL REQUIREMENTS:

**A. Limited state funds** may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

**B. Need determination process:** Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1500 liquid or \$2000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent (85%) of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

**C. GA payment determination:** The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

**D. Gross income test:** The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent (85%) of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

(a) one person \$ 768

(b) two persons \$1,033

(c) three persons \$1,297

(d) four persons \$1,562

(e) five persons \$1,828

(f) six persons \$2,092

(g) seven persons \$2,357

(h) eight persons \$2,622

(i) add \$265 for each additional person.

### E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) **Notice:** The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

**F. Net income test:** The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group.

**G. Special clothing allowance for school-age dependent children:** [In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100, subject to the availability of state or federal funds.] A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age nineteen (19) by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

**H. Supplemental issuance:** A one time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion

of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

### TITLE 8 SOCIAL SERVICES CHAPTER 300 MEDICAID GENERAL INFORMATION

#### PART 22 ELECTRONIC HEALTH RECORDS INCENTIVE PROGRAM

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

[8.300.22.1 NMAC - N, 8-1-11]

**8.300.22.2 SCOPE:** The rule applies to the general public.

[8.300.22.2 NMAC - N, 8-1-11]

**8.300.22.3 STATUTORY AUTHORITY:** 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 Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.

[8.300.22.3 NMAC - N, 8-1-11]

**8.300.22.4 DURATION:** Permanent

[8.300.22.4 NMAC - N, 8-1-11]

**8.300.22.5 EFFECTIVE DATE:** August 1, 2011, unless a later date is cited at the end of a section.

[8.300.22.5 NMAC - N, 8-1-11]

**8.300.22.6 OBJECTIVE:** The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance division programs.

[8.300.22.6 NMAC - N, 8-1-11]



**8.300.22.7 DEFINITIONS:**  
[RESERVED]

**8.300.22.8 MISSION STATEMENT:** To reduce the impact of poverty on people living in New Mexico and to assure low income and individuals with disabilities in New Mexico equal participation in the life of their communities. [8.300.22.8 NMAC - N, 8-1-11]

**8.300.22.9 ELECTRONIC HEALTH RECORDS INCENTIVE PROGRAM:** The New Mexico medical assistance division (MAD) administers the medicaid electronic health records incentive program (medicaid EHR incentive program) as authorized by the federal American Recovery and Reinvestment Act of 2009. Under this program, New Mexico MAD providers may qualify for incentive payments if they meet the eligibility guidelines in this section and demonstrate they are engaged in efforts to adopt, implement, upgrade (AIU), or meaningfully use certified electronic health records (EHR) technology. The medicaid EHR incentive program is governed by the rule in this section, the electronic health records program final rule issued by centers for medicare and medicaid (CMS) in CMS-0033-F and 45 CFR 170, and the conditions of approval of the MAD plan approved by CMS. New Mexico MAD providers must also follow MAD instructions for enrolling in the medicaid EHR incentive program and provide documentation as required. Payments are made with federal funds and are contingent on the availability of those funds and federal requirements for reimbursement. Should the federal government discontinue funding, the incentive payments, inclusive, then incentive payments from the department will terminate. [8.300.22.9 NMAC - N, 8-1-11]

**8.300.22.10 ELIGIBLE PROVIDERS:**

A. Health care to New Mexico MAD eligible recipients is furnished by a variety of providers and provider groups. The reimbursement for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement or a MAD EHR incentive payment agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be approved before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs

administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When approved, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement or a MAD EHR incentive payment 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.

B. To qualify for incentive payments, a provider must be an eligible professional or an eligible hospital. A provider who receives incentive payments must have an existing fee-for-service (FFS) MAD provider participation agreement or a MAD EHR incentive payment agreement, and at least one of their facilities must be located within the state of New Mexico.

(1) An eligible professional provider may not be hospital-based, unless they practice predominantly at a federally qualified health center (FQHC) or a rural health center (RHC) as defined by the CMS final rule. A professional provider is considered "hospital-based" if he/she furnishes 90 percent or more of his/her medicaid professional services during the relevant EHR reporting period in a hospital inpatient or emergency room, using the facilities and equipment of the hospital. An eligible professional provider may not participate in both the medicaid EHR incentive payment program and medicare EHR incentive payment program during the same payment year. Eligible professional providers include:

- (a) a physician;
- (b) a physician assistant practicing in a FQHC or RHC led by a physician assistant;
- (c) a board certified pediatrician;
- (d) a nurse practitioner;
- (e) a certified nurse midwife;
- (f) a dentist; or
- (g) other type of provider when specifically allowed by CMS.

(2) Eligible hospitals are children's hospitals or acute care hospitals, including critical access hospitals and cancer hospitals. A hospital must meet either of the following definitions to be eligible for incentive payments:

(a) an acute care hospital is defined as a health care facility where the average length of patient stay is 25 days or fewer and that has a CMS certification number that has the

last four digits in the series 0001-0879 and 1300-1399; or

(b) a children's hospital is defined as a separately certified children's hospital, either freestanding or hospital-within-hospital, that predominantly treats individuals under 21 years of age and has a CMS certification number with the last four digits in the series 3300-3399.

[8.300.22.10 NMAC - N, 8-1-11]

**8.300.22.11 ELIGIBLE RECIPIENT VOLUME:** An eligible professional provider and an eligible hospital must meet eligible recipient volume criteria to qualify for incentive payments. Eligible recipient volume criteria compliance will be verified by MAD through claims and encounter data and audits. Eligible recipient volume requirements represent Title XIX (medicaid) eligible recipients as a percent of total eligible recipients, except for an eligible professional provider practicing predominately in a FQHC or RHC, who may use "needy individuals" as defined below in calculating eligible recipient volume.

A. The CMS final rule provides two options for determining patient volume percentages. New Mexico MAD will allow both options, as described below:

(1) eligible recipient encounter method: medicaid eligible recipient encounters in any 90-day reporting period in the preceding calendar year divided by total eligible recipient encounters in same 90-day period; or

(2) unduplicated eligible recipient method: see formula below.

(total medicaid eligible recipients assigned to the provider in any representative continuous 90-day period in the preceding calendar year with at least one encounter in the year preceding the start of the 90-day period) + (unduplicated medicaid encounters in that same 90-day period) \*100 divided by (total eligible recipients assigned to the provider in the same 90 days with at least one encounter in the year preceding the start of the 90-day period) + (all unduplicated encounters in that same 90-day period).

B. Eligible recipient volume thresholds vary by type of provider and practice location.

(1) An eligible professional provider must meet a 30 percent medicaid eligible recipient volume threshold over a continuous 90-day period in the preceding calendar year. The only exception is for pediatricians, as discussed in 8.300.22.16 NMAC, below.

(2) With the exception of a children's hospital, which have no eligible recipient volume requirement, an eligible hospital must meet a 10 percent medicaid eligible recipient volume threshold over a continuous 90-day period in the preceding calendar year.

(3) An eligible professional provider practicing predominantly in an FQHC or RHC must meet 30 percent “needy individual” eligible recipient volume. To qualify as a “needy individual,” patients must meet one of the following criteria:

(a) receives medicaid under an appropriate category of eligibility; or

(b) were furnished services at either no cost or reduced cost based on a sliding scale determined by the individual’s ability to pay, or were furnished uncompensated care by the provider.

(4) A clinic or group practice may calculate eligible recipient volume using the clinic’s or group’s entire eligible recipient volume under the following conditions:

(a) the clinic or group practice’s eligible recipient volume is appropriate as a eligible recipient volume methodology calculation for the eligible professional provider; and

(b) there is an auditable data source to support the eligible recipient volume determination; and

(c) all eligible professional providers in the clinic or group practice use the same methodology for the payment year; and

(d) the clinic or group practice does not limit eligible recipient volume in any way; and

(e) if an eligible professional provider works inside and outside of the clinic or practice, the eligible recipient volume calculation includes only those encounters associated with the clinic or group practice, and not the eligible professional provider’s outside encounters.

(5) A pediatrician may qualify for a two-thirds incentive payment if their medicaid eligible recipient volume is 20-29 percent. To qualify as a pediatrician for the purpose of receiving a two-thirds payment under the medicaid EHR incentive program, the pediatrician must be enrolled as a pediatrician provider with MAD.

(6) An eligible professional provider and an eligible hospital may not include out-of-state medicaid recipients for eligible recipient volume requirement purposes.

[8.300.22.11 NMAC - N, 8-1-11]

**8.300.22.12 NATIONAL REGISTRATION AND ATTESTATION SYSTEM:** An eligible professional provider or eligible hospital choosing to participate in the medicaid EHR incentive program must register with the CMS national level registry (NLR) and provide demographic information as well as participation choices. The NLR registration process is described in the medicaid EHR incentive program participation instructions.

[8.300.22.12 NMAC - N, 8-1-11]

**8.300.22.13 ATTESTATION REQUIREMENTS:** An eligible professional provider or eligible hospital must attest to meeting the medicaid EHR incentive program participation requirements as a prerequisite to receiving payment. Attestation is accomplished through on-line access to the state level registry (SLR) and completion of an agreement. The agreement must be signed by the eligible professional provider or the eligible hospital and when accepted by MAD becomes part of the MAD provider participation agreement or a MAD EHR incentive payment agreement. The medicaid EHR incentive program attestation includes several elements, described in subsequent sections.

A. An eligible professional provider or eligible hospital in their first participation year under the medicaid EHR incentive program may choose to attest to adopting, implementing, or upgrading certified electronic health record (EHR) technology. Proof of A/I/U must be submitted to MAD as part of the attestation.

B. An eligible professional provider in their second through sixth participation year and an eligible hospital in their second through third, or fourth participation year must attest to meaningful use of certified EHR technology. An eligible hospital must attest to meaningful use if they are participating in both the medicare and MAD medicaid EHR incentive programs in their first participation year. The definition of “meaningful EHR user” and “meaningful use” is found in 42 CFR 495.4 and 42 CFR 495.6, respectively.

[8.300.22.13 NMAC - N, 8-1-11]

**8.300.22.14 PAYMENT REQUIREMENTS:** An eligible professional provider and eligible hospital may receive yearly payments under the medicaid EHR incentive program. All medicaid EHR incentive program payments are subject to certain conditions.

A. Attestations must be accepted by MAD and the attested items verified pursuant to MAD guidelines.

B. An eligible professional provider or eligible hospital must identify a taxpayer identification number (TIN) to assign payment. Valid entities may be the individual eligible professional provider, a group with which the eligible professional provider s associated or an organization recognized by MAD as a qualified organization promoting the use of EHR technology. The “qualified organization” may not retain more than five percent of the annual medicaid EHR incentive program for those costs unrelated to the certified EHR, which will include salaries and benefits, rent, maintenance, utilities, insurance and travel.

C. The eligible professional or eligible hospital must have a current MAD provider participation agreement or a MAD EHR incentive payment agreement by MAD or its designee.

D. The eligible professional provider or eligible hospital is responsible for repayment of any identified overpayment of the medicaid EHR incentive program funds. MAD will recoup the overpaid funds by reducing any future payments, or through other arrangements as it determines.

[8.300.22.14 NMAC - N, 8-1-11]

**8.300.22.15 PAYMENT CALCULATION:** MAD will calculate yearly payment amounts and the total payment amounts based on the guidelines described below.

A. An eligible professional provider may receive a maximum of \$63,750 in the incentive payments over six years, unless otherwise reduced or increased by CMS.

(1) An eligible professional provider must initiate registration to receive payment in 2016 in order to participate in the program.

(2) An eligible professional provider may receive payment on an annual or non-consecutive basis for up to six years between 2011 through 2021.

(3) Payment will be made one time per year per eligible professional provider.

(4) To receive an incentive payment in the second, third, fourth, fifth and sixth payment year, the eligible professional provider must demonstrate that it is a meaningful user of EHR technology, as described in 42 CFR 495.4.

	PY 2011	PY 2012	PY 2013	PY 2014	PY 2015	PY 2016
CY 2011	\$21,250					
CY 2012	\$8,500	\$21,250				
CY 2013	\$8,500	\$8,500	\$21,250			
CY 2014	\$8,500	\$8,500	\$8,500	\$21,250		
CY 2015	\$8,500	\$8,500	\$8,500	\$8,500	\$21,250	
CY 2016	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	\$21,250
CY 2017		\$8,500	\$8,500	\$8,500	\$8,500	\$8,500
CY 2018			\$8,500	\$8,500	\$8,500	\$8,500
CY 2019				\$8,500	\$8,500	\$8,500
CY 2020					\$8,500	\$8,500
CY 2021						\$8,500
<i>Potential:</i>	\$63,750	\$63,750	\$63,750	\$63,750	\$63,750	\$63,750

B. An eligible hospital aggregated incentive amount calculation will be a one-time, up front calculation for each hospital, based on the methodology described in Paragraph (2) of Subsection B below.

(1) An eligible hospital has a base amount of \$2,000,000 for each of four years, plus a discharge-related amount, times the MAD share of the total. The detailed formula is below.

{Sum over four years of [(base amount + discharge related amount applicable for each year) \* transition factor applicable for each year]} \* [(MAD inpatient-bed-days + MAD managed care inpatient-bed-days) / {(total inpatient-bed-days) \* (estimated total charges – charity care charges) / (estimated total charges)}].

(2) MAD will make payment to a hospital as follows:

(a) A hospital will be eligible for funding over three years with payments distributed at 50 percent of the total payment in the first participation year of program enrollment, 40 percent of the total payment in the second participation year of program enrollment, and 10 percent in the third participation year of program enrollment.

(b) MAD will accept the most recent submitted cost reports as the basis for calculation of EHR incentive program payments.

(c) MAD will use the MAD management information system (MMIS) data as the basis for validating hospital MAD eligible recipient volume.

(d) MAD will use the federal fiscal year as the basis for calculation of all measures related to a hospital.

(e) MAD will use the hospital audit agent to support the MAD calculation of each eligible hospital incentive payment, and reach agreement with the eligible hospital and their representative, the New Mexico hospital association on the accuracy of each eligible hospital calculation before submitting the results for payment.

(f) A hospital may not request a re-calculation of the medicaid EHR incentive program payment once the parties have agreed to the base year for the medicare cost report.

[8.300.22.15 NMAC - N, 8-1-11]

**8.300.22.16 AUDIT AND RECORD RETENTION:** Medicaid EHR incentive program participation and payments are subject to audit and recoupment if determined to be paid improperly. MAD will provide both prepayment verification and post payment audit of the payments made through the medicaid EHR incentive program.

A. MAD expects to verify most aspects of medicaid EHR incentive program eligibility as part of its pre-payment screening, including:

(1) active MAD provider participation agreement for an eligible professional provider and an eligible hospital or a MAD EHR incentive payment agreement;

(2) MAD eligible recipient volume for an eligible professional provider in an independent practice (broken out by FFS and for each contracted MCO);

(3) participation in the group practice identified by the eligible professional provider as meeting the threshold for MAD eligible recipient volume;

(4) total MAD eligible recipient for group practice;

(5) all members of a group use the same methodology for assigning eligible recipients to participating eligible professional providers;

(6) A/I/U certified EHR software for eligible professionals;

(7) not a hospital based provider for eligible professional providers;

(8) hospital eligible recipient volume from audit reports; and

(9) hospital incentive payment calculation (one-time process).

B. MAD may conduct post payment audits of any medicaid EHR incentive program participant. Post payment audits may include any aspect of medicaid EHR incentive program eligibility. An eligible professional provider, group or eligible hospital must maintain and make available documentation to support their participation in the medicaid EHR incentive program. Post payment audits will focus on verification of eligibility components not readily available to MAD as part of normal MAD program administration, including:

(1) validation of total eligible recipient volume, including “needy individuals” for all eligible professional providers;

(2) out-of-state medicaid eligible recipients;

(3) practices predominantly in a FQHC or RHC for eligible professional providers claiming that status; and

(4) meaningful use through meeting objectives for collecting and submitting clinical quality measures.

C. MAD eligible professional providers and eligible hospitals participating in the medicaid EHR incentive program must maintain all documentation supporting their participation in the program for six years from the date of receipt of any payment.

[8.300.22.16 NMAC - N, 8-1-11]

**HISTORY OF 8.300.22 NMAC: [RESERVED]**

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**Explanatory paragraph:** This is an amendment to Sections 7, 9, 10, 11 and 13 of 6.31.2 NMAC (CHILDREN WITH DISABILITIES/GIFTED CHILDREN), effective July 29, 2011. Subsection B of Section 7 (DEFINITIONS) is amended to change the reference from “mental retardation” to “intellectual disability” in the definition of “Child with a disability” and to add a definition for “dyslexia” with the following paragraphs renumbered accordingly. Subsection C of Section 7 is amended to delete the definition of “Complaint assistance IEP (CAIEP) meeting” and to renumber the succeeding paragraphs accordingly. Section 9 (PUBLIC AGENCY RESPONSIBILITIES) is amended to add a new subparagraph (b) to paragraph (8) of Subsection B regarding providing training for research-based interventions for students with dyslexia, to correct a citation to the federal regulations in paragraph (1) of subsection D, and to add a new Subsection J regarding prohibition on mandatory medication. Section 10 (IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS) is amended to change “multi-disciplinary team or IEP team” to “eligibility team” throughout the section and to add a new subparagraph (c)(iv) to paragraph (1) of Subsection D regarding a parent being allowed to request an initial evaluation at any time. Section 11 (EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES) is amended to delete the reference to “ninety days” in paragraph (4) of Subsection A and to add a new paragraph (5) of Subsection B regarding requiring IEP teams to consider eleven strategies in developing IEPs for students with autism spectrum disorders. Section 13 (ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES) is amended to delete references to CAIEP meetings in Subsections G and H, to delete paragraphs (28) and (29) of Subsection I, to change a reference to a state rule in paragraph (6) of Subsection L and to add a new Subsection M regarding computation of time.

### 6.31.2.7 DEFINITIONS:

**B.** The following terms shall have the following meanings for purposes of these rules.

(2) “Child with a disability” means a child who meets all requirements of 34 CFR Sec. 300.8 and who:

(b) has been evaluated in accordance with 34 CFR Secs. 300.304-

300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR Sec. 300.8 including [mental retardation] intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf-blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and

(6) “Dyslexia” means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.

(6)(7) The “educational jurisdiction” of a public agency includes the geographic area, age range and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements including joint powers agreements (JPA) or memoranda of understanding (MOU) to provide educational services for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.

(7)(8) A “free appropriate public education (FAPE)” means special education and related services which meet all requirements of 34 CFR Sec. 300.17 and which, pursuant to Sec. 300.17(b), meet all applicable department rules and standards, including but not limited to these rules (6.31.2 NMAC), the Standards for Excellence (6.29.1 NMAC) and department rules governing school personnel preparation, licensure and performance (6.60 NMAC through 6.64 NMAC), student rights and responsibilities (6.11.2 NMAC) and student transportation (6.41.3 and 6.41.4 NMAC).

(8)(9) The “general education curriculum” pursuant to 34 CFR Sec. 300.320, means the same curriculum that a public agency offers for nondisabled

children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks and all other applicable requirements of the Standards for Excellence (Chapter 29 of Title 6 of the NMAC) and any other department rules defining curricular requirements.

(9)(10) “LEA” means a local educational agency as defined in 34 CFR Sec. 300.28.

(10)(11) “Individualized education program” or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324.

(11)(12) The “IDEA” means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 USC Secs. 1401 and following, including future amendments.

(12)(13) “NMAC” means the New Mexico administrative code, including future amendments.

(13)(14) “NMSA 1978” means the 1978 Compilation of New Mexico Statutes Annotated, including future amendments.

(14)(15) “Parent” includes, in addition to the persons specified in 34 CFR Sec. 300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child’s behalf as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR Sec. 300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of the IDEA if: (i) the foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child’s foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the above requirements but who meets all requirements for a surrogate parent under 34 CFR Sec. 300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate. (See Subsection J of 6.31.2.13 NMAC.)

(15)(16) “Puente para los niños fund” in New Mexico means a risk pool fund to support high cost students with disabilities identified by LEAs pursuant to 34 CFR Sec. 300.704(c)(3)(i).

(16)(17) “SAT” means the

student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.

~~[(17)]~~(18) “SEB” means the special education bureau of the public education department.

~~[(18)]~~(19) “Special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(a) As authorized by 34 CFR Sec. 300.8(a)(2)(ii) and 300.39(a)(2)(i), “special education” in New Mexico may include speech-language pathology services.

(b) Speech-language pathology services must meet the following standards to be considered special education:

(i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR Secs. 300.301-300.306 and Subsection D of 6.31.2.10 NMAC;

(ii) the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance; and

(iii) the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and

(iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.

(c) If all of the above standards are met, the service will be considered as special education rather than a related service.

(d) Student/staff caseloads shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.

~~[(19)]~~(20) A “state-supported educational program” means a publicly funded program that:

(a) provides special education and related services to children with disabilities who come within the program’s educational jurisdiction;

(b) is operated by, or under contractual arrangements for, a state school, state educational institution or other state institution, state hospital or state agency; and

(c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.

~~[(20)]~~(21) “USC” means the United States code, including future amendments.

C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.

~~[(1) “Complaint assistance IEP (CAIEP) meeting” means an IEP meeting that is facilitated by the representative of the public agency who directs special education programs within the public agency, and who has decision-making authority on behalf of such agency.]~~

~~[(2)]~~(1) “Facilitated IEP (FIEP) meeting” means an IEP meeting that utilizes an independent, state-approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student’s IEP.

~~[(3)]~~(2) “Mediation” means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student’s IEP or other educational, non-IEP-related issues.

[6.31.2.7 NMAC - Rp, 6.31.2.7 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11]

#### 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. Public agency funding and staffing.

##### (8) Staff training and qualifications.

(a) Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR Sec. 300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of the IDEA.

(b) Each public agency and charter school shall train their school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation and shall train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services.

D. Early intervening

services set aside funds. Fifteen percent set aside.

(1) Pursuant to 34 CFR Secs. 300.208(a)(2) and ~~[300.266]~~ 300.226, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.

J. Prohibition on mandatory medication. Each LEA and other public agencies serving students with disabilities are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a student as a condition of attending school, receiving an evaluation under 34 CFR Secs. 300.300 through 300.311, or receiving services under Part B of the IDEA. This prohibition shall be construed as provided in 34 CFR Sec. 300.174(b).

[6.31.2.9 NMAC - Rp, 6.31.2.9 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11]

#### 6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

D. Evaluations and reevaluations.

(1) Initial evaluations.

(c) Procedures for initial evaluation.

(iii) Each public agency shall maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the ~~[multi-disciplinary team or IEP team]~~ eligibility determination team.

(iv) A parent may request an initial special education evaluation at any time during the SAT process. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent’s request for an evaluation, the public agency must issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.

(f) The ~~[multi-disciplinary]~~ eligibility determination team including the parent and child, if appropriate, must meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation.

(2) Reevaluations.

(e) Each public agency shall

maintain a record of the receipt, processing, and disposition of any referral for an individualized reevaluation. Reevaluation shall be completed on or before the three year anniversary date. All appropriate reevaluation data and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the [multi-disciplinary] eligibility determination team or IEP team.

[6.31.2.10 NMAC - Rp, 6.31.2.10 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11]

### **6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:**

**A.** Preschool programs for children aged 2 through 5.

**(4)** Each public agency shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR Sec. 300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the [ninety day] transition planning conferences arranged by local Part C providers.

**B.** Individualized education programs (IEPs).

**(5)** For students with autism spectrum disorders (ASD) eligible for special education services under 34 CFR Sec. 300.8(c)(1), the strategies described in Subparagraphs (a)-(k) of this paragraph shall be considered by the IEP team in developing the IEP for the student. The IEP team shall document consideration of the strategies. The strategies must be based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed to provide FAPE, addressed in the IEP:

**(a)** extended educational programming, including, for example, extended day or extended school year services that consider the duration of programs or settings based on assessment of behavior, social skills, communication, academics, and self-help skills;

**(b)** daily schedules reflecting minimal unstructured time and reflecting active engagement in learning activities, including, for example, lunch, snack, and recess periods that provide flexibility within routines, adapt to individual skill levels, and assist with schedule changes, such as changes involving substitute teachers and other in-school extracurricular activities;

**(c)** in-home and community-based training or viable alternatives to such training that assist the student with acquisition of social or behavioral skills,

including, for example, strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community;

**(d)** positive behavior support strategies based on relevant information, including, for example:

**(i)** antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

**(ii)** a behavioral intervention plan focusing on positive behavior supports and developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

**(e)** futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

**(f)** parent or family training and support, provided by qualified personnel with experience in ASD, that, for example:

**(i)** provides a family with skills necessary for a child to succeed in the home or community setting;

**(ii)** includes information regarding resources such as parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching and management techniques related to the child's curriculum; and

**(iii)** facilitates parental carryover of in-home training, including, for example, strategies for behavior management and developing structured home environments or communication training so that parents are active participants in promoting the continuity of interventions across all settings;

**(g)** suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social or behavioral progress based on the child's developmental and learning level and that encourages work towards individual independence as determined by, for example:

**(i)** adaptive behavior evaluation results;

**(ii)** behavioral accommodation needs across settings; and

**(iii)** transitions within the school day;

**(h)** communication interventions, including communication modes and functions that enhance effective communication across settings such as augmentative, incidental, and naturalistic teaching;

**(i)** social skills supports and strategies based on social skills assessment

or curriculum and provided across settings, including, for example, trained peer facilitators, video modeling, social stories, and role playing;

**(j)** professional educator and staff support, including, for example, training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP; and

**(k)** teaching strategies based on peer reviewed, research-based practices for students with ASD, including, for example, those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, and social skills training.

[6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11]

### **6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:**

**G.** Conflict management and resolution.

**(2)** Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the public agency shall ensure that the following range of dispute resolution options is available to parents and public agency personnel.

**(c)** Formal dispute resolution.

**(i)** A state-level complaint may be filed with the SEB of the department by the parents of a child, or by another individual or organization on behalf of a child, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, [the responding public agency must offer in writing to convene a CAIEP meeting with the parents(s) and other relevant members of the IEP team to address any IEP-related issues raised in the complaint. The parent may accept or decline this offer, or] the parties may agree to convene a FIEP meeting or mediation [instead,] as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC.

**H.** State complaint procedures.

**(3)** Preliminary meeting.

[~~(a)~~ CAIEP meeting. Upon receipt of a complaint that meets the requirements of Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the SEB of the department shall acknowledge receipt of the complaint in writing and notify the public agency against which the violation has been alleged. Once a state-level complaint has been filed, the public agency shall offer in writing to convene a CAIEP meeting to address IEP-related issues raised in the complaint. The parent(s) may accept or decline this offer, or the parties may agree

in writing instead to convene a FIEP meeting or mediation, as described in Subparagraph (b) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC. The public agency must (and the parent(s) may) notify the SEB within one business day of agreeing to convene (or not to convene) one of these alternative dispute resolution (ADR) options. If the parties agree to convene a CAIEP meeting, as described at Paragraph D(1) of 6.31.2.7 NMAC, the following requirements apply:

(i) it must take place within 14 days of the date of the SEB's receipt of the complaint;

(ii) it must include the relevant members of the IEP team who have specific knowledge of the facts identified in the complaint; and

(iii) it may not include an attorney of the public agency unless the parent is accompanied by an attorney.]

~~(b)~~**(a)** FIEP meeting. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation [instead of a CAIEP meeting]. To do so, the public agency must (and the parent may) notify the SEB of the department in writing within 1 business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the complaint.

~~(c)~~**(b)** Mediation requirements. If the parties choose to use mediation, the following requirements apply.

(i) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

(ii) Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the agency who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

(iii) If a mediated agreement involves IEP-related issues, the agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.

(iv) The mediator shall

transmit a copy of the written mediation agreement to each party within 7 days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.

(v) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(vi) Any other requirement provided in 34 CFR 300.506(b) that is not otherwise provided herein.

(5) Complaints against public agencies.

(b) Decision. A written decision which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint shall be issued by the SEB and mailed to the parties within sixty (60) days of receipt of the written complaint, regardless of whether or not the parties agree to convene [a CAIEP meeting;] a FIEP meeting, or mediation. Such decision shall further include procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and if corrective action is required, such action shall be designated and shall include the timeline for correction and the possible consequences for continued noncompliance.

(7) Extension of time limit. An extension of the time limit under Subparagraph (b) of Paragraph (5) or Subparagraph (b) of Paragraph (6) of this Subsection H of 6.31.2.13 NMAC shall be permitted by the SEB of the department only if exceptional circumstances exist with respect to a particular complaint or if the parent or any other party filing a complaint and the public agency involved agree to extend the time to engage in mediation or a [CAIEP or] FIEP meeting.

I. Due process hearings.

~~(28)~~ Computation of time. In computing any period of time prescribed or allowed by Subsection I of 6.31.2.13 NMAC, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday. As used in this rule, "legal holiday" includes any day designated as a state holiday.

(29) Effective date and transitional provisions:

~~(a)~~ The procedures in this Subsection I of 6.31.2.13 NMAC shall govern due process requests received by the SEB after July 29, 2005.

~~(b)~~ The provisions of the IDEA 2004 that took effect on July 1, 2005, shall apply to due process cases filed between July 1 and July 29, 2005, in the event of irreconcilable conflicts with the state rules as they existed during that time.

~~(c)~~ The parties to due process cases that were pending on July 29, 2005, may enter into a written agreement to waive the administrative review process that would otherwise be available under the former state rules and proceed directly from a final decision by a hearing officer to a civil action in a state or federal district court. The parties to cases in which administrative appeals were pending on July 29, 2005, and in which the administrative appeal officer has not yet ruled on the merits of any substantive issue may likewise agree to waive the administrative review process but shall decide whether to do so within a reasonable time to be established by the administrative appeal officer.

~~(d)~~ The parties to cases pending on July 29, 2005, may likewise enter into a written agreement to dismiss any claims under Section 504 of the federal Rehabilitation Act that would otherwise be hearable or administratively reviewable under the former state rules, provided that the hearing or appeal officer has not yet ruled on the merits of any substantive issue raised under an affected Section 504 claim.

~~(e)~~ Upon receipt of a timely and sufficient motion incorporating an agreement under Subparagraphs (c) or (d) of Paragraph (29) of Subsection I of 6.31.2.13 NMAC above, the authority before whom the case is pending shall enter an appropriate order to implement the agreement.]

L. Confidentiality of information.

(6) Educational records retention and disposition schedules.

(c) Federal regulation and department rules require public agencies to inform parents of proposed destruction of special education records (34 CFR Sec. 300.624 and [6.29.1 NMAC] Paragraph (5) of this subsection).

M. Computation of time.

(1) In computing any period of time prescribed or allowed by 6.31.2.13 NMAC, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday in which case the last day shall be the next business day. As used in this rule, "legal holiday" includes any day designated as a state holiday.

(2) Notwithstanding Paragraph (1) of this subsection, if the due date of a decision referenced in Subsection H of 6.31.2.13 NMAC falls on a Saturday, a Sunday or a legal holiday, the decision will

be due on the previous business day.

[6.31.2.13 NMAC - Rp, 6.31.2.13 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11]

## NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

This is an amendment to 10.10.3 NMAC, Sections 11, 15, and 16, effective 07/29/2011.

### 10.10.3.11 AUTHORIZED PROJECTS/PROGRAM AREAS:

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

(1) law enforcement;

(2) planning, evaluation and technology improvement programs[~~limited to the evaluation component only~~].

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

C. Applicants may request copies of the New Mexico drug strategy by writing the department of public safety, grants management bureau, Post Office Box 1628, Santa Fe, New Mexico 87504 or by calling (505) 827-3347 or (505) 827-9112.

[10.10.3.11 NMAC - N, 8/31/2009; A, 5/14/2010; A, 7/29/2011]

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

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

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

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

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

C. Expenditures for purchase of services, evidence, and information (confidential funds): Formula

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

D. Land acquisition: Funds made available under this grant may not be used for land acquisition.

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

F. Supplanting: ~~[Formula grant funds shall not be used to supplant applicant funds, but will be used to increase the amount of such funds that would, in the absence of federal aid, be made available for law enforcement activities.]~~ Federal funds must be used to supplement existing funds for program activities and cannot replace or supplant nonfederal funds that have been appropriated for the same purpose.

G. Infrastructure investment: Funds made available under this grant may not be used for infrastructure investment.

[10.10.3.15 NMAC - N, 8/31/2009; A, 5/14/2010; A, 7/29/2011]

### 10.10.3.16 REPORTING AND OTHER REQUIREMENTS:

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

(1) the total amount of JAG funds received;

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

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

(a) the name of the project or activity;

(b) a description of the project or activity;

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

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

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

D. In accordance with 2 CFR Chapter 1, Part 170 REPORTING SUB-AWARD AND EXECUTIVE COMPENSATION INFORMATION, applicants should anticipate that all recipients (other than individuals) of awards of \$25,000 or more under this solicitation, consistent with the Federal Funding Accountability and Transparency Act of 2006 (FFATA), will be required to report award information on awards totaling \$25,000 or more, and, in certain cases, to report information on the names and total compensation of the five most highly compensated executives of the recipient.

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

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

~~[F:] G.~~ Audit requirements: The recipient agrees to comply with the organizational audit of OMB circular A-133, audit of states, local government, and non-profit organizations, as further described in the current edition of the OJP financial guide, chapter 19.

[10.10.3.16 NMAC - N, 8/31/2009; A, 5/14/2010; A, 7/29/2011]



**NEW MEXICO  
SIGNED LANGUAGE  
INTERPRETING  
PRACTICES BOARD**

This is an amendment to 16.28.1 NMAC Sections 7 and 8, effective 08/18/2011.

**16.28.1.7 DEFINITIONS:** As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

**A.** "Accredited" means approved by the:

(1) New England association of schools and colleges;

(2) middle states association of colleges and secondary schools;

(3) north central association of colleges and schools;

(4) northwest association of schools and colleges;

(5) southern association of colleges and schools; or

(6) western association of schools and colleges.

**B.** "ACET" refers to the associate continuing education tracking system within RID.

**C.** "Act" means the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17.

**D.** "Administrator" or "board administrator" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the act.

**E.** "Adult" means the all persons 18 years of age or older.

**F.** "Applicant" means a person who has completed all educational requirements of the eligibility requirements for licensure and has submitted a complete application to the board. An applicant is seeking approval of his or her application by the board to advance him or her to candidacy for licensure.

**G.** "Board" means the signed language interpreting practices board.

**H.** "Board regulations" or "regulations" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation.

**I.** "CEU" refers to continuing education units as is used by the registry of interpreters for the deaf.

**J.** "CMP" means the certification maintenance program as is used by the registry of interpreters for the deaf.

**K.** "Consumer" means a person using the services of a signed language interpreter.

**L.** " C o n f i d e n t i a l

communication" means a communication that is not intended to be disclosed to third persons other than those present to further the interest of the person requiring the interpreting.

**M.** "Deaf person" means a person who has either no hearing or who has significant hearing loss.

**N.** "Deaf-blind person" means a person who has either no hearing or who has significant hearing loss and a significant vision loss.

**O.** "Department" means the New Mexico regulation and licensing department.

**P.** "EIPA" refers to the educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

**Q.** "Filed with the board" means hand delivered or postal mail received during normal business hours by the board office in Santa Fe, New Mexico.

**R.** "Hard-of-hearing person" means a person who has either no hearing or who has significant hearing loss.

**S.** "Interpreter" means a person who practices signed language interpreting.

**T.** "Interpreter education program" or "interpreter preparation program" means a post-secondary degree program of at least two year's duration accredited by the state or similar accreditation by another state, district or territory; or a substantially equivalent education program approved by the board.

**U.** "Interpreting" means the process of providing accessible communication between deaf, hard of hearing, or deaf-blind persons and hearing persons, including communication between signed language and spoken language and other modalities such as visual, gesture and tactile methods, not to include written communication. A person is interpreting if the person advertises, offers to practice, is employed in a position described as interpreting or [hold] holds out to the public or represents in any manner that the person is an interpreter in New Mexico

**V.** "Licensee" means an interpreter who holds a current license issued under the act and these rules.

**W.** "NAD" means the national association of the deaf.

**X.** "New Mexico administrative code" or "NMAC", Section 14-4-7.2 NMSA 1978 is the official compilation of current rules filed by state agencies in accordance with New Mexico statutes.

**Y.** "New Mexico statutes annotated 1978 or NMSA 1978" is the official compilation of state laws.

**Z.** "Open Meetings Act" or

"OMA", 10-15-1 through 10-15-4 NMSA 1978 is the statutory provision requiring that public business be conducted in full public view; providing guidelines governing both public and closed meetings, and regulating the notice, agenda and minutes of such meetings.

**AA.** "Properly made application" means a completed application form for a signed language interpreter license filed with the board that is complete in all particulars and appears on its face to satisfy all minimum age, educational, supervision, payment and other requirements [~~except examination requirements~~] for licensure as required by the act and these regulations.

**BB.** "RID" refers to the registry of interpreters for the deaf, which is a national association of signed language interpreters.

**CC.** "Rule" means board regulations.

**DD.** "State Rules Act", Sections 14-4-1 through 14-4-5 NMSA 1978, is the statutory provision that ensures that state agencies file with the state records center and archives all rules and regulations including amendments or repeals.

**EE.** "Statute" means a law that governs conduct within its scope. A bill passed by the legislature becomes a statute; and "statutory authority" means the boundaries of the board's lawful responsibility as laid out by the statute that created it.

**FF.** "Substantial compliance" means sufficient compliance with the statutes or rules so as to carry out the intent for which the statutes or rules were adopted and in a manner that accomplished the reasonable objective of the statutes or rules.

**GG.** "Supervised interpreter intern or student" means a person who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning.

**HH.** "Uniform Licensing Act" or "ULA", Section 61-1-1 through 61-1-33 NMSA 1978 is the statutory provision that governs the major duties of the board in area of:

(1) procedures which must be followed to accord due process to applicants for licensure and to licensees if the board takes action against the licensee for acts of misconduct that would adversely affect public health, safety and welfare, and

(2) rulemaking procedures that the board shall follow in adopting valid regulations affecting signed language interpreters.

[16.28.1.7 NMAC - N, 07/21/09; A, 08/18/11]

**16.28.1.8 B O A R D OPERATIONS:**

**A. Elections.** At its annual meeting in July, the board shall elect a chair and vice-chair.

**B. Duties of officers.** All board officers shall exercise authority subject to the act, board regulations, and specific directions of the board.

(1) The chair shall preside at board meetings and adjudicatory hearings unless another presiding officer is named by the board. The chair may respond to inquiries and correspondence, execute orders of the board in any pending adjudicatory proceeding unless a hearing officer is appointed, or designate another board member to sign decisions of the board, appoint board members to formal committees, and provide direction to the board administrator on routine matters to facilitate the efficient operation of board functions between meetings.

(2) If the chair becomes vacant, the vice chair shall serve as chair until a new chair is elected.

**C. Vacancy.** If the office of board chair becomes vacant, the board shall elect a chair at the next meeting or any subsequent meeting. If the office of vice chair becomes vacant, the board may hold elections as it deems necessary and advisable.

**D. Duties of board administrator.** The board administrator or designee shall at all times perform those tasks directed by the board pursuant to those duties prescribed by the act, board regulations, the ULA, Sections 61-1-1 through 61-1-33 NMSA 1978, and other applicable state laws. In addition, the board administrator shall assume the role of custodian of records.

**E. Board meetings.** The board shall conduct meeting in an orderly fashion, with due regard for each board member and the public. The board may refer to Robert's Rules of Order, Revised, when necessary and advisable.

**F. Quorum.** The board shall transact official business only at a legally constituted meeting with a quorum present. A quorum shall consist of four (4) members.

**G. [Complaint] Standards of practice committee.** The board chair shall appoint a [complaint] standards of practice committee consisting of at least one board member.

**H. Addressing the board.** Except for proceedings to adopt, amend, or repeal regulations in accordance with the ULA, Section 61-1-29 NMSA 1978, the board at its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall be timely made and shall not delay

or disrupt the board's meeting. No person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation, except to confer for the purpose of settlement or adjudicatory proceeding, or matter in litigation, except to confer the purpose of settlement or simplification of the issues. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person.

**I. Telephone attendance.** Pursuant to the OMA, Section 10-15-1 (C) NMSA 1978, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, and shall give advance notice to the board administrator an ample time to arrange such accommodation.

**J. Conflict of interest, recusal.** Any board member who cannot be impartial in the determination of a matter before the board and who cannot judge a particular matter or controversy fairly on the basis of its own merits shall not participate in any board deliberation or vote on the matter.

**K. Confidentiality.** Board members shall not disclose to any non-member content of any executive session, or any other confidential matters that may be the subject of an executive session or attorney-client privileged communications except as ordered by a court of competent jurisdiction or where the board knowingly and intentionally permits disclosure.

**L. Code of conduct.** Board members shall adhere to the standards set forth in the Governmental Conduct Act, Section 10-16-1 through 10-16-18 NMSA 1978.

[16.28.1.8 NMAC - N, 07/21/09; A, 08/18/11]

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**NEW MEXICO  
SIGNED LANGUAGE  
INTERPRETING  
PRACTICES BOARD**

This is an amendment to 16.28.2 NMAC Section 9, effective 08/18/2011.

**16.28.2.9 CONTINUING EDUCATION REQUIREMENTS:**

**A. Community or educational signed language interpreter license shall submit a copy of the applicant's current RID membership card documenting compliance with the requirements of the certification maintenance program (CMP).**

**B. Provisional license:** Two CEUs (20 hours) of continuing education annually documented on the applicant's associate continuing education tracking (ACET) transcript from RID. This requirement will be pro-rated for applicants who receive their license after October 30 of any calendar year.

[16.28.2.9 NMAC - N, 07/21/09; A, 08/18/11]

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**NEW MEXICO  
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PRACTICES BOARD**

This is an amendment to 16.28.3 NMAC Sections 11, 12, 13, 14, 15, 17 & 19 effective 08/18/2011.

**16.28.3.11 APPLICATION FOR LICENSURE:**

**A.** An application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.

**B.** All applications for licensure must include:

(1) a completed and signed application;

(2) applicant name;

(3) proof of age indicating applicant is at least eighteen years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(4) mailing address;

(5) business address;

(6) phone number;

(7) non-refundable application fee as required by the board;

(8) photograph: applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.

**C.** An application for a community signed language interpreter license must also include: a copy of the applicant's current RID membership card showing that the applicant holds one or more certifications recognized by RID at the time of application for licensure with the exception of ED: K-12 (educational certificate: K-12).

**D.** An application for an educational signed language interpreter license must also include: proof of EIPA rating of 4.0 – 5.0 and a copy of the applicant's current RID membership card showing that the applicant holds the ED: K-12 certified member status by virtue of EIPA rating; or a copy of the applicant's current RID membership card showing that the applicant holds one or more certifications currently recognized by RID.

**E.** An application for a provisional signed language interpreter license must also include: proof of completion of an interpreter education program or interpreter preparation program at an accredited institution; or proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective; and a copy of the applicant's current RID membership card showing that the applicant is an associate member (for purposes of tracking CEU requirements through the ACET program as outlined in Subsection B of 16.28.2.9 NMAC).

**F.** If an applicant submits an incomplete license application they will be requested to submit any missing documentation; failure to do so within six months of receipt of the original application will result in the application file being closed. After the file has been closed, the applicant will be required to submit a new application and application fee to apply again.  
[16.28.3.11 NMAC - N, 07/21/09; A, 08/18/11]

**16.28.3.12 REQUIREMENTS FOR A LICENSE FOR A COMMUNITY SIGNED LANGUAGE INTERPRETER:**

A license for a community signed language interpreter shall be granted to a person who:

**A.** files a completed application that is accompanied by the required fees; and,

**B.** submits satisfactory evidence that the person:

- (1) has reached the age of majority;
- (2) is of good moral character;
- (3) has completed all educational requirements established by the board;

(4) holds active certification recognized at the time of application by the registry of interpreters for the deaf (RID) with the exception of ED: K-12 (educational certificate: K-12); and

(5) complies with the registry of interpreters for the deaf (RID) certification maintenance program (CMP).

[16.28.3.12 NMAC - N, 07/21/09; A, 08/18/11]

**16.28.3.13 REQUIREMENTS FOR A LICENSE FOR AN EDUCATIONAL SIGNED LANGUAGE INTERPRETER:**

A license for an educational signed language interpreter shall be granted to a person who:

**A.** files a completed application that is accompanied by the required fees; and,

**B.** submits satisfactory evidence that the person:

- (1) has reached the age of majority;
- (2) is of good moral character;
- (3) has completed all educational

requirements established by the board;

(4) has passed the educational interpreter written and performance assessment (EIPA) with a score of 4.0 – 5.0 and holds active ED: K-12 (educational certification: K-12) or other certification recognized at the time of application by the registry of interpreters for the deaf (RID); and

(5) complies with the registry of interpreters for the deaf (RID) certification maintenance program (CMP).

[16.28.3.13 NMAC - N, 07/21/09; A, 08/18/11]

**16.28.3.14 REQUIREMENTS FOR A ONE-TIME, FIVE-YEAR PROVISIONAL LICENSE TO A PERSON NOT MEETING THE COMMUNITY SIGNED LANGUAGE INTERPRETER OR EDUCATIONAL SIGNED LANGUAGE INTERPRETER REQUIREMENTS FOR LICENSURE:**

A one-time, five-year provisional license shall be granted to a person who:

**A.** files a completed application that is accompanied by the required fees; and,

**B.** has completed an interpreter education program or interpreter preparation program at an accredited institution; or

**C.** [Hs] provides verifiable documentation that he or she was employed as a community signed language interpreter or an educational signed language interpreter at the time the act became effective on July 21, 2009;

**D.** provides proof of associate membership in the registry of interpreters for the deaf (RID) (for purposes of meeting the CEU requirements outlined in Subsection B of 16.28.2.9 NMAC).

[16.28.3.14 NMAC - N, 07/21/09; A, 08/18/11]

**16.28.3.15 INITIAL LICENSE:**

Initial community and educational licenses expire on September 30th, in the second year of licensure. Initial provisional licenses expire on September 30<sup>th</sup> (following issue date). No license will be issued for longer than 28 months.

[16.28.3.15 NMAC - N, 07/21/09; A, 08/18/11]

**16.28.3.17 LICENSE RENEWAL:**

**A.** A licensee may renew a community signed language interpreter license or an educational signed language interpreter license every two years by:

(1) submitting a completed renewal application provided by the board that is accompanied by the required fees; and

(2) submitting the continuing education requirements as specified in

16.28.2.9 NMAC.

**B.** A licensee may renew a provisional interpreter license every year for up to four years by:

(1) submitting a completed renewal application provided by the board that is accompanied by the required fees; and

(2) submitting the continuing education requirements as specified in 16.28.2.9 NMAC.

**C.** If a license is not renewed by the expiration date, the license shall be considered expired, and the licensee shall refrain from practicing. The licensee may renew within a sixty-day grace period, which begins the first day the license expires, by submitting payment of the renewal fee and late fee and complying with all renewal requirements. Upon renewal of license, the licensee may resume practice.

**D.** Any person whose provisional license has lapsed may apply to the board for reinstatement of the license.

(1) In making application for reinstatement, the applicant must state why the license should be reinstated and should specifically set forth an explanation of why the license lapsed and how changed circumstances would justify reinstatement. Documentation must be provided.

(2) Any licensed interpreter applying for reinstatement of a license must submit an application fee as set forth in 16.28.6.8 NMAC and provide proof of attendance of continuing education hours as set forth in 16.28.2.9 NMAC for each year of lapse.

(3) Provisionally licensed interpreters will still be limited to a total of five years from the time the initial license was granted.

(4) If the board approves the reinstatement application, the original license number will be issued to the applicant.

[16.28.3.17 NMAC - N, 07/21/09; A, 08/18/11]

**16.28.3.19 EXEMPTIONS:**

**A.** The Signed Language Interpreting Practices Act does not apply to:

(1) nonresident interpreters working in New Mexico less than thirty calendar days per year;

(2) interpreting in religious or spiritual settings;

(3) interpreting in informal settings for friends, families or guests;

(4) interpreting in emergency situations where the deaf, hard-of-hearing or deaf-blind person or that person's legal representative decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer;

(5) the activities or services of a supervised interpreter intern or student in training who is enrolled in an interpreter education program, interpreter preparation

program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board; or

(6) multilingual interpreting in order to accommodate the personal choice of the consumer.

**B.** Persons falling under [the] these exemptions [listed in Section 61.34.5 NMSA—1978;] are not required to apply for licensure or otherwise notify the board of their exempted interpreting practice.

[16.28.3.19 NMAC - N, 07/21/09; A, 08/18/11]

## NEW MEXICO SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

This is an amendment to 16.28.4 NMAC Sections 7, 8, 9, 10, 11, 12, 13 & 14 effective 08/18/2011.

### 16.28.4.7 DEFINITIONS:

**A. “Complaint”** means a complaint filed with the board against an applicant for licensure or against a licensee.

**B. “Complainant”** means the party who files a complaint against a licensee or an applicant for licensure.

**C. “Respondent”** means the applicant for licensure or the licensee who is the subject of the complaint filed with the board.

**D. “Hearing”** means the formal process whereby the respondent is afforded the opportunity to be heard by the board, or its designated hearing officer, before the board takes action which might result in the disciplinary action against the respondent’s application for licensure or his or her license to practice signed language interpreting.

**E. “Violation”** means a violation of the Signed Language Interpreting Practices Act or the rules and regulations duly adopted by the board.

**F. “Notice of contemplated action”** or “NCA” means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the board’s intent to take action based upon the alleged violations of practice and whereby the respondent is afforded the opportunity for a hearing before the board.

**G. “License revocation”** means to prohibit the conduct authorized by the license.

**H. “License suspension”** means to prohibit, for a stated period of time, the conduct authorized by the license.

**I. “License restricted subject to conditions”** means to allow

the conduct authorized by the license for a stated period of time, subject to conditions that are reasonably related to the grounds for disciplinary action.

[16.28.4.7 NMAC - N, 08/18/11]

**16.28.4.8 COMPLAINTS:** The disciplinary process may be instituted by a complaint on a board approved form by any person, including board members and board staff.

[16.28.4.8 NMAC - N, 07/21/09; 16.28.4.8 NMAC - N, 08/18/11]

### ~~[16.28.4.8]~~ **16.28.4.9 COMPLAINT PROCEDURES:**

~~[A:]~~ **Inquiries regarding filing of complaints.**

~~[(+)]~~ **A.** Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator for a response.

~~[(2)]~~ **B.** Upon receipt of an inquiry, the board administrator shall forward to the potential complainant a statement regarding the board’s jurisdiction, the conduct or grounds for possible action by the board against a licensee or applicant, and a complaint form with instructions on how to file the complaint. Complaints should be submitted in writing on the prescribed form, signed and notarized, and state the facts upon which the complaint is based, however, oral complaints may be received and investigated. An oral complaint submitted to the board administrator shall be in an audio, visual or audiovisual format. After the complaint committee reviews the complaint facts and determines there is cause for further investigation, the board will have the complaint translated into written English and entered onto the form provided by the board, then present the transcription to the complainant for clarification and approval. Once approved, the complainant shall resubmit the [complaint in writing on a form provided by the board;] signed, notarized [and submitted] complaint to the board administrator. Anonymous complaints will not be investigated, unless the board determines an exception is valid due to unusual circumstances.

~~[(3)]~~ **C.** Once a complaint is made, it will come under the provisions of this section and cannot be withdrawn.

~~[B. Procedures for processing complaints.~~ The board administrator shall:

~~(1) log in the date the complaint is received;~~

~~(2) determine if the subject of the complaint is a licensed signed language interpreter or an applicant or person otherwise within the jurisdiction of the board;~~

~~(3) assign an individual file with a complaint number, which numbering~~

sequence shall begin each new calendar year;

~~(4) forward the complaint file to the complaint committee; and~~

~~(5) send a letter to the complainant confirming receipt of the complaint.~~

~~C. Review by the complaint committee.~~

~~(1) The complaint committee will handle complaints in a confidential manner as required by law.~~

~~(2) The complaint committee will review all complaints received by the board.~~

~~(3) Upon its review of a complaint, the complaint committee will present a summary of the case to the board and submit its recommendations to the board.~~

~~(4) The complaint committee, on behalf of the board, may issue investigative subpoenas.~~

~~D. Review by the board.~~

~~(1) Any board member who is partial or believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances shall not participate in the decision whether to issue a notice of contemplated action and shall not participate in the hearing, deliberation, or decision of the board.~~

~~(2) The board shall review the case summary presented by the complaint committee relevant documents, witness statements, and other pertinent information regarding the complaint. If the board has sufficient evidence that a violation may have occurred, the board shall forward the evidence to the administrative prosecutor for issuance of a notice of contemplated action.~~

~~(3) Following the issuance of a notice of contemplated action, the board may at its option, authorize a board member, the hearing officer, or the administrative prosecutor to confer with the applicant or the licensee for the purpose of settlement of the complaint. Such settlement must be approved by the board, must be with the consent of the applicant or licensee, and shall include a knowing and intentional waiver by the applicant or the licensee, and shall include a knowing and intentional waiver by the applicant or his rights to hearing under the Uniform Licensing Act.~~

~~(4) The board may refer a complaint to the attorney general for injunctive proceeding or to the district attorney for criminal prosecution.]~~

[16.28.4.9 NMAC - N, 07/21/09; 16.28.4.9 NMAC - Rn & A, 16.28.4.8 NMAC, 08/18/11]

### ~~[16.28.4.9]~~ **16.28.4.10 [DISCIPLINARY HEARINGS:]**

~~A. All hearings will be conducted in accordance with the Uniform Licensing Act.~~

~~B. The chair of the board will serve as hearing officer, unless the board~~

appoints a hearing officer:

**C.** If the board appoints a hearing officer, the hearing officer will be fully authorized to make all necessary procedural decisions on behalf of the board, including but not limited to matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law:

**D.** The hearing officer may make such orders as he or she deems necessary to implement the authority conferred by Subsection A of 16.28.4.9 NMAC.] **INVESTIGATION:** Upon receipt of the complaint, the board will cause an investigation to be made into the subject complaint by the boards standards of practice committee.

[16.28.4.10 NMAC - N, 07/21/09; Repealed, 08/18/11; 16.28.4.10 NMAC - N, 08/18/11]

**[16.28.4.10] 16.28.4.11 [SURRENDER OF LICENSE:**

**A.** If a license is restricted, suspended, or revoked by the board for any reason specified in the rules and regulations of the board or in the act, the licensee shall immediately surrender his or her license in person or by registered mail to the board:

**B.** If the licensee's scope of practice is restricted or limited or otherwise subject to conditions, the license may reflect the restriction, limitations, or condition.] **STANDARDS OF PRACTICE COMMITTEE:** The standards of practice committee is formed for the purpose of investigating disciplinary matters referred to it by the board. The board chairperson shall appoint a member or members of the board to the standards of practice committee.

**A.** The standards of practice committee shall review all documentation provided to it in reference to the subject complaint.

**B.** The standards of practice committee may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to respond to the allegations in the complaint.

**C.** The foregoing notwithstanding, the standards of practice committee will not be required to provide the respondent with notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action, if the committee determines that disclosure may impair, impede, or compromise the efficacy or integrity of the investigation.

**D.** The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

**E.** The standards of practice committee will have independent

authority to direct the board administrator to contract for the services of such persons without prior approval of the board after the board administrator has determined budgetary availability for such services.

**F.** Upon completion of its investigation, the standards of practice committee shall submit to the board its proposed recommendations concerning the proper disposition of the subject complaint.

**G.** Upon review the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee recommendations.

**H.** Standards of practice committee members who participate in the preparation of recommendations to the remaining board members shall not participate further in any actions initiated by the board against the licensee or applicant who is the subject of the complaint.

**I.** If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

**J.** If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

**K.** The board may take any other action with regard to the complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

[16.28.4.11 NMAC - N, 07/21/09; Repealed, 08/18/11; 16.28.4.11 NMAC - N, 08/18/11]

**16.28.4.12 PRIVATE CAUSE OF ACTION:** Neither the action nor inaction by the board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[16.28.4.12 NMAC - N, 08/18/11]

**16.28.4.13 DISCIPLINARY ACTION:** In accordance with the Uniform Licensing Act, the board has authority to impose penalties in disciplinary matters. The Uniform Licensing Act allows discipline in many forms including but not limited to fines, letters of reprimand, corrective action plans, suspension, and revocation of license.

**A.** Formal letter of reprimand: The board shall have discretionary authority to issue formal letters of reprimand or warning instead of revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the Uniform Licensing Act and

shall be matters of public record.

**B.** Prehearing motions: The board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing. Until such time as the board appoints a hearing officer, the chair of the board shall serve as hearing officer.

**C.** Settlement agreements: Following the issuance of a notice of contemplated action, the board may enter into a settlement agreement with the respondent as a means of resolving a complaint.

**D.** Costs of disciplinary proceedings: Licensees or applicants shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing and an action in Section 61-1-3 NMSA 1978 of the Uniform Licensing Act is not taken by the board.

**E.** Uniform licensing provisions: In accordance with Section 61-1-7.G NMSA 1978 of the Uniform Licensing Act, a licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the board shall be subject to disciplinary action.

**F.** License returned to the board: Any license issued by the board must be returned to the board subsequent to revocation or suspension. The item(s) listed must be returned in person or by certified mail no later than thirty (30) days after the suspension or revocation order to the board.

[16.28.4.13 NMAC - N, 08/18/11]

**16.28.4.14 DELEGATION OF AUTHORITY:** The authority of the New Mexico signed language interpreting practices board to refer any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq, for administrative prosecution is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.28.4.14 NMAC - N, 08/18/11]

## Submittal Deadlines and Publication Dates 2011

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Issue Number 1	January 4	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
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 18	April 29
Issue Number 9	May 2	May 16
Issue Number 10	May 17	May 31
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 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
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Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
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Issue Number 24	December 16	December 30