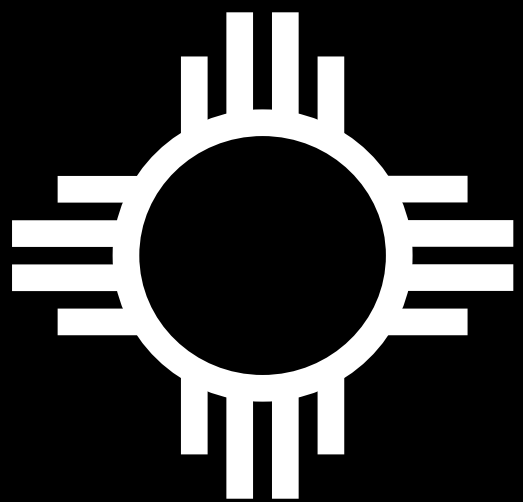


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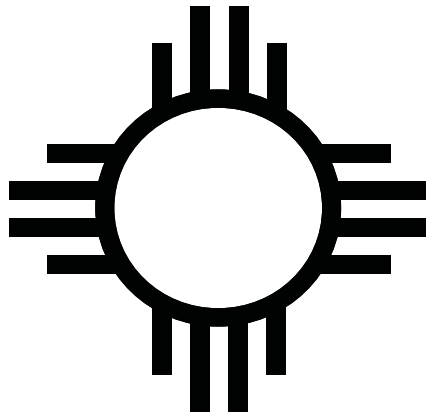


Volume XXIII  
Issue Number 2  
January 31, 2012



# **New Mexico Register**

**Volume XXIII, Issue Number 2  
January 31, 2012**



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

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2012

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# New Mexico Register

Volume XXIII, Number 2

January 31, 2012

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#### Effective Date and Validity of Rule Filings

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO GAME COMMISSION

#### STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, February 23, 2012**, beginning at 9:00 a.m., in **Meeting Room A301 Hobbs City Hall Annex 200 East Broadway, Hobbs, NM 88240**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: to designate reasonable public notice for 2012 Commission meetings; Habitat Stamp program; discuss hunting recruitment and retention; conservation education initiative; initiation of the 2012 Biennial Review of Species listed as threatened or endangered under the State Wildlife Conservation Act; 2012 legislative session; quarterly depredation report; river otter reintroduction; presentation of the Fiscal Year 2011 financial statements and audit report, and hear general public comments (comments are limited to three minutes).

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8027. Please contact Ms. Quintana at least 3 working days before the meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms upon request.

### NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

#### PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

#### NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The Public School Capital Outlay Council ("Council") is scheduled to consider the

following rulemaking actions: 6.27.31 (SPECIAL PURPOSE SCHOOLS EDUCATIONAL FACILITY ADEQUACY STANDARDS) – New Rule.

There will be a public hearing regarding the proposed new rule on February 14, 2012 at 9:00 a.m. in the Old Senate Chambers (Red Room – Room 238) located on the second floor of the Bataan Memorial Building, 407 Galisteo St, Santa Fe, NM. The proposed rules are posted on the Public School Facilities Authority's website at [www.nmpsfa.org](http://www.nmpsfa.org) and have been disseminated to public school districts, charter schools, and other interested parties. Copies may also be obtained by contacting Lena Archuleta, Public School Facilities Authority, 2019 Galisteo, Suite B-1, Santa Fe, NM, 87505 ((505) 988-5989); [larchuleta@nmpsfa.org](mailto:larchuleta@nmpsfa.org). Written comments regarding the proposed rulemaking should be submitted to Ms. Archuleta at the addresses shown above. Comments may also be telefaxed to Ms. Archuleta at (505) 988-5933. Written comments must be submitted no later than 5:00 p.m. on February 10, 2012; however, submission of written comments as soon as possible is encouraged.

The Council will act on the proposed rules at its March 1, 2012 meeting beginning at 9:00 a.m. in Room 317 of the State Capitol, Santa Fe, New Mexico. Notice of any changes regarding the date, time, and location of the Public School Capital Outlay Council meeting will be provided in accordance with the Council's open meetings policy. The agenda will be electronically mailed to public school districts and charter schools.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Lena Archuleta at (505) 988-5989 by February 3, 2012. Public documents, including the agenda and minutes, can be provided in various accessible forms. Please contact Lena Archuleta if a summary or other type of accessible form is needed.

### End of Notices and Proposed Rules Section

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## Adopted Rules

### NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.3 NMAC, Section 11, effective 1-31-2012.

#### 19.31.3.11 RESTRICTIONS:

**A. One license per big game species per year:** It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

**B. Validity of license or permit:** All permits or licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area. Except that a permit or license will be valid on the contiguous deeded land of private property that extends into an adjacent GMU that is open to hunting for that species, when the license holder is in possession of current, valid written permission from the appropriate landowner. This exception shall only apply when the adjacent unit has the same restrictions as to weapon type, bag limit, season dates and license availability.

**C. Improper license and permit:** Any person who attempts to capture or shoot, hunts, kills, injures or takes, in any manner any game animal, fur-bearing animal, game bird or game fish other than in accordance with the specified hunt code or dates, legal sporting arm, bag limit allowance or area designated on a license or permit issued by the department to that person is deemed to be hunting, fishing or trapping without a proper license as required by 17-3-1 NMSA 1978 unless otherwise exempted by a valid commission rule.

**D. Transfer of permits or licenses:** The director may grant the transfer of a hunting license or permit once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

**E. Refunds:** The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or

life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting.

**F. Donation of permits or licenses:** Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a person who has been qualified through a nonprofit wish-granting organization. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit wish-granting organizations that identify and submit recipients for donated licenses or permits. However, a once-in-a-lifetime licensee may be reinstated as eligible to participate in future drawings for the same species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit wish granting organization. Donation of a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.

**G. More than one application:** It shall be unlawful to submit more than one application per species for any license issued through a special drawing, unless otherwise permitted by regulation.

**H. Handicapped fishing or handicapped general hunting license qualifications:** To hold a handicapped fishing or handicapped general hunting license, the individual must be a resident of New Mexico and must show proof of a severe disability by reason of one or more developmental or physical disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, and end-stage renal disease, or who has a combination of permanent disabilities which cause comparable substantial functional limitation. Reasonable accommodation will be made, relating to these licenses, upon request.

**I. Mobility impaired (MI) deer, elk, oryx, or antelope license qualifications:** To hold a mobility impaired deer, elk, oryx, or antelope license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a mobility restriction which

limits their activity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation and then obtain department approval for MI hunt eligibility. Every person qualified as MI shall have their card/eligibility expire 48 months from the department's approval date or issuance date, whichever is later, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

**J. Youth hunts:** Only applicants who have not reached their 18<sup>th</sup> birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt. Applicant for firearm hunts must provide hunter education certificate number on application.

**K.** An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social security number prior to an application form being processed or a license being awarded.

**L. Military only hunts:** Applicants must be full time active military and proof of military status must accompany application or, if applying online, must be forwarded to the department by the application deadline date.

**M. Penalty assessments:** When a person is issued a penalty assessment citation for fishing without a license or hunting small game without a license, the citation will serve as a special permit for that specific activity for 15 calendar days. The person must remit the prescribed penalty amount indicated on the face of the citation within 30 days of the date of citation issuance.

**N. Iraq/Afghanistan veteran oryx hunts:** Only New Mexico residents who served on active duty military during the Iraq or Afghanistan conflict are eligible to apply for Iraq/Afghanistan veteran oryx licenses. Proof of active duty military assignment in Iraq or Afghanistan must accompany application or, if applying online, must be forwarded to the department by the application deadline date.

**O. Mentor/youth only hunts:** Applications for mentor/youth only hunts are limited to one adult (18 years and older) and up to three youth applicants (under 18 years as of opening day of the hunt). Youth applicants for any mentor/youth only firearm hunts must provide hunter education certificate number on application.

**P. Youth encouragement**

**hunts:** Only youth hunters as defined by 19.31.3.11 NMAC that successfully fulfilled all application requirements and responsibilities for draw hunts for deer, elk, antelope, ibex, oryx, or bighorn sheep in the current license year and were unsuccessful in drawing any licenses or permits will be eligible to ~~[register for these hunts]~~ apply for licenses for these hunts for 14 days subsequent to the original posting of availability of these hunts on the department website. Licenses remaining after the first 14 days of availability shall be available to any youth hunters as defined by 19.31.3.11 NMAC and eligible to purchase an elk license.

**Q. NMDGF customer identification number:** It shall be unlawful for an applicant to use another person's NMDGF customer identification number or to provide false information to obtain a NMDGF customer identification number.

**R. Application fee:** Prior to the drawing, all applicants for special hunt drawings for public draw licenses shall pay the applicable species license fees including depredation damage stamp, the required game hunting license fee and the non-refundable application fee as defined by 19.30.9.9 NMAC. Disabled American veterans certified as holders of lifetime general hunting and fishing licenses are exempt from paying the application fee when applying for deer hunt drawings.

**S. Game hunting license fee refund:** Applicants for special hunt drawings for public draw licenses may elect to receive a refund of the game hunting license and appropriate fees if they are unsuccessful in the drawing for all of the species applied for as long as an authorization number (pursuant to 17-3-5 NMSA 1978) has not been issued to the applicant by the department.

[19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 12-30-04; A, 6-30-05; A, 9-30-05; A, 10-31-05; A, 3-31-06; A, 6-15-06; A, 4-1-07; A, 8-15-07; A, 3-16-09; A, 3-15-11; A, 9-30-11; A, 1-31-12]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.5 NMAC, Section 8 effective 1-31-2012.

### 19.31.5.8 LICENSE AND APPLICATION REQUIREMENTS:

**A. License:** It shall be unlawful to hunt blue grouse, pheasant, quail, and squirrel without having purchased a valid license for the current license year. ~~[Valid licenses for upland game hunting~~

~~are general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or junior or senior small game and fishing, or non-resident small game, and temporary small game 4-day licenses. A habitat stamp is required for those hunting on US forest service and bureau of land management properties. Hunters from 18 through 69 years of age must also purchase a habitat management and access validation except for resident 100% disabled veterans.~~

~~(1) For blue grouse hunting: in addition to a valid license, a free blue grouse permit obtained from department offices or website shall be required.~~

~~(2) (1) For pheasant hunting on Casa Colorado and Seven Rivers youth-only, Casa Colorado, Seven Rivers and W.S. Huey WMAs: in addition to a valid license, a special permit obtained by drawing shall be required.~~

~~(3) (2) For pheasant hunting on private lands in Valencia county: in addition to a valid license, a Valencia county landowner pheasant permit shall be required.~~

**B. Valid dates of license or permit:** All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area specified by the hunt code printed on the permit or license.

**C. Applications:** Applications for upland game special permits shall be submitted on the appropriate application form or via the department website.

(1) No more than four persons may apply per application.

(2) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the rejection of all applications for that species.

(3) Applications may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

(4) Applicants may apply for a first, second and third choice of seasons if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(5) All applications must be mailed to the Santa Fe office or submitted via the department website unless otherwise specifically allowed by rule. Persons desiring a Valencia county landowner pheasant hunt permit must obtain an application from registered landowners. Applications must be submitted in person to only the northwest area (Albuquerque) office. Applications for the Valencia county landowner pheasant hunt permits may be submitted up to the day

prior to the hunt.

(6) The application deadline for Casa Colorado youth-only, Seven Rivers youth-only, Casa Colorado, Seven Rivers and W.S. Huey WMAs pheasant hunts shall be the first Wednesday in November.

(7) If applications for permits exceed the number of available permits, permits shall be allotted by means of a random public drawing.

(8) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

**D. Youth hunts:** Only applicants who have not reached their 18<sup>th</sup> birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt.

[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-16-2010; A, 1-31-2012]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.33.6 NMAC, Sections 8 and 9, effective 1/31/2012.

### 19.33.6.8 THREATENED AND ENDANGERED SPECIES OF NEW MEXICO:

#### A. MAMMALS

##### (1) Endangered:

(a) Arizona shrew, *Sorex arizonae*  
(b) Mexican long-nosed bat, *Leptonycteris nivalis*

(c) (Penasco) least chipmunk, *Neotamias minimus atristriatus*  
(d) meadow jumping mouse, *Zapus hudsonius*

(e) (Arizona) montane vole, *Microtus montanus arizonensis*

(f) gray wolf, *Canis lupus*

##### (2) Threatened:

(a) North American least shrew, *Cryptotis parva*

(b) ~~[southern]~~ lesser long-nosed bat, *Leptonycteris curasoae*

(c) spotted bat, *Euderma maculatum*

(d) western yellow bat, *Lasiurus xanthius*

(e) white-sided jackrabbit, *Lepus callotis*

(f) (Organ mountains) Colorado chipmunk, *Neotamias quadrivittatus australis*

(g) southern pocket gopher, *Thomomys umbrinus*

(h) American marten, *Martes Americana*

(i) (desert) bighorn sheep, *Orvis*

*canadensis mexicana*

(3) Listing excepts individuals and populations of the desert bighorn sheep in the Peloncillo mountains in Hidalgo county and all stock in captivity.

**B. BIRDS****(1) Endangered:**

(a) brown pelican, *Pelecanus occidentalis*

(b) aplomado falcon, *Falco femoralis*

(c) white-tailed ptarmigan, *Lagopus leucurus*

(d) whooping crane, *Grus americana*

(e) least tern, *Sterna antillarum*

(f) common ground-dove, *Columbina passerina*

(g) buff-collared nightjar, *Caprimulgus ridgway*

(h) elegant trogon, *Trogon elegans*

(i) northern beardless-tyrannulet, *Camptostoma imberbe*

(j) (southwestern) willow flycatcher, *Empidonax traillii extimus*

(k) thick-billed kingbird, *Tyrannus crassirostris*

(l) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammolagus*

**(2) Threatened:**

(a) neotropic cormorant, *Phalacrocorax brasilianus*

(b) bald eagle, *Haliaeetus leucocephalus*

(c) common black-hawk, *Buteogallus anthracinus*

(d) peregrine falcon, *Falco peregrinus*

(e) (Gould's) wild turkey, *Meleagris gallopavo mexicana*

(f) piping plover, *Charadrius melodus*

(g) whiskered screech-owl, *Megascops trichopsis*

(h) boreal owl, *Aegolius funereus*

(i) broad-billed hummingbird, *Cynanthus latirostris*

(j) white-eared hummingbird, *Hylocharis leucotis*

(k) violet-crowned hummingbird, *Amazilia violiceps*

(l) lucifer hummingbird, *Calothorax lucifer*

(m) Costa's hummingbird, *Calypte costae*

(n) Gila woodpecker, *Melanerpes uropygialis*

(o) Bell's vireo, *Vireo bellii*

(p) gray vireo, *vireo vicinior*

(q) Abert's towhee, *Pipilo aberti*

(r) Baird's sparrow, *Ammodramus bairdii*

(s) yellow-eyed junco, *Junco phaeonotus*

(t) varied bunting, *Passerina versicolor*

**C. REPTILES****(1) Endangered:**

(a) Gila monster, *Heloderma suspectum*

(b) sand dune lizard, *Sceloporus arenicolus*

(c) gray-checked whiptail *Aspidoscelis dixonii*

(d) gray-banded kingsnake, *Lampropeltis alterna*

(e) Mexican gartersnake, *Thamnophis eques*

(f) plain-bellied water snake, *Nerodia erythrogaster*

(g) (New Mexico) ridgenosed rattlesnake, *Crotalus willardi obscurus*

**(2) Threatened:**

(a) western river cooter, *Pseudemys gorzugi*

(b) Slevin's bunch grass lizard, *Sceloporus slevini*

(c) canyon spotted whiptail, *Aspidoscelis burti*

(d) mountain skink, *Eumeces callicephalus*

(e) green ratsnake, *Senticolis triaspis*

(f) narrow-headed gartersnake, *Thamnophis rufipunctatus*

(g) western ribbonsnake, *Thamnophis proximus*

(h) (mottled) rock rattlesnake, *Crotalus lepidus lepidus*

**D. AMPHIBIANS****(1) Endangered:**

(a) Jemez mountains salamander, *Plethodon neomexicanus*

(b) lowland leopard frog, *Rana yavapaiensis*

(c) mountain toad, *Bufo boreas*

(d) Great Plains narrow-mouthed toad, *Gastrophyryne olivacea*

**(2) Threatened:**

(a) Sacramento mountain salamander, *Aneides hardii*

(b) Sonoran desert toad, *Bufo alvarius*

**E. FISHES****(1) Endangered:**

(a) Gila chub, *Gila intermedia*

(b) Headwater chub, *Gila nigra*

(c) Chihuahua chub, *Gila nigrescens*

(d) roundtail chub, *Gila robusta*

(e) Rio Grande silvery minnow, *Hybognathus amarus*

(f) spikedace *Meda fulgia*

(g) Arkansas river shiner, *Notropis girard*

(h) (Pecos) bluntnose shiner, *Notropis simus pecosensis*

(i) southern redbelly dace, *Phoxinus erythrogaster*

(j) Colorado pikeminnow, *Ptychocheilus lucius*

(k) loach minnow, *Tiaroga cobitis*

(l) (Zuni) bluehead sucker, *Catostomus discobolus yarrowi*

(m) blue sucker, *Cycleptus elongates*

(n) gray redbhorse, *Moxostoma congestum*

(o) Pecos gambusia, *Gambusia nobilis*

**(2) Threatened:**

(a) Gila trout, *Oncorhynchus gilae*

(b) Mexican tetra, *Astyanax mexicanus*

(c) peppered chub, *Macrhybopsis tetranema*

(d) suckermouth minnow, *Phenacobius mirabilis*

(e) Pecos pupfish, *Cyprinodon pecosensis*

(f) White Sands pupfish, *Cyprinodon Tularosa*

(g) Gila topminnow, *Poeciliopsis occidentalis*

(h) greenthroat darter, *Etheostoma lepidum*

(i) bigscale logperch, *Percina macrolepida*

**(3) Listing exceptions:** Gila trout-excludes the population in McKnight creek, Grant county; Arkansas river shiner-excludes the population in the Pecos river drainage; bigscale logperch-excludes the population in the Canadian river drainage

**F. CRUSTACEANS:****(1) Endangered:**

(a) Socorro isopod, *Thermosphaeroma thermophilum*

(b) Noel's amphipod, *Gammmarus desperatus*

**G. MOLLUSKS****(1) Endangered:**

(a) paper pondshell, *Utterbackia imbecillis*

(b) Texas hornshell, *Popenaias popeii*

(c) Koster's springsnail, *Juturnia kosteri*

(d) Alamosa springsnail, *Pseudotryonia alamosae*

(e) Chupadera springsnail, *Pyrgulopsis chupaderae*

(f) Socorro springsnail, *Pyrgulopsis neomexicana*

(g) Roswell springsnail, *Pyrgulopsis roswellensis*

(h) Pecos assimineae, *Assimineae pecos*,

(i) wrinkled marshsnail, *Stagnicola caperata*

(j) Florida mountainsnail, *Oreohelix florida*

**(2) Threatened:**

(a) lake fingernailclam, *Musculium lacustre*

(b) swamp fingernailclam, *Musculium partumeium*

(c) long fingernailclam, *Musculium transversum*

(d) Lilljeborg's peaclam, *Pisidium lilljeborgi*

- (e) Sangre de Cristo peaclam, *Pisidium sanguinichristi*
  - (f) Gila springsnail, *Pyrgulopsis gilae*
  - (g) Pecos springsnail, *Pyrgulopsis pecosensis*
  - (h) New Mexico springsnail, *Pyrgulopsis thermalis*
  - (i) star gyro, *Gyraulus crista*
  - (j) shortneck snaggletooth, *Gastrocopta dalliana dalliana*
  - (k) ovate vertigo, *Vertigo ovata*
  - (l) Hacheta Grande woodlandsnail, *Ashmunella hebardii*
  - (m) Cooke's peak woodlandsnail, *Ashmunella macromphala*
  - (n) Mineral creek mountainsnail, *Oreohelix pilsbryi*
  - (o) Doña Ana talussnail, *Sonorella todseni*
- [1-11-91, 11-15-95, 12-31-96, 8-15-98; 19.33.1.8 NMAC - Rn & A, 19 NMAC 33.1.8, 4/14/00; 19.33.6.8 NMAC - Rn, 19.33.1.8 NMAC & A, 11/30/00; A, 11/14/02; A, 1/31/05; A, 9/15/05; A, 10/16/06; A, 12/29/06; A, 1/15/10; A, 1/31/12]

**19.33.6.9 RESTRICTED SPECIES OF NEW MEXICO:**

- A.** leopard, *Panthera pardus*
  - B.** clouded leopard, *Neofelis nebulosa*
  - C.** snow leopard, [*Panthera*] *Uncia uncia*
  - D.** jaguar, *Panthera onca*
  - E.** Florida panther, [*Felis*]
  - Puma concolor coryi*
  - F.** tiger, *Panthera tigris*
  - G.** ocelot, [*Felis*]
  - Leopardus pardalis*
- [8-6-91, 8-15-98; 19.33.1.8 NMAC - Rn, 19 NMAC 33.1.9, 4/14/00; 19.33.6.9 NMAC - Rn, 19.33.1.9 NMAC, 11/30/00; A, 9/15/05; A, 1/31/12]

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

This is an amendment to 8.311.2 NMAC, Sections 8 and 15 effective February 1, 2012.

**8.311.2.8 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.]~~ To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.  
[8.311.2.8 NMAC - Rp/E, 8 NMAC 4.MAD 002, 1/1/09; A, 11/1/10; A, 2/1/12]

**8.311.2.15 OUTPATIENT SERVICES:** MAD covers outpatient services which are medically necessary for prevention, diagnosis or rehabilitation as indicated by the condition of an eligible recipient. Services must be furnished within the scope and practice of a professional provider as defined by state laws and regulations.

**A. Outpatient covered services:** Covered hospital outpatient care includes the use of minor surgery or cast rooms, intravenous infusions, catheter changes, first aid care of injuries, laboratory and radiology services, and diagnostic and therapeutic radiation, including radioactive isotopes. A partial hospitalization program in a general hospital psychiatric unit is considered under outpatient services. See 8.321.5 NMAC, *Outpatient Psychiatric Services and Partial Hospitalization.*

**B. Outpatient noncovered services:** MAD does not cover the following specific outpatient benefits:

- (1) outpatient hospital services not considered medically necessary for the condition of the eligible recipient;
- (2) outpatient hospital services that require prior approval for which the approval was not requested except in cases with extenuating circumstances as granted by MAD or its designee;
- (3) outpatient hospital services furnished to an individual who was not eligible for MAD services on the date of service;
- (4) experimental or investigational procedures, technologies or therapies and the services related to them, including hospitalization, anesthesiology, laboratory tests, and imaging services; see 8.325.6 NMAC, *Experimental or Investigational Procedures or Therapies;*
- (5) drugs classified as "ineffective" by the federal food and drug administration;
- (6) laboratory specimen handling or mailing charges; and
- (7) formal educational or vocational services which relate to traditional academic subjects or training for employment.

**C. MCO payment rates:** If a provider and an MCO are unable to agree to terms or fail to execute an agreement for any reason, the MCO shall be obliged to pay, and the provider shall accept, 100 percent of the "applicable reimbursement rate" based on the provider type for services rendered under both emergency and non-emergency situations. The "applicable reimbursement rate" is defined as the rate paid by HSD to the provider participating in medicaid or other medical assistance programs administered by HSD and excludes disproportionate share hospital and medical education payments.

**D. Prior authorization:** Certain procedures or services performed in

outpatient settings can require prior approval from MAD or its designee. Outpatient physical, occupational, and speech therapies services require prior authorization.

**E. Reimbursement for outpatient services:** Effective November 1, 2010, outpatient hospital services are reimbursed using outpatient prospective payment system (OPPS) rates. The OPPS rules for payment for packaged services, separately reimbursed services are based on the medicare ambulatory payment classification (APC) methodology.

(1) Reimbursement for laboratory services, radiology services, and drug items will not exceed maximum levels established by MAD. Hospitals must identify drugs items purchased at 340B prices.

(2) Services or supplies furnished by a provider under contract or through referral must meet the contract services requirements and be reimbursed based on approved methods. See 8.302.2 NMAC, *Billing For Medicaid Services.*

(3) For critical access hospital providers, the MAD outpatient prospective payment system (OPPS) fee-for-service rate will be set based on the provider's reported cost to charge ratio reported in the provider's most recently filed cost report prior to February 1, 2012.

~~[(3)]~~ (4) For services not reimbursed using the outpatient prospective payment system (OPPS) methodology or fee schedule, reimbursement for a MAD fee-for-service provider will be made using the medicare allowable cost method, reducing medicare allowable costs by three percent. An interim rate of payment is established by MAD. A rate of payment for providers not subject to the cost settlement process is also established by MAD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principals. If the provider is not cost settled, the reimbursement rate will be at the provider's cost to charge ratio reported in the provider's most recently filed cost report prior to February 1, 2012. ~~[Both]~~ Otherwise, rates are established after considering available cost to charge ratios, payment levels made by other payers, and MAD payment levels for services of similar cost, complexity and duration.

[8.311.2.15 NMAC - Rp/E, 8 NMAC 4.MAD 721.6, 1/1/09; A, 11/1/10; A, 2/1/12]

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

This is an amendment to 8.311.3 NMAC, Sections 8 and 10 effective February 1, 2012.

**8.311.3.8 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.]~~ To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance. [2-1-95; 8.311.3.8 NMAC - Rn, 8 NMAC 4.MAD.002, 1-1-01; A, 4-1-11; A, 2-1-12]

**8.311.3.10 GENERAL REIMBURSEMENT POLICY:** The state of New Mexico human services department (hereinafter called the department) will reimburse inpatient hospital services rendered on or after October 1, 1989 in the following manner:

A. Covered inpatient services provided to eligible recipients admitted to in-state acute care hospitals and acute care units on or after October 1, 1989 will be reimbursed at a prospectively set rate, determined by the methodology set forth in 8.311.3.12 NMAC, unless the hospital or unit is classified into one of the prospective payment system (PPS) exempt categories outlined in Subsection C through D below.

B. Covered inpatient services provided to eligible recipients admitted to acute care hospitals and acute care units within hospitals located out-of-state or in border areas (Mexico excluded) will be reimbursed at a prospectively set rate as described in Paragraph (16) of Subsection C of 8.311.12 NMAC, unless the hospital or unit is classified into one of the prospective payment system (PPS) exempt categories outlined in Subsections C through D below or at a negotiated rate not to exceed the rate paid by federal programs such as medicare. Negotiation of rates will only be allowed when the department determines that the hospital provides a unique service required by an eligible recipient.

C. Inpatient services provided in rehabilitation and specialty hospitals and medicare PPS-exempt distinct part units within hospitals will be reimbursed using the provisions and principles of reimbursement set forth in Public Law 97-248. This legislation, which was effective October 1, 1982, is commonly referred to as TEFRA (Tax Equity and Finance Reduction Act) and is described in 8.311.3.11 NMAC of this section.

D. Indian health services hospitals will be reimbursed using a per diem rate established by the federal government.

E. New Mexico providers entering the MAD program will be reimbursed at the peer group median rate for the applicable peer group, until such time as a distinct rate can be established, unless the hospital meets the criteria for prospective payment exemption as described in Subsections C through D above.

F. All hospitals which meet the criteria in Subsection A of 8.311.3.13 NMAC will be eligible for a disproportionate share adjustment.

G. Effective for discharges on or after April 1, 1992, and in accordance with Section 4604 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, the department provides for an outlier adjustment in payment amounts for medically necessary inpatient services involving exceptionally high costs or long lengths of stay for children who have not attained the age of six years in disproportionate share hospitals and for infants under one year of age in all hospitals. The outlier adjustment for these cases is described in Subsection F of 8.311.3.12 NMAC.

H. MAD covered inpatient services provided in specialty hospitals will be reimbursed at an interim rate established by MAD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principals. If a provider is not cost settled, the reimbursement rate will be at the provider's cost to charge ratio reported in the provider's most recently filed cost report prior to February 1, 2012. Otherwise, rates are established after considering available cost to charge ratios, payment levels made by other payers, and MAD payment levels for services of similar cost, complexity and duration. [2-1-95; 8.311.3.10 NMAC - Rn, 8 NMAC 4.MAD.721.D.I, 1-1-01; A, 4-1-11; A, 2-1-12]

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

This is an amendment to 8.321.2 NMAC, Sections 8 and 17 effective February 1, 2012.

**8.321.2.8 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 lives of their communities.]~~ To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.321.2.8 NMAC - Rp, 8 NMAC 4.MAD.002 & A, 11/1/10; A, 2/1/12]

**8.321.2.17 REIMBURSEMENT:** Freestanding psychiatric hospital service providers must submit claims for reimbursement on the UB04 claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing.

A. Reimbursement rates for New Mexico freestanding psychiatric hospitals are based on TEFRA provisions and principles of reimbursement. See 8.311.3.11 NMAC, *payment methodology for PPS-exempt hospitals and exempt units within hospitals*, and 8.311.3.14 NMAC, *determination of actual, allowable and reasonable costs*, contained in 8.311.3 NMAC, *Methods and Standards for Establishing Payment - Inpatient Hospital Services*. Covered inpatient services provided in freestanding psychiatric hospitals will be reimbursed at an interim rate established by HSD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principals.

B. ~~[Reimbursement rates for hospitals not subject to cost settlement are paid at a percent of billed charges on a fee schedule rate established by the department after considering available cost-to-charge ratios, payment levels made by other payers, and MAD payment levels for services of similar cost, complexity and duration. Negotiation of rates is allowed only when MAD determines that the hospital provides a unique service required by an eligible recipient.]~~ If a provider is not cost settled, the reimbursement rate will be at the provider's cost to charge ratio reported in the provider's most recently filed cost report prior to February 1, 2012. Otherwise, rates are established after considering available cost to charge ratios, payment levels made by other payers, and MAD payment levels for services of similar cost, complexity and duration.

C. Reimbursement rates for services furnished by psychiatrists and licensed Ph.D. psychologists in freestanding psychiatric hospitals are contained in that provider section. See 8.310.8, *Behavioral Health Professional Services*. Services furnished by psychiatrists and psychologists in freestanding psychiatric hospitals cannot be included as inpatient psychiatric hospital charges.

[8.321.2.17 NMAC - Rp, 8 NMAC 4.MAD.742.18 & A, 11/1/10; A, 2/1/12]

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

This is an amendment to 8.353.2 NMAC, Sections 3, 5 and 8-13 effective February 1, 2012.

**8.353.2.3 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, 27-2-12 et seq. [(Repl-Pamp-1994)].

[1-1-95; 8.353.2.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 7-1-01; A, 5-1-10; A, 2-1-12]

**8.353.2.5 EFFECTIVE DATE:**

November 1, 1996, unless a later date is cited at the end of a section.

[11-1-96; 8.353.2.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 7-1-01; A, 2-1-12]

**8.353.2.8 MISSION**

**STATEMENT:** ~~[To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the lives of their communities.]~~ To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[2-1-95; 8.353.2.8 NMAC - Rn, 8 NMAC 4.MAD.002, 7-1-01; A, 5-1-10; A, 2-1-12]

**8.353.2.9 PROVIDER**

**HEARINGS:** HSD has established a hearing process for medicaid fee-for-service (FFS) providers who disagree with HSD decisions concerning their participation in the New Mexico medicaid program, recoupment of overpayments due to provider billing error, and imposition of sanctions. For the hearing process concerning decisions on noncompliance with nursing facility (NF) or intermediate care facility (ICF-MR) provider certification requirements[-]; also see hearing regulations promulgated by the department of health (DOH) and specific MAD rules applicable to the provider. This section describes the hearing process for MAD FFS providers. See 8.311.3 NMAC, *Methods and Standards for Establishing Payment Rates Inpatient Hospital Services*, 8.312.2 NMAC, *Cost Related Reimbursement for Nursing Facilities*, and 8.313.3 NMAC, *Cost Related Reimbursement for Intermediate Care Facilities for the Mentally Retarded*, for a description of the appeals process for audit settlements. See 8.305.12.16 NMAC, *MCO/se provider appeal process*, 8.306.12.16 NMAC, *MCO provider grievance process*,

and 8.307.12.15 NMAC, *provider grievance appeal process*, for a description of the grievance process for resolving provider disputes between a New Mexico medicaid managed care organizations (MCO) and their contractors or subcontractors. For applicable rules for services and items provided through a coordinated service contractor, refer to 8.349.2 NMAC, *Appeals and Grievance Process*.

A. **Hearing rights:** The right to a hearing includes the right to:

(1) be advised of the nature and availability of a hearing;

(2) be represented by counsel or its representative of the provider's choice;

(3) have a hearing which safeguards the provider's opportunity to present a case;

(4) have prompt notice and implementation of the hearing decision; and

(5) be advised that judicial review may be invoked to the extent such review is available under state law.

B. **Notice of rights:** Upon enrollment, MAD providers receive written notice of hearing rights along with any HSD action notice concerning provider agreement termination, recoupment of overpayment due to provider billing error, or notice of sanction. This information includes a description of the method by which a hearing may be requested and a statement that the provider's presentation may be made by the provider or by its representative.

[11-1-96; 8.353.2.9 NMAC - Rn, 8 NMAC 4.MAD.980 & A, 7-1-01; A, 5-1-10; A, 2-1-12]

**8.353.2.10 INITIATION OF HEARING PROCESS:**

A. **Notice:** The hearing process is initiated by a provider's request for hearing made in response to an HSD action notice. See Section 8.351.2 NMAC, *Sanctions and Remedies*, for information concerning notice requirements when the action has been a sanction.

B. **Time limits:** A MAD FFS provider has 30 calendar days from the date of the HSD action notice to request a hearing. To be considered timely, the request must be received by HSD no later than the close of business of the specified day. Hearings are conducted and a written decision is issued to the provider within 120 calendar days from the date HSD receives the hearing request, unless the parties otherwise agree to an extension. ~~[If HSD seeks to impose a sanction or remedy or take another action against a provider, the provider may submit a written request for a stay of the effective date of imposition of the sanction, remedy, or action to MAD. Granting of a stay is at the discretion of the MAD director.]~~ See 8.351.2 NMAC, *Sanctions and Remedies*, for information

concerning time limits when the action has been a sanction. The right to request a stay is cited in Subsection B of 8.351.2.15 NMAC, *request for provider hearing.*

C. **Scope and limits on provider hearings:**

(1) A hearing is available to all MAD FFS providers, including providers applying for electronic health record incentive payments, who submit a request in accordance with this section in a timely manner. A provider can request a hearing if:

(a) a provider application or renewal of an application is denied;

(b) the provider's participation is suspended or terminated; or

(c) the provider disagrees with a decision of MAD or its designee with respect to recovery of overpayments due to provider billing error including incorrect billing, or lack of documentation to support the medical necessity of a service, or that the service was provided, or imposition of a sanction or other remedy, with the exception of the withholding of medicaid payments by MAD when the action is directed by the state's medicaid fraud control unit; or

(d) the provider believes the requirements for timely filing of a claim as stated in 8.302.2 NMAC, *Billing for Medicaid Services*, were met but a decision by MAD has been made that the timely filing requirements were not met.

(2) **Denial or dismissal of request for hearing:** HSD may deny or dismiss a request for a provider hearing when:

(a) the request is not received in a timely manner or within the time period stated in the notice;

(b) the request is withdrawn or canceled in writing by the provider or the provider's authorized representative;

(c) the sole issue presented concerns a federal or state law which requires an adjustment of compensation for all or certain classes of providers or services unless the reason for the hearing request involves an alleged error in the computation of provider compensation;

(d) the provider fails to appear at a scheduled hearing without good cause; [or] a request for a hearing may be considered abandoned and therefore dismissed if neither the provider nor the representative appear at the time and place of the hearing, unless, within 10 calendar days after the date of the scheduled hearing, the provider presents good cause for failure to appear; "good cause" includes death in the family, disabling personal illness, or other significant emergencies; at the discretion of the hearing officer, other exceptional circumstances may be considered good cause;

(e) the same issue has already been appealed or decided upon as to this provider and fact situation;

(f) the matter presented for hearing

is outside the scope of issues which are subject to the provider hearing process; see Subsection C of 8.353.2.10 NMAC, *scope and limits on provider hearings*; ~~and~~

(g) the sole issue presented concerns MAD MCO utilization management decisions, such as a decision to terminate, suspend, reduce, or deny services to members, untimely utilization reviews, and provider payment issues, raised by a contracted or subcontracted MCO provider; or

(h) the sole issue presented is regarding a rule in the New Mexico administrative code (NMAC) rather than the application of the rule to the provider.

~~[(3) A request for a hearing may be considered abandoned and therefore dismissed if neither the provider nor representative appears at the time and place of the hearing, unless, within 10 calendar days after the date of the scheduled hearing, the provider presents good cause for failure to appear. "Good cause" includes death in the family, disabling personal illness, or other significant emergencies.~~

~~—(4) At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.]~~

D. **Method:** A request for hearing must be made in writing and must identify the provider and the underlying action.

E. **Acknowledgment of request:** The HSD hearing bureau sends acknowledgment of its receipt of a hearing request to the provider.

[11-1-96; 8.353.2.10 NMAC - Rn, 8 NMAC 4.MAD.981 & A, 7-1-01; A, 5-1-10; A, 2-1-12]

### 8.353.2.11 PRE - HEARING PROCEDURE:

A. **Notice of hearing:** Not less than 30 calendar days before the hearing, written notice is given to all parties involved of the time, date, and place of the hearing. If an accommodation is necessary, the party must notify the hearing officer at least 10 calendar days prior to the hearing. The provider is also given an explanation of the hearing process and procedures and informed that HSD does not pay fees or costs incurred by the provider as a result of the hearing or appeal of the hearing decision.

B. **Postponement:** A provider may request, and is entitled to receive, one postponement of the scheduled hearing, as long as it does not interfere with the decision time frames. Requests for more than one postponement are considered, at the hearing officer's discretion, on a case-by-case basis.

C. **Expedited hearing:** The parties may request an expedited hearing in cases involving eligible recipient health, safety, or service availability issues. The

request must be made in writing and state in detail the reasons why an expedited hearing is necessary. Granting an expedited hearing is at the discretion of the hearing officer.

D. **Group hearing:** A hearing officer may respond to a series of individual requests for hearings by conducting a single group hearing. Group hearing procedures apply only to cases where individual issues of fact are not disputed and where related issues of federal and state law, rules and policies or any combination of these are the sole issues being raised. In all group hearings, the regulations governing individual hearings are followed. Each provider is permitted to present his own case or to be represented by his own attorney or other person. If a group hearing is arranged, any provider has the right to withdraw from the group hearing in favor of an individual hearing.

E. **Informal resolution conference:** The parties are encouraged to hold an informal resolution conference before the hearing to discuss the issues involved in the hearing. The informal resolution conference is optional and does not delay or replace the hearing process. Conference participants may include the provider or their personal representative, HSD or other responsible agency representatives, and the selected claims processing contractor. The purpose of the informal resolution conference is to informally review HSD's action and to determine whether the issues can be resolved by mutual agreement. The issues to be decided at the hearing may also be clarified or further defined. Regardless of the outcome of the informal resolution conference, a hearing is still held, unless the provider makes a written withdrawal of the request of the hearing.

F. **Pre-hearing conference:** Upon receipt of a request for hearing, the hearing officer assigned to a case schedules a pre-hearing conference to be held within 30 calendar days of the receipt of the request. A pre-hearing conference is an informal proceeding and may occur telephonically.

(1) **Purpose of conference:** The purposes of the pre-hearing conference include, but are not limited to:

- (a) expediting the disposition of the action;
- (b) identification, clarification, formulation and simplification of issues;
- (c) resolution of some or all issues;
- (d) exchange of documents and information;
- (e) preparing stipulations of fact to avoid unnecessary introduction of evidence at the hearing;
- (f) review of audit findings;
- (g) reconsideration of a suspension or withholding of payments;
- (h) identifying the number of

witnesses; and

(i) facilitating the settlement of the case.

(2) **Scheduling:** A scheduling order shall be entered into, which shall set the due date for the summary of evidence, due date for exhibits, and sets the date for the hearing. The order shall issue as soon as practicable but in any event within 30 days of the request for hearing.

(3) **Continuations and rescheduling:** A pre-hearing conference may be continued or rescheduled with the consent of all parties, after the 30 calendar days time limit.

(4) **Settlements, stipulations and admissions:** No offer of settlement made in a pre-hearing conference is admissible as evidence at a later hearing. Stipulations and admissions are binding and may be used as evidence at the hearing. Any stipulation, settlement or consent order reached between the parties is written and signed by the hearing officer and the parties or their representatives.

(5) **Timeliness:** The pre-hearing conference will not delay or replace the hearing itself. Pre-hearing conferences may include the provider or their personal representative, HSD or other responsible agency representatives, and the selected claims processing contractor. Subsequent to the conference or in the event that any of the parties to the hearing fail to participate, the scheduled hearing is still held, unless the provider submits a written request for withdrawal.

(6) **Unresolved issues:** If all matters in controversy are not resolved at the pre-hearing conference, the hearing officer sets a hearing date within 30 calendar days of the last conference date, or at a later time agreed to by parties, recognizing the 120 calendar day time constraints.

(7) **Written summaries:** The hearing office may request the parties to submit a written summary of all issues resolved at the pre-hearing conference.

(8) **Pre-hearing order:** The hearing officer may, at his sole discretion, prepare or ask the parties to prepare a pre-hearing order. The pre-hearing order may contain:

- (a) statements of any contested facts and issues;
- (b) stipulation of matters not in dispute;
- (c) list of witnesses to be called and the subject of their testimony;
- (d) list of exhibits;
- (e) discovery directives; or
- (f) other matters relevant to the issues.

(9) **Points of law:** The hearing officer may direct the parties to submit memoranda on points of law to inform the final decision, and may dictate the length and

scope of the submissions.

**G. Summary of evidence:**

A summary of evidence is a document prepared by HSD staff involved in the action or proposed action or HSD counsel that provides preliminary information [to the hearing officer] concerning the basis of an HSD action.

(1) [The summary will be completed as soon as practicable but in any event within five working days of the hearing and will be forwarded to the HSD hearing officer and all parties involved.] The summary must be provided within five working days of the hearing officer's request to the HSD hearing officer and all parties involved. The hearing officer is required to fax to the MAD designated staff the request for the relevant evidence for this hearing. The date the fax is confirmed sent by the hearing officer will be considered the start of the five working days timeframe of the due date of the summary of evidence to the hearing officer and all parties involved.

[(2) The summary must be prepared and submitted within the time frame even if the informal resolution conference has not been completed.

[(3)] (2) Failure to timely provide the summary of evidence may result in its exclusion or a continuance of the hearing at the discretion of the hearing officer [pursuant to Subsection D of 8.353.2.13 NMAC, *conducting the hearing*].

[(4)] (3) MAD staff or other responsible agency representative is responsible for preparation of the summary of evidence and coordination of parties and witnesses [when the MAD selected claims processing contractor is party to the fair hearing].

[(5)] (4) The summary of evidence [with] shall contain:

(a) [identifying information, including but not limited to] the provider's name, telephone and address and the status of any previous or concurrent grievance through the MAD selected claims processing contractor;

(b) the action, proposed action or inaction being appealed;

[(c) the issue or issues to be decided at the hearing;

[(d)] (c) information on which the action or proposed action is based [and facts and findings related to the hearing issues, along] with supporting documentation and correspondence[; some or all of the involved documentation may be provided by the MAD selected claims processing contractor]; and

[(e)] (d) applicable federal and state law, rules and policies or any combination of these.

**H. Availability of provider evidence:**

(1) The provider or his personal representative shall make any evidence that

is planned to be introduced at the hearing available to HSD/hearings bureau at least [three] eight to ten days prior to the hearing. The hearings bureau will forward to MAD copies of any evidence. MAD will then make these available to its selected claims processing, contractor if appropriate.

[(2) All measures should be taken to ensure that this evidence is received with sufficient time to review before the hearing.

[(3)] (2) Failure to timely provide the documentary evidence may result in its exclusion or a continuance of the hearing at the discretion of the hearing officer [pursuant to Subsection D of 8.353.2.13 NMAC, *conducting the hearing*].

**I. Availability of information:** HSD must:

(1) provide, on request, in a timely manner and without charge, any documents in its [procession] possession concerning the underlying action, that are not already in the provider's possession, and that are necessary for a provider [or his personal representative] to decide whether to request a hearing or to prepare for a hearing; and

(2) allow the provider or his personal representative to examine all documents to be used at the hearing at a reasonable time before the date of the hearing and during the hearing; [confidential information protected from release, and other] documents or records which the provider would not otherwise have an opportunity to challenge or contest, may not be introduced at the hearing or [affect the hearing officer's decision or become part of the hearing record; and] be considered by the hearing officer.

[(3) present the provider with a copy of the summary of evidence.]

[11-1-96; 8.353.2.11 NMAC - Rn. 8 NMAC 4.MAD.982 & A, 7-1-01; A, 5-1-10; A, 2-1-12]

**8.353.2.12 H E A R I N G STANDARDS:**

**A. Rights at hearing:** The parties are given an opportunity to:

(1) present their case or have it presented by a representative;

(2) bring witnesses to present information relevant to the case; [and]

(3) submit evidence to establish all pertinent facts and circumstances in the case;

[(2)] (4) advance arguments without undue interference; and

[(3)] (5) question or contradict any testimony or evidence, including an opportunity to confront and cross-examine opposing witnesses.

**B. Hearing officer:** Hearings are conducted by an impartial official who:

(1) does not have any personal stake or involvement in the case; and

(2) was not involved in the

determination or the action which is being contested; if the hearing officer had any involvement with the action in question, including giving advice or consultation on the points at issue, or is personally related in any relevant degree to the parties, he must disqualify himself as the hearing officer for that case.

[(1)] (3) **Authority and duties of the hearing officer:** The hearing officer must:

(a) explain how the hearing will be conducted to participants at the start of the hearing, before administering oaths;

(b) administer oaths and affirmations;

(c) request, receive, and make part of the record all evidence considered necessary to decide the issues raised;

(d) regulate the conduct and the course of the hearing and any pre-hearing conference to ensure an orderly hearing;

(e) request, if appropriate, an independent medical assessment or professional evaluation from a source mutually satisfactory to the parties; and

(f) produce the hearing report and recommendation for review and final decision.

[(2)] (4) **Appointment of hearing officer:** The hearing officer is appointed by the HSD hearings bureau chief upon receipt of the request for hearing. All communications are to be addressed to the assigned officer.

**C. Evidence:** Formal rules of evidence and civil procedure do not apply. A free, orderly exchange of relevant information is necessary for the decision-making process. [The hearing officer may question any witness in order to clarify testimony. All relevant evidence is admissible subject to the hearing officer's authority to limit repetitive or unduly cumulative evidence and his ability to conduct an orderly hearing. The hearing officer must admit evidence: 1) relevant to those allegations against the provider included in the notice of recovery of overpayment, sanction or other remedy, application denial, or application termination; and 2) which pertains to contested issues set forth in the pre-hearing order.]

(1) **Admissibility:** All evidence is admissible subject to the hearing officer's authority to limit irrelevant, repetitive or unduly cumulative evidence and his ability to conduct an orderly hearing. The hearing officer must admit evidence that is relevant to those allegations against the provider included in the notice of recovery of overpayment, sanction or other remedy, application denial, or application termination.

[(1)] (2) **Confidentiality:** The confidentiality of records is to be maintained. Information which is not



presented during the hearing in the presence of the provider or provider's representative and HSD representative may not be used by the hearing officer in making the hearing recommendation except as allowed by Subsection E of 8.353.2.13 NMAC, *conducting the hearing*.

~~[(2)]~~ (3) **Administrative notice:** The hearing officer may take administrative notice of any matter in which courts of this state may take judicial notice.

~~[(3)]~~ (4) **Privilege:** The rules of privilege apply to the extent that they are required to be recognized in civil actions in the district courts of New Mexico.

~~[(4)]~~ (5) **Medical issues:** In a case involving medical issues, the parties may submit expert testimony, reports, affidavits or medical records into record as necessary. Admission of this evidence is at the discretion of the hearing officer. All parties to the hearing have the right to examine any documents which may influence the decision.

D. **Burden of proof:** HSD has the burden of proving the basis to support its proposed action by a preponderance of the evidence. HSD must prove allegations of fraud by clear and convincing evidence. In cases involving the imposition of civil money penalties against a nursing facility provider, HSD's conclusion about the nursing facility's level of noncompliance must be upheld unless clearly erroneous.

E. **Record of the hearing:** A hearing is electronically recorded. The recording is placed on file at the hearings bureau and is available to the parties for 60 calendar days following the decision. In addition to the recorded proceedings, the record of the hearing includes any pleadings, documents, or other exhibits admitted into evidence. ~~[If a hearing decision is appealed, a written transcript of the hearing is prepared by HSD and a copy of the transcript is supplied to the provider.]~~ Either party may request copies of the ~~[recording in addition to the transcript]~~ recordings.

[11-1-96; 8.353.2.12 NMAC - Rn, 8 NMAC 4.MAD.983 & A, 7-1-01; A, 5-1-10; A, 2-1-12]

**8.353.2.13 CONDUCTING THE HEARING:** A hearing is conducted in an orderly manner and in an informal atmosphere. The hearing is conducted in person and is not open to the public. The hearing officer has the authority to limit the number of persons in attendance if space or other considerations dictate.

A. **Opening the hearing:** The hearing is opened by the hearing officer. Individuals present must identify themselves for the record. The hearing officer explains his role in the proceedings, and that the final decision on the appeal will be made by the MAD director after review

of the proceedings and the hearing officer's recommendation. The order of testimony is described, and the oath is administered to all who will testify at the hearing.

B. **Order of testimony:** The order of testimony at the hearing is as follows:

(1) opening statements of parties or representatives;

(2) presentation of HSD's case; if witnesses are called, the order of examination of each witness is:

(a) examination by HSD representative;

(b) cross examination by the provider or representative; and

(c) ~~[further questions or clarification by the hearing officer or, if requested, the HSD representative, or the provider or provider representative]~~ opportunity to redirect the witness;

(3) presentation of the provider's case; if witnesses are called, the order of examination of each witness is:

(a) examination by provider or representative;

(b) cross examination by HSD or its representative; and

(c) ~~[further questions or clarification by the hearing officer or, if requested, provider or provider representative, or HSD]~~ opportunity to redirect the witness;

(4) presentation of rebuttal evidence by HSD and provider, respectively;

(5) the hearing officer may direct further questions to the HSD representative, the provider, or any witnesses to clarify inconsistencies or obtain an adequate evidentiary record; and

(6) the hearing officer may ask both parties to summarize and present closing arguments.

C. **Written closing argument:** At the discretion of the hearing officer, the parties may be directed to make closing arguments, or submit written memoranda on points of law.

D. **Continuance:** The hearing officer may continue the hearing upon the request of either party or on his own motion, for admission of additional testimony or evidence. The granting of a continuance is at the discretion of the hearing officer and can only be allowed when the timeliness of a decision is not jeopardized by the continuance or the parties have agreed to an extension of the decision time frame. The reasons for the continuance must be stated for the record. Written notice of the date, time, and place of the continued hearing is sent to the parties if these are not set at the time of the continuance.

E. **Additional evidence:** If the hearing officer needs additional evidence to further clarify documentary evidence presented during the hearing, he may close

the hearing but keep the record open and direct the parties to submit such clarifying evidence. Each party receives a copy of the direction for further evidence and the documentary evidence being submitted and is allowed an opportunity to respond to the submission, in writing, within 10 calendar days of its receipt. The additional evidence and responses become part of the hearing record.

F. **Re-opening a hearing:** The hearing officer, at his discretion, may re-open a hearing when the evidentiary record fails to address an issue that is relevant to resolution of a hearing request. The hearing can only be re-opened if the timeliness of the decision is not jeopardized or the parties have agreed to an extension of the decision time frames. Written notice of the date, time and place of the re-opened hearing is sent to the parties not less than 10 calendar days before the re-opened hearing.

[11-1-96; 8.353.2.13 NMAC - Rn, 8 NMAC 4.MAD.984 & A, 7-1-01; A, 5-1-10; A, 2-1-12]

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## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.321.5 NMAC, Sections 1, 3, 5, and 8 - 17 effective February 1, 2012. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.000 and 8 NMAC 4.MAD.742.4 to comply with NMAC requirements.

**8.321.5.1 ISSUING AGENCY:** New Mexico Human Services Department (HSD).  
[2/1/95; 8.321.5.1 NMAC - Rn, 8 NMAC 4.MAD.000.1 & A, 2/1/12]

**8.321.5.3 STATUTORY AUTHORITY:** ~~[The New Mexico Medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).]~~ The New Mexico Medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.  
[2/1/95; 8.321.5.3 NMAC - Rn, 8 NMAC 4.MAD.000.3 & A, 2/1/12]

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

[2/1/95; 8.321.5.5 NMAC - Rn, 8 NMAC 4.MAD.000.5 & A, 2/1/12]

**8.321.5.8 MISSION STATEMENT:**

[The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.] To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[2/1/95; 8.321.5.8 NMAC - Rn, 8 NMAC 4.MAD.002 & A, 2/1/12]

**8.321.5.9 OUTPATIENT AND PARTIAL HOSPITALIZATION SERVICES IN FREESTANDING PSYCHIATRIC HOSPITALS:**

The New Mexico [medicaid program (medicaid)] medical assistance division (MAD) pays for medically necessary health services furnished to eligible recipients. To help New Mexico recipients under [twenty-one (21)] 21 years of age receive the level of services needed, [the New Mexico medical assistance division (MAD)] MAD pays for partial hospitalization services furnished in freestanding psychiatric hospitals as part of early and periodic screening, diagnosis and treatment (EPSDT) services [42 CFR Section 441.57]. The need for outpatient or partial hospitalization services must be identified in the tot to teen healthcheck screen or other diagnostic evaluation furnished through a healthcheck referral. [This section describes eligible providers, covered services, service limitations, and general reimbursement methodology.]

[2/1/95; 8.321.5.9 NMAC - Rn, 8 NMAC 4.MAD.742.4 & A, 2/1/12]

**8.321.5.10 ELIGIBLE PROVIDERS:**

[A. Upon approval of New Mexico medical assistance program provider participation agreements by MAD, freestanding psychiatric hospitals are eligible to be reimbursed for providing partial hospitalization to medicaid recipients under twenty-one (21) years of age under the early and periodic screening, diagnosis and treatment (EPSDT) program if they meet the following criteria:

(1) accredited by the joint commission on accreditation of healthcare organizations (JCAHO); and

(2) licensed and certified by the licensing and certification bureau of the New Mexico department of health (DOH) or the comparable agency in another state.

B. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions,

and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.]

A. Health care to New Mexico eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners, 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 enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only. Providers must supply necessary information in order for payment to be made. Eligible providers include facilities:

(1) accredited by the joint commission of healthcare organizations (JCAHO); and

(2) licensed and certified by the licensing and certification bureau of the New Mexico department of health (DOH) or the comparable agency in another state.

B. When services are billed to and paid by a MAD fee-for-service coordinated services contractor, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

[8.321.5.10 NMAC - Rp, 8 NMAC 4.MAD.742.41 & A, 2/1/12]

**8.321.5.11 PROVIDER RESPONSIBILITIES:** [Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See Section

MAD-701, General Provider Policies. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. Providers must maintain records which are sufficient to fully disclose the extent and nature of the services furnished to recipients. See Section MAD-701, General Provider Policies. Providers must maintain records documenting the source and amount of any financial resource collected or receive by provider by behalf of recipients, including federal or state governmental sources and document receipt and disbursement of recipient funds.]

A. A provider who furnishes services to a medicaid or other health care programs eligible recipient must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services.

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

C. When services are billed to and paid by a MAD fee-for-service coordinated services contractor authorized by HSD, under an administrative services contract, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

See 8.302.1 NMAC, *General Provider Policies*.

[8.321.5.8 NMAC - Rp, 8 NMAC 4.MAD.742.42 & A, 2/1/12]

**8.321.5.12 COVERAGE CRITERIA:** [Medicaid] MAD covers only those services which meet the following criteria:

A. Services are prescribed by a psychiatrist or licensed Ph.D. psychologist and furnished under an individualized written treatment plan established by the psychiatrist or licensed Ph.D. psychologist after any necessary

consultation with appropriate staff members. The plan must state the type, amount, frequency and duration of the services to be furnished and indicate the diagnoses and anticipated goals.

B. Treatment is supervised and periodically evaluated by a psychiatrist or licensed Ph.D. psychologist to determine the extent to which treatment goals are being ~~realized; and~~ realized. The psychiatrist or licensed Ph.D. psychologist must also provide supervision and direction to any therapist involved in the eligible recipient's treatment. The psychiatrist or licensed Ph.D. psychologist must see the eligible recipient periodically to evaluate the course of treatment and to determine the extent to which treatment goals are being realized and whether changes in direction or emphasis are needed.

~~(1) the evaluation must be based on periodic consultation and conference with therapists and staff; review of medical records and recipient interviews; for purposes of the evaluation, periodic is defined as once every twelve (12) sessions with therapists and staff; psychiatrist or licensed Ph.D. psychologist entries in medical records must support this involvement.~~

~~(2) the psychiatrist or licensed Ph.D. psychologist must also provide supervision and direction to any therapist involved in the recipient's treatment; the psychiatrist or licensed Ph.D. psychologist must see the recipient periodically to evaluate the course of treatment and to determine the extent to which treatment goals are being realized and whether changes in direction or emphasis are needed.]~~

C. Treatment must be reasonably expected to improve the eligible recipient's condition or designed to reduce or control the eligible recipient's psychiatric symptoms to prevent relapse or hospitalization and to improve or maintain the eligible recipient's level of functioning. Control of symptoms and maintenance of a functional level to avoid further deterioration or hospitalization are acceptable expectations of improvement.

[2/1/95; 8.321.5.12 NMAC - Rn, 8 NMAC 4.MAD.742.43 & A, 2/1/12]

**8.321.5.13 COVERED SERVICES AND SERVICE LIMITATIONS:** The following services must be furnished by a partial hospitalization ~~[providers] provider~~ to receive reimbursement from medicaid. Payment for performance of these services is included in the facility's reimbursement rate:

A. performance of necessary evaluations and psychological testing for the development of the treatment plan, while ensuring that evaluations already performed are not repeated;

B. regularly scheduled

structured counseling and therapy sessions for recipients, groups, families or multifamily groups based on individualized needs furnished by social workers, trained psychiatric nurses, other [mental] behavioral health professionals who are employed by the hospital, as specified in the treatment plan;

C. facilitation of age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills, time management, school attendance and money management;

D. assistance to [recipients] the eligible recipient in self-administration of medication in compliance with state policies and procedures;

E. appropriate staff available on a ~~[twenty-four-(24)] 24-~~ hour basis to respond to crisis situations, determine the severity of the situation, stabilize [recipients] the eligible recipient by providing support, make referrals as necessary and provide follow-up;

F. consultation with other professionals or allied care givers regarding a specific recipient;

G. n o n - m e d i c a l transportation services needed to accomplish the treatment objective; and

H. therapeutic services to meet the physical, social, cultural, recreational, health maintenance and rehabilitation needs of [recipients] the eligible recipient.

[2/1/95; 8.321.5.13 NMAC - Rn, 8 NMAC 4.MAD.742.44 & A, 2/1/12]

**8.321.5.14 NON COVERED SERVICES:** Partial hospitalization services are subject to the limitations and coverage restrictions which exist for other medicaid services. See ~~[Section MAD-602] 8.301.3 NMAC, General Noncovered Services.~~ [Medicaid] MAD does not cover the following specific services under partial hospitalization:

A. meals and transportation;

B. activity therapies, group activities or other services which are primarily recreational or diversional in nature;

C. ~~[day-care]~~ programs which provide social and recreational activities to recipients who need some supervision during the day;

D. programs which are generally community support groups in non-medical settings for chronically mentally ill persons for the purpose of social interaction; medicaid does not cover the service if [a] an eligible recipient's outpatient hospital program consists entirely of social activities.

E. formal educational and vocational services related to traditional

academic subjects or vocational training; non-formal education services can be covered if they are part of an active treatment plan for [recipients] the eligible recipient under the age of ~~[twenty-one (21)] 21~~ receiving inpatient psychiatric services; see 42 CFR Section 441.13(b).

F. hypnotherapy or biofeedback;

G. services to treat social maladjustments without manifest psychiatric disorders, including occupational maladjustment, marital maladjustment, and sexual dysfunction; and

H. services not considered medically necessary for the condition of the eligible recipient.

[2/1/95; 8.321.5.14 NMAC - Rn, 8 NMAC 4.MAD.742.45 & A, 2/1/12]

### **8.321.5.15 TREATMENT PLAN:**

An individualized treatment plan must be developed by a team of professionals in consultation with [recipients] the eligible recipient, parents legal guardians or others in whose care [recipients] the eligible recipient will be released after discharge within ~~[fourteen-(14)] 14~~ days of the eligible recipient's admission ~~[or the initiation of services]:~~

A. the interdisciplinary team must ~~[review] participate in~~ the treatment ~~[plan] planning~~ at least every ~~[thirty-(30)] 30~~ days;

B. the following must be contained in the treatment plan or documents used in the development of the treatment plan; the treatment plan and all supporting documentation must be available for review in the eligible recipient's file:

(1) statement of the nature of the specific problem and the specific needs of the eligible recipient;

(2) description of the functional level of the eligible recipient, including the following:

(a) mental status assessment;  
(b) intellectual function assessment;

(c) psychological assessment;  
(d) educational assessment;  
(e) vocational assessment;  
(f) social assessment;  
(g) medication assessment; and  
(h) physical assessment;

C. statement of the least restrictive conditions necessary to achieve the purposes of treatment;

D. description of intermediate and long-range goals, with the projected timetable for their attainment and the duration and scope of therapy services;

E. statement and rationale of the treatment plan for achieving these intermediate and long-range goals, including provisions for the review and modification of the plan;

F. specification of staff responsibilities, description of proposed staff involvement and orders for medication(s), treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the eligible recipient; and

G. criteria for release to less restrictive settings for treatment, discharge plans, criteria for discharge, and projected date of discharge.

[2/1/95; 8.321.5.15 NMAC - Rn, 8 NMAC 4.MAD.742.46 & A, 2/1/12]

**8.321.5.16 PRIOR [APPROVAL] AUTHORIZATION AND UTILIZATION REVIEW:** [All ~~medicaid services~~ are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See [Section MAD-705] Prior Approval and Utilization Review. Once enrolled, providers receive instructions and documentation forms necessary for prior approval and claims processing.

~~A. All outpatient and partial hospitalization services furnished in freestanding psychiatric hospitals for recipients under twenty-one (21) years of age require prior approval from MAD or its designee. Services for which prior approval was obtained remain subject to utilization review at any point in the payment process.~~

~~B. Prior approval of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.~~

~~C. Providers who disagree with prior approval request denials or other review decisions can request a re-review and a reconsideration. See Section MAD-953 Reconsideration of Utilization Review Decisions.]~~

All MAD services are subject to utilization review for medical necessity, inspection of care, and program compliance. Reviews can be performed before services are furnished, after services are furnished, and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. The provider must contact HSD or its authorized agents to request utilization review instructions. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials. When services are billed to and paid by a coordinated services contractor authorized by HSD,

the provider must follow that contractor's instructions for authorization of services.

A. **Prior authorization:** All outpatient and partial hospitalization services furnished in freestanding psychiatric hospitals for recipients under 21 years of age require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process. See Subsection A of 8.311.2.16 NMAC, *emergency room services*.

B. **Eligibility determination:** Prior authorization of services does not guarantee that an individual is eligible for medicaid or other health care programs. A provider must verify that an individual is eligible for a specific program at the time services are furnished and must determine if the eligible recipient has other health insurance.

C. **Reconsideration:** A provider who disagrees with prior authorization denials or other review decisions can request a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions*. [2/1/95; 8.321.5.16 NMAC - Rn, 8 NMAC 4.MAD.742.47 & A, 2/1/12]

**8.321.5.17 REIMBURSEMENT:** Providers of partial hospitalization services must submit claims for reimbursement on the [UB-92] UB claim form or its successor. See [Section MAD-702] 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing and claims processing. [Outpatient partial hospitalization services are reimbursed using the Title XVIII (medicare) principles. For those services reimbursed using the medicare allowable cost methodology, medicaid reduces the medicare allowable costs by three percent (3%). The interim rate of payment is seventy-seven percent (77%) of billed charges. If any professional services are billed and reimbursed to the provider under a separate professional component number, all costs for these services must be removed from the hospital cost report prior to cost settlement or rebasing.]

A. Outpatient and partial hospitalization services are reimbursed at an interim rate established by MAD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principles using the Title XVIII (medicare) principles. For those services reimbursed using the medicare allowable cost methodology, medicaid reduces the medicare allowable costs by three percent. Outpatient and partial hospitalization services that are not cost settled, will be reimbursed at the provider's cost to charge ratio reported in the provider's most recently filed cost report prior to February 1, 2012. Otherwise, rates

are established after considering available cost to charge ratios, payment levels made by other payers, and MAD payment levels for services of similar cost, complexity and duration.

B. If any professional services are billed and reimbursed to the provider under a separate professional component number, all costs for these services must be removed from the hospital cost report prior to cost settlement or rebasing.

[2/1/95; 8.321.5.17 NMAC - Rn, 8 NMAC 4.MAD.742.48 & A, 2/1/12]

**NEW MEXICO  
DEPARTMENT OF PUBLIC  
SAFETY  
TRAINING AND RECRUITING  
DIVISION  
Law Enforcement Academy**

This is an amendment to 10.29.10 NMAC, Section 8, effective 3/2/2012.

**10.29.10.8 [MINIMUM STANDARDS: PUBLIC SAFETY TELECOMMUNICATORS, EMERGENCY COMMUNICATOR AND TELECOMMUNICATOR TRAINING**

~~A. **Block 1: National crime information center and New Mexico law enforcement telecommunications system;** 32 total block hours - This unit of instruction will explain and apply situations, policies and procedures, which govern use of national crime information center and New Mexico law enforcement telecommunications systems. This unit of instruction will also present and identify limits in the use of national crime information center and New Mexico law enforcement telecommunications systems information.~~

~~B. **Block 2: Introduction to New Mexico telecommunications;** 13 total block hours - This unit of instruction identifies the core background, principals and exceptions of being a public safety telecommunicator in New Mexico:~~

- ~~(1) role of the public safety telecommunicator; 2 hours~~
- ~~(2) interpersonal communications; 4 hours~~
- ~~(3) officer safety; 2 hours~~
- ~~(4) ethics; 2 hours~~
- ~~(5) stress management; 3 hours~~

~~C. **Block 3: Call handling process and procedures;** 19 total block hours - This unit of instruction will provide the student with an understanding of the elements of effective telephone/call handling communication.~~

- ~~(1) enhanced 911 systems; 1 hour~~
- ~~(2) call handling; 4 hours~~
- ~~(3) TDD; 2 hours~~

- \_\_\_\_\_ (4) medical call handling; 2 hours
- \_\_\_\_\_ (5) resources; 6 hours
- \_\_\_\_\_ (6) domestic violence; 4 hours

**D. Block 4: Principals of law and the legal process;** 12 total block hours - This unit of instruction will inform the student about law and its application to the functions of law enforcement system. This unit will also instruct the student in civil liability:

- \_\_\_\_\_ (1) civil law; 6 hours
- \_\_\_\_\_ (2) criminal law; 6 hours

**E. Block 5: Radio technology and guidelines;** 4 total block hours - This unit of instruction will inform the students of basic radio concepts, federal communications center requirements and existing/new technology:

- \_\_\_\_\_ (1) radio techniques; 3 hours
- \_\_\_\_\_ (2) computer aided dispatch; 1 hour

**F. Block 6: Scene management;** 13 total block hours - This unit of instruction will prepare the telecommunicator to effectively assist in the management high-risk incidents to a safe and successful conclusion:

- \_\_\_\_\_ (1) fire dispatch; 1 hour
- \_\_\_\_\_ (2) haz-mat; 2 hours
- \_\_\_\_\_ (3) critical incident management overview; 4 hours
- \_\_\_\_\_ (4) critical incident stress debriefing; 1 hour
- \_\_\_\_\_ (5) dealing with death and dying; 1 hour
- \_\_\_\_\_ (6) suicide and hostage/kidnap incidents; 4 hours

**G. Block 7: Human relations;** 5.5 total block hours - This unit of instruction will provide the student with tools and techniques to be aware of persons not familiar with the public safety system, so they can be more effective in their duties:

- \_\_\_\_\_ (1) cultural diversity; 1.5 hours
- \_\_\_\_\_ (2) gang awareness; 2 hours
- \_\_\_\_\_ (3) community policing; 2 hours

**H. Block 8: Practical application activities;** 12 total block hours - This unit is to allow the student to apply job-related communications skills, tasks and knowledge in a simulated working environment:

**I. Block 9: Academy administration;** 7.5 total block hours - This unit is for administration of the basic public safety telecommunicator training program. This includes examinations and reviews, discretionary training time and graduations:

**J. Block 10:** [Reserved]  
**K. Block 11: Emergency medical dispatch (optional);** 24 total block hours:

- \_\_\_\_\_ (1) emergency medical dispatch; 24 hours
- \_\_\_\_\_ (2) [Reserved]

**MINIMUM STANDARDS: PUBLIC SAFETY TELECOMMUNICATORS.**

**EMERGENCY COMMUNICATORS AND TELECOMMUNICATOR TRAINING:**

The public safety telecommunicator (PST) certification course is a total of 132 hours of training in 12 units of instruction. There will be up to a total of 12 pre-academy distance learning applied training hours prior to the attendance of the PST academy, for a total of 120 contact training hours during the course.

**A. Unit 1: Introduction to New Mexico telecommunicators;** 2.5 total unit hours - This unit of instruction will identify the core state requirements for public safety telecommunicator certification in New Mexico and provide the background or principles of being a professional telecommunicator in New Mexico.

- \_\_\_\_\_ (1) New Mexico NMAC requirements for public safety telecommunicator; 1 hours
- \_\_\_\_\_ (2) History of emergency communications; .5 hours
- \_\_\_\_\_ (3) Professionalization of public safety telecommunicators; .5 hours
- \_\_\_\_\_ (4) Survive & thrive in the public safety telecommunications profession; .5 hours

**B. Unit 2: Call receiving;** 14 total unit hours - This unit of instruction will provide the student with an understanding of the elements of effective interpersonal communication and effective call handling communications.

- \_\_\_\_\_ (1) Emergency link; .5 hours
- \_\_\_\_\_ (2) Courtesy purposefully; .5 hours
- \_\_\_\_\_ (3) Handling Emotions; .5 hours
- \_\_\_\_\_ (4) Call taking basics; 4 hours
- \_\_\_\_\_ (5) How to assess calls; 2 hours
- \_\_\_\_\_ (6) Introduction to call types; 1 hour
- \_\_\_\_\_ (7) Writing a narrative and common abbreviations; 1 hour
- \_\_\_\_\_ (8) Speed writing skills development; 3 hours
- \_\_\_\_\_ (9) Updating a call; .5 hours
- \_\_\_\_\_ (10) Canceling a call; .5 hours
- \_\_\_\_\_ (11) Confidentiality; .5 hours
- \_\_\_\_\_ (12) Making promises to callers; .5 hours
- \_\_\_\_\_ (13) Keeping the callers on the line; .5 hours
- \_\_\_\_\_ (14) 911 hang up; .5 hours
- \_\_\_\_\_ (15) Tdd/tty communications with the hearing impaired; 2 hours
- \_\_\_\_\_ (16) Safety and situational awareness in call taking; 1 hour
- \_\_\_\_\_ (17) Worst case scenarios; 1 hour
- \_\_\_\_\_ (18) Computer aided dispatch overview; 1 hour

**C. Unit 3: Enhanced 911 systems;** 2 total unit hours - This unit of instruction will provide an overview of the enhanced 911 (E911) system history to date and terminology used in the public safety profession, wireless/VoIP 911, public

marketing and education.

- \_\_\_\_\_ (1) Enhanced 911 history and terminology; 1 total hour
- \_\_\_\_\_ (2) Wireless/VoIP; .5 total hours
- \_\_\_\_\_ (3) Public marketing and education; .5 total hours

**D. Unit 4: Principles of the law as a public safety telecommunicator;** 15.5 total unit hours - This unit of instruction will provide a basic understanding of the criminal justice systems at the municipal, county, state and federal levels and the telecommunicators role and responsibilities in the criminal justice system. This unit will also provide an overview of criminal offenses.

- \_\_\_\_\_ (1) Federal, state, municipal and county law enforcement agencies overview; 1.5 hours
- \_\_\_\_\_ (2) The roll of the telecommunicator in the criminal justice system; .5 hours
- \_\_\_\_\_ (3) What is a crime; .5 hours
- \_\_\_\_\_ (4) Violent crimes; 5 hours
- \_\_\_\_\_ (5) Property crimes; 3.5 hours
- \_\_\_\_\_ (6) Crime and punishment defined; 1 hour
- \_\_\_\_\_ (7) Miscellaneous crimes; 1 hour
- \_\_\_\_\_ (8) Traffic related crimes; 1 hour
- \_\_\_\_\_ (9) Units 1 through 4 academic testing and post test review; 1.5 hours

**E. Unit 4A: Critical incident management (CIM) and interdisciplinary incident command system (ICS);** 19 total unit hours - This unit will cover CIM awareness and interdisciplinary ICS levels 100, 200 and 700, to include practical application in participating in CIM scenarios utilizing model simulator boards and critical incident stress debriefings.

- \_\_\_\_\_ (1) CIM awareness; 4 hours
- \_\_\_\_\_ (2) ICS 100, 200 and 700; 8 hours
- \_\_\_\_\_ (3) Hazardous materials awareness; 2 hours
- \_\_\_\_\_ (4) CIM and ICS scenarios utilizing model simulator boards; 4 hours
- \_\_\_\_\_ (5) Critical incident stress debriefing; 1 hour

**F. Unit 4B: High performance team police radio communications;** 22.5 total unit hours - This unit of instruction will expand the students knowledge of police communications as it narrows down the information gathered to specific law enforcement operations, and basic national crime information center (NCIC) operations to include the code of federal regulations 28 (CFR 28) and practical competencies of the 19 NCIC forms and there data requirements.

- \_\_\_\_\_ (1) Determining who to send; .5 hours
- \_\_\_\_\_ (2) On view calls; .5 hours
- \_\_\_\_\_ (3) Police beats; .5 hours
- \_\_\_\_\_ (4) Dispatching the call and officer safety; 4 hours
- \_\_\_\_\_ (5) Police communications

methods and techniques; 1 hour

(6) Law enforcement information and NCIC systems; 16 hours (8 hours in scenarios)

**G. Unit 5: High performance team fire communications:** 8.5 total unit hours - This unit of instruction will provide an overview of fire, fire suppression theories, safety and dispatching, fire apparatus and common fire operations terminology.

(1) Fire facts; .5 hours

(2) Structural fire suppression; 2 hours

(3) Wildfire suppression, jurisdictions and zones; 2 hours

(4) Fire fighter safety; .5 hours

(5) Fire call taking; 1.5 hours

(6) Fire radio; 1 hour

(7) Fire apparatus and terminology; 1 hour

**H. Unit 6: High performance team medical communications:** 9 total unit hours - This unit of instruction will provide an overview of emergency medical dispatch, medical and trauma signs and symptoms, safety and dispatching to include EMS apparatus and common terminology.

(1) Emergency medical services (EMS) overview; 1 hour

(2) EMS personnel safety; .5 hours

(3) Medical and trauma signs and symptoms overview; 2 hours

(4) EMS call taking; 2.5 hours

(5) EMS radio; 1 hour

(6) EMS apparatus and terminology; .5 hours

(7) Units 4A through 6 academic testing and post test review; 1.5 hours

**I. Unit 7: Emergency radio, life line to responders:** 4.5 total unit hours - This unit of instruction will provide information on the use of broadcast radio as a link to front line responders, including FCC requirements.

(1) Radio basics; 1 hour

(2) Enhanced development of radio techniques; .5 hours

(3) Time saving techniques; .5 hours

(4) Multiple casualty incidents; .5 hours

(5) Radio dispatch voice; 1.5 hours

(6) FCC requirements and violations; .5 hours

**J. Unit 8: Accountability, responsibility and liability for telecommunicators:** 5 total unit hours - This unit of instruction will provide an overview of civil litigation/liability, telecommunicator accountability and responsibilities, the need for continuous quality assurance and evaluations, the requirements to comply with organizational policies and the known areas of high risk as a telecommunicator.

(1) Facts and reality of law suits;

.5 hours

(2) Accountability and responsibility; 1 hour

(3) The need for quality assurance evaluations; 1.5 hours

(4) The need for local organizational policies and procedure and their compliance; 1 hour

**K. Unit 9: Crisis intervention - dangerous opportunity:** 7 total units hours - This unit of instruction will provide a telecommunicator with a core understanding on interacting with individuals with mental impairments or who may be or are in crisis. This unit of instruction while not statutorily required at this time will also comply with the lecture topics contained in 29-7c-7 NMSA 1978.

(1) People in crisis to include: mental illness, developmental disability, posttraumatic stress disorder, dual diagnosis, autism, youth in crisis, traumatic brain injury and excited delirium; 3.5 hours

(2) Understand crisis situations; 1 hour

(3) Identifying a crisis; .5 hours

(4) Maintaining balance; .5 hours

(5) Crisis bill of rights; .5 hours

(6) Rules for crisis listening; 1 hour

**L. Unit 10: 911 stress management for wellness:** 3.5 total unit hours - This unit of instruction will focus on the mental, emotional and physical wellness or readiness of the telecommunicator.

(1) Toxic stress in emergency communications; .5 hours

(2) Critical incident stress; .5 hours

(3) Victimization and stress; .5 hours

(4) Physical wellness; .5 hours

(5) Units 7 through 10 academic testing and post test review; 1.5 hours

**M. Unit 11: Practical application of core abilities:** 8 total unit hours - This unit of instruction will provide an opportunity for a telecommunicator to participate in realistic scenarios using dispatch simulators to handle call taking, radio traffic and computer aided dispatch programs or manual call logs and NCIC traffic. Scripted scenarios encompassing the listed telecommunicator's customer base will be utilized throughout the PST academy to apply theoretical knowledge in realistic scenarios. The telecommunicator will receive progressive practical training in and demonstrate the ability to correctly and effectively handle law enforcement, EMS, fire/rescue, emergency managers, elected officials, public works/utilities, animal control and other stake holders, in radio traffic and phone calls while maintaining appropriate documentation and professionalism.

**N. Unit 12: PST academy**

**administrative time:** 5 total unit hours - This unit of instruction will include introductions, student handbook overview, academy expectations overview, administering the public safety telecommunicator certification examination and graduation ceremonies.

[5-24-81...3-16-95; 10-1-97; 10.29.10.8 NMAC - Rn & A, 10 NMAC 29.9.10.8, 7/1/01; A, 01/01/04; A, 3/2/12]

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## End of Adopted Rules Section

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## Other Material Related to Administrative Law

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**NEW MEXICO  
DEPARTMENT OF PUBLIC  
SAFETY**  
TRAINING AND RECRUITING  
DIVISION  
Law Enforcement Academy

Notice

**NEW MEXICO DEPARTMENT OF  
PUBLIC SAFETY  
NM LAW ENFORCEMENT ACADEMY  
BOARD MEETING**

On Thursday March 1, 2012 at 10:00 a.m.,  
the New Mexico Law Enforcement Academy  
Board will hold a Regular Board Meeting.

The NMLEA Board Meeting will be held at  
the Albuquerque Police Academy 5412 2nd  
Street, NW Albuquerque, NM 87102

Copies of the Regular Board Meeting  
Agenda's may be obtained by accessing our  
website at [www.dps.nm.org/training](http://www.dps.nm.org/training) or by  
calling Monique Lopez at (505) 827-9255.

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**End of Other Related Material  
Section**

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## Submittal Deadlines and Publication Dates 2012

Volume XXIII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 15
Issue Number 4	February 16	February 29
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

The *New Mexico Register* is the official publication for all notices of rule making, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at <http://www.nmcpr.state.nm.us/nmregister>.

For further information, call 505-476-7907.