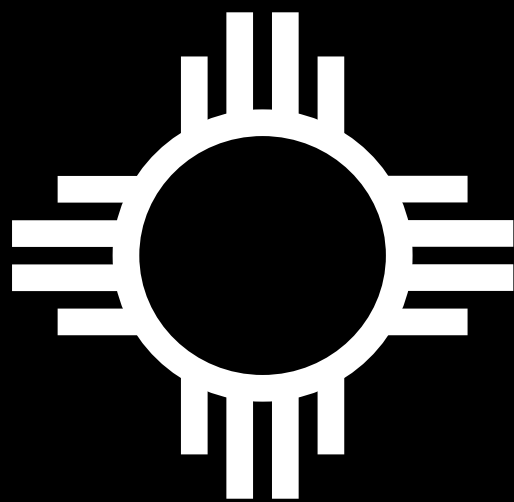


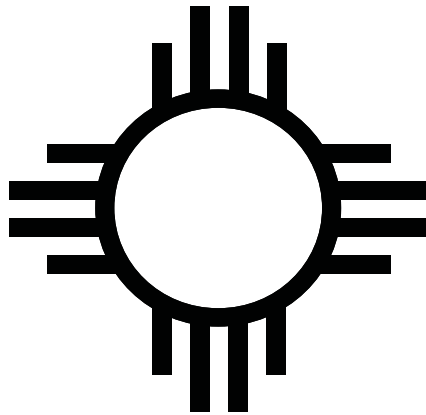
**NEW
MEXICO
REGISTER**



Volume XXIII
Issue Number 10
May 31, 2012

New Mexico Register

Volume XXIII, Issue Number 10
May 31, 2012



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2012

COPYRIGHT © 2012
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XXIII, Number 10

May 31, 2012

Table of Contents

Notices of Rulemaking and Proposed Rules

Acupuncture and Oriental Medicine, Board of	
Legal Notice; Public Rule Hearing and Regular Board Meeting	327
Attorney General, Office of the	
Consumer Protection Division	
Notice of Proposed Amendments to Rule	327
Environmental Improvement Board	
Notice of Public Hearing to Consider Proposed Amendments to 20.7.3 NMAC	329
Health, Department of	
Notice of Public Hearing	329
Human Services Department	
Medical Assistance Division	
Notice of Public Hearings	330
Oil Conservation Commission	
Notice of Public Hearing	330
Public Regulation Commission	
Notice of Proposed Rulemaking.	330
Racing Commission	
Notice of Rulemaking and Public Hearing.	332
Recycled Metals Advisory Board	
Legal Notice; Public Rule Hearing.	332
State Records Center and Archives	
Notice of Rule Hearing.	332
Taxation and Revenue Department	
Notice of Hearing and Proposed Rules	333
Thanatopractice, Board of	
Legal Notice; Public Rule Hearing and Regular Board Meeting.	335

Adopted Rules

Effective Date and Validity of Rule Filings

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

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

Dental Health Care, Board of			
16.5.56 NMAC	N	Parental Responsibility Compliance.	337
16.5.1 NMAC	A	Dentistry (Dentists, Dental Hygienists, Etc.): General Provisions.	338
16.5.2 NMAC	A	Impaired Practitioner Program	339
16.5.7 NMAC	A	Dentists, Temporary or Public Service Licensure	340
16.5.8 NMAC	A	Dentists, Licensure by Credentials	342
16.5.15 NMAC	A	Dentists, Anesthesia Administration.	342
16.5.16 NMAC	A	Dentists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions	343
16.5.33 NMAC	A	Dental Assistants, Requirements for Certification	344
16.5.40 NMAC	A	Dental Assistants, Disciplinary Proceedings	344
16.5.42 NMAC	A	Expanded Function Dental Auxiliary, Requirements for Certification	345
16.5.46 NMAC	A	Expanded Function Dental Auxiliary, Practice and Supervision	346
16.5.47 NMAC	A	Expanded Function Dental Auxiliary, Disciplinary Proceedings	346
16.5.52 NMAC	A	Community Dental Health Coordinator, Continuing Education Requirements	346

16.5.54 NMAC	A	Community Dental Health Coordinator, Practice and Supervision	347
16.5.55 NMAC	A	Community Dental Health Coordinator, Disciplinary Proceedings	347
Economic Development Department			
3.2.250 NMAC	N	Deduction - Gross Receipts and Compensating Taxes - Locomotive Fuel	347
Educational Retirement Board			
2.82.3 NMAC	R	Member and Administrative Unit Contributions	348
2.82.3 NMAC	N	Member and Administrative Unit Contributions	348
2.82.2 NMAC	A	Membership	351
Environmental Improvement Board			
20.2.100 NMAC	R	Greenhouse Gas Reduction Program	353
Human Services Department			
Medical Assistance Division			
8.311.3 NMAC	A	Methods and Standards for Establishing Payment - Inpatient Hospital Services	353
Pharmacy, Board of			
16.19.20 NMAC	A	Controlled Substances	353
16.19.23 NMAC	A	Parental Responsibility Act Compliance	356
Public Education Department			
6.19.8 NMAC	A	Grading of Public Schools	357
Public Regulation Commission			
Insurance Division			
13.10.17 NMAC	A	Grievance Procedures	360

Other Material Related to Administrative Law

Agriculture, Department of			
		Public Meeting Notice	363
Thanatopractice, Board of			
		NMAC Chapter Name Change	363

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

The *New Mexico Register*
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail staterules@state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Acupuncture and Oriental Medicine will hold a Rule Hearing on Friday, July 6, 2012. Following the Rule Hearing the New Mexico Board of Acupuncture and Oriental Medicine will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Acupuncture and Oriental Medicine Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the State Capitol Building, 3rd Floor, Room 310 located at 490 Old Santa Fe Trail, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.2.1 NMAC -General Provisions; 16.2.2 NMAC – Scope of Practice; 16.2.3 NMAC – Application for Licensure; 16.2.4 NMAC – Examinations; 16.2.5 NMAC – Temporary Licensing; 16.2.6 NMAC – Reciprocal Licensing; 16.2.7 NMAC – Educational Programs; 16.2.8 NMAC – License Renewal; 16.2.9 NMAC – Continuing Education; 16.2.10 NMAC – Fees; 16.2.11 NMAC – Licensee Business Offices and Administrative Requirements; 16.2.12 NMAC – Grounds for Denial; 16.2.13 NMAC – Complaint and Disciplinary Procedures; 16.2.14 NMAC – Externships; 16.2.15 NMAC – Inactive License; 16.2.16 NMAC - Auricular Detoxification; 16.2.17 NMAC – Licensure by Endorsement; 16.2.18 NMAC – Expanded Practice Educational Courses; 16.2.19 NMAC – Expanded Practice Certifications; 16.2.20 NMAC – Expanded Practice Formulary

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4630 after June 7, 2012. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than June 22, 2012. Persons wishing to present their

comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4630 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL CONSUMER PROTECTION DIVISION

OFFICE OF THE NEW MEXICO ATTORNEY GENERAL NOTICE OF PROPOSED AMENDMENTS TO RULE

Office of the Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 827-6000
www.nmag.gov

The Attorney General is proposing amendments to the existing rule on NEGOTIATING A SALE IN A LANGUAGE OTHER THAN ENGLISH which can be found at 12.2.9.1 NMAC et seq. Particularly, the attorney general proposes to amend the rule by amending the following provisions of the present rule: 12.2.9.2 NMAC as it pertains to the scope of the rule; 12.2.9.6 NMAC as it pertains to the objective of the rule; 12.2.9.7(B) NMAC as it pertains to the definition of “language principally used”; 12.2.9.8 NMAC as it pertains to what constitutes an unfair or deceptive trade practice; 12.2.9.9 NMAC as it pertains to the requirements when another language other than English is principally used; and adding 12.2.9.7(C) NMAC defining “material terms and conditions.”

The amendments to the existing rule are being promulgated by the authority vested in the Attorney General pursuant to the New Mexico Unfair Practices Act, NMSA 1978, Section 57- 12-13 (1967) and the New Mexico False Advertising Act, NMSA 1978, Section 57-15- 7 (1967).

The proposed amendments to the rule are available at the Office of the Attorney General located in the Paul Bardacke Attorney General Complex in Santa Fe located at 408 Galisteo Street, Consumer Protection

Division, or at the Attorney General’s Office located in Albuquerque at 111 Lomas Blvd. NW, Suite 300. The proposed amendments to the trade or commerce in a language other than English are also posted on the Office of the Attorney General’s website and may be accessed, free of charge, from the following website:

http://www.nmag.gov/the_office/consumer-protection/immigrant-services/negotiating-a-sale-in-a-language-other-than-english

To request a copy of the proposed amendments to the rule concerning NEGOTIATING A SALE IN A LANGUAGE OTHER THAN ENGLISH be mailed to you, please submit your request in writing to:

Office of the Attorney General
Consumer Protection Division
Attention: Amendments to the rule
on NEGOTIATING A SALE IN A
LANGUAGE OTHER THAN ENGLISH
P.O. Drawer 1508
Santa Fe, NM 87504-1508

You may also request a copy of the proposed amendments to the rule by calling the following telephone number:

1 (800) 678-1508

There is a \$.25 copying charge per page.

Any person who is or may be affected by these proposed amendments to the rule on NEGOTIATING A SALE IN A LANGUAGE OTHER THAN ENGLISH may submit written comments.

Written comments concerning the proposed amendments to the rule may be submitted by mail to:

Office Of the Attorney General
Consumer Protection Division
Attention: Amendments to rule on
NEGOTIATING A SALE IN A
LANGUAGE OTHER THAN ENGLISH
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Written comments may also be submitted in person at:

Office of the Attorney General
408 Galisteo St.
Santa Fe, New Mexico 87501

The Office of the New Mexico Attorney General will accept written comments for consideration as provided above no later than 30 days after the proposed amendment

is published in the State Register.

The proposed amendments to the rule on NEGOTIATING A SALE IN A LANGUAGE OTHER THAN ENGLISH reads as follows:

TITLE 12 TRADE, COMMERCE, AND BANKING
CHAPTER 2 C O N S U M E R PROTECTION
PART 9 NEGOTIATING A SALE IN A LANGUAGE OTHER THAN ENGLISH

12.2.9.1 ISSUING AGENCY: Office of the New Mexico Attorney General.

12.2.9.2 SCOPE: [Transactions that are negotiated in a language other than English and are finalized in an English-written agreement.] Any transaction in conjunction with trade or commerce that is presented, negotiated, discussed or conducted in a language other than English that leads to the execution of an English-Language written agreement.

12.2.9.3 S T A T U T O R Y AUTHORITY: The New Mexico Unfair Practices Act, Section 57-12-1, et seq. NMSA 1978 and New Mexico False Advertising Act, Section 57-15-1 et seq., NMSA 1978.

12.2.9.4 D U R A T I O N : Permanent

12.2.9.5 EFFECTIVE DATE: September 15, 2009, unless a later date is cited at the end of a section.

12.2.9.6 OBJECTIVE: [The purpose of this rule is to deter unfair and deceptive practices that result in economic harm to consumers in transactions that are negotiated in a language other than English and are finalized in an English-written agreement without a translation of the material terms and conditions in the same language used in the oral sales presentation or negotiations.] This rule is to provide a guide to any person that offers, solicits the purchase of, and sells or leases goods and services in New Mexico, or that extends credit, or that engages in the collection of debts, where the language principally used in the transaction is not English. Additionally, this rule is intended to deter unfair and deceptive or unconscionable trade practices in New Mexico in transactions that are presented, negotiated, discussed or conducted where the language principally used is a language other than English, but that are finalized in an English language written document.

12.2.9.7 DEFINITIONS:

A. “Trade” or “commerce” includes the advertising, offering for sale, distribution, lease, rental or loan of goods or any services and any property and any other article, commodity or thing of value, or in the extension of credit or in the collection of debts by a person, including any trade or commerce directly or indirectly affecting the people of this state.

B. “Language principally used” means the language that is used to discuss, present, [or] negotiate [the material terms and conditions of the sale] or conduct any transaction within trade or commerce regardless of the partial use of some concepts, phrases or words in the English language [during the negotiations or sales presentation]. The “language principally used” may be a written language or a language that is a traditional oral language.

C. “Material terms and conditions” means those terms and conditions to which a reasonable person would attach importance in making his or her choice of action regarding a transaction, or that the business or its agent, employee or representative knows or has reason to know that the consumer regards, or is likely to regard, as important in determining his or her choice of action in the transaction.

12.2.9.8 UNFAIR OR DECEPTIVE TRADE PRACTICE: It is an unfair and deceptive business trade practice for any [seller to fail to furnish the buyer with a summary translation of any receipt or contract pertaining to the sale of goods or services at the time of its execution that is in the same language as that principally used in the oral sales presentation or negotiations.] person engaged in a business transaction in New Mexico resulting in the execution of an English language written agreement, and:

A. When the language principally used is a language other than English, to fail to furnish the consumer with a written summary of the material terms and conditions of the parties’ agreement at the time of its execution, translated in the same language as that principally used in the transaction; or,

B. When the language principally used is a traditional oral language other than English, to fail to read to the consumer an oral translation of the material terms and conditions of the parties’ agreement at the time of its execution, translated in the same language as that principally used in the transaction.

C. To provide a materially inaccurate translation, either written or oral, including, but not limited to, a translation that omits a material fact.

12.2.9.9 REQUIREMENTS WHEN [ANOTHER] A LANGUAGE OTHER THAN ENGLISH IS

PRINCIPALLY USED [TO SELL GOODS AND SERVICES]:

~~A. The summary translation must contain the material terms and conditions of the parties’ agreement.~~

~~B. Sellers must also furnish the English language receipt or contract.~~

~~C. If the language used principally during the oral presentation or negotiations is not a written language, the seller or his representative must provide a summary containing the material terms and conditions in English but must also read the material terms and conditions orally to the consumer in language used during the presentation or negotiations. The reader must certify that he or she is fluent in that language and that he or she accurately read the summary translation to the buyer in the language principally used during the oral presentation or negotiation.]~~

A. In the case of written languages other than English, any person engaged in trade or commerce shall provide a written summary of the material terms and conditions of the parties’ agreement translated into the same language principally used in a trade or commerce transaction to the consumer prior to execution of the final English language transaction documents. A complete translation of the final written agreement document and all other documents related to the transaction satisfies the translation requirements of this rule.

B. When the language principally used is a traditional oral language, the business shall certify in writing that a true and correct translation of the material terms and conditions was orally read to the consumer by a translator fluent in both the English language and the language principally used in the transaction. The translator shall sign a written certification setting forth his or her name and contact information and affirming that he or she is fluent in both the English language and the language principally used in the transaction. Both translation certifications must be made part of the transaction file and the consumer must be provided with a copy of both certificates of translation.

C. Any person subject to this rule must also furnish the complete English language receipt or agreement to the consumer at the same time of delivery of the translated summary.

12.2.9.10 SEVERABILITY: If any part of this rule is held invalid, the remainder and the application thereof shall not be affected.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.7.3 NMAC

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning at 9:00 a.m. on August 6, 2012, and continuing thereafter as necessary at the New Mexico State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to August 6, and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oots/eib.htm> prior to the hearing. The purpose of the hearing is to consider proposed amendments to Liquid Waste Disposal Rules, 20.7.3 NMAC (Rules). The New Mexico Environment Department (NMED) is the proponent of the amendments to the Rules.

The amendments proposed by NMED to 20.7.3 NMAC represent a general overhaul and updating of the Rules. The most significant changes would include 1) the addition of an Installer Specialist classification which would allow certain installers to perform photographic self-inspections on a greater percentage of systems they install, 2) codification of a single lot policy that would eliminate the practice of lot-splitting to avoid groundwater discharge permits, 3) elimination of requirements for advanced treatment in areas where the hydrogeology is such that advanced treatment will not result in any greater protection of water quality or public health, 4) providing amnesty to older liquid waste systems that may not strictly comply with historical regulations, but that are functioning properly, and not creating a hazard to water quality or public health, 5) allowing qualified third-parties to inspect unpermitted systems installed prior to 2002, 6) reducing the burden of laboratory testing of effluent and relying more heavily on service inspections and field testing, 7) eliminating the requirement that maintenance service providers be factory certified to allow for greater free-market competition among qualified industry personnel, 8) providing more specific regulations on low pressure pipe systems, which are becoming more common in the state, 9) The addition of several requirements for septage pumpers, including a requirement that septage disposal may only occur at permitted facilities and 10) adjusting regulations for design flow assumptions and drain field storage capacity

to reflect water conservation practices in the state.

In addition the proposed amendments include a number of other minor changes and clarifications to current definitions, regulations, and procedures. Please note that formatting and minor technical changes in the regulations other than those proposed by petitioners may be proposed at hearing. In addition, the Board may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

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

Written comments regarding the proposed revisions may be addressed to Ms. Felicia Orth Medina at the above address, and should reference docket number EIB 12-01(R).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other applicable procedures.

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

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so on or before 5:00 pm on July 17, 2012. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- attach each exhibit anticipated to be offered by that person at the hearing, including any proposed statement of reasons

for adoption of the rules; and,

- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on July 17, and should reference the name of the regulation, the date of the hearing, and docket number EIB 12-01(R). Notices of intent to present technical testimony should be submitted to:

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

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by July 17, 2012. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.4.3 NMAC "Control of Disease and Conditions of Public Health Significance". The Hearing will be held at 9:00 AM on June 22, 2012 in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

The public hearing will be conducted to add or remove certain rules and regulations regarding eligibility, revise definitions, including the expanded newborn genetic screening program, update or correct statutory or administrative code references, and make certain clarifications and modifications to the existing regulation.

A copy of the proposed regulation can be

obtained from:

Susan Chacon
Children's Medical Services
New Mexico Department of Health
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
505-476-8860

Please submit any written comments regarding the proposed regulation to the attention of Susan Chacon at the above address prior to the hearing. If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Susan Chacon by telephone at 505-476-8860. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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

NOTICE

The New Mexico Human Services Department (HSD), Medical Assistance Division (MAD) originally scheduled two public hearings on Tuesday, June 19, 2012. One of the two public hearings has been cancelled.

The public hearing on *Coordinated Long Term-Term Services, Client Transition of Care*, originally scheduled for June 19, 2012 at 1:00 pm in the ASD conference room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe has been cancelled. The hearing will be rescheduled at a later date.

The public hearing on *Medicaid Managed Care, Client Transition of Care*, will be held at 9:00 am on June 19, 2012 as originally scheduled in the South Park Conference Room, 2055 S. Pacheco, Ste. 500-590 in Santa Fe.

**NEW MEXICO
OIL CONSERVATION
COMMISSION**

**STATE OF NEW MEXICO
ENERGY, MINERAL AND NATURAL
RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO**

The State of New Mexico, through the Oil Conservation Commission (Commission) has been conducting a public hearing regarding Case No. 14784 (APPLICATION OF THE NEW MEXICO OIL AND

GAS ASSOCIATION FOR AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP SYSTEMS, BELOW GRADE TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING CHANGES, STATEWIDE.) and Case No. 14785 (APPLICATION OF THE INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO FOR AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP SYSTEMS, BELOW GRADE TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING CHANGES, STATEWIDE.) The Commission hereby gives notice that the hearing has not concluded and will resume at 9 a.m. on June 20, 2012 in Porter Hall at 1220 South Saint Francis Drive, Santa Fe, New Mexico. The hearing shall continue until the Commission reaches a decision.

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 Ms. Florene Davidson at (505) 476- 3458 or through the New Mexico Relay Network at 1-800-659-1779 by June 8, 2012. Public documents can be provided in various forms. Please contact Ms. Davidson if a summary or other type of form is needed. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 24 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. In addition, the agenda will be posted on the Oil Conservation Division's website at www.emnrd.state.nm.us/ocd/.

Given under the seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 16th day of May, 2012.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Jami Bailey
Oil Conservation Commission Chair

NEW MEXICO PUBLIC REGULATION COMMISSION

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

12-00149-IN

IN THE MATTER OF THE ADOPTION OF PROPOSED AMENDMENTS TO THE NEW MEXICO HEALTH INSURANCE ALLIANCE PLAN OF OPERATION AND ELIGIBILITY CRITERIA

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of the Insurance Division of the New Mexico Public Regulation Commission (Superintendent) proposes to amend its existing New Mexico Health Insurance Alliance Plan of Operation and Eligibility Criteria currently codified at 13.10.11 NMAC. This matter comes before the Superintendent upon his own Motion and, having reviewed the record and being duly advised,

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over the subject matter and the parties in this proceeding pursuant to the New Mexico Insurance Code, 1978 NMSA Section 59A-1-1 *et seq.* (Insurance Code).

2. The New Mexico Health Insurance Alliance (HIA) was established in 1994 by the New Mexico Legislature to provide increased access to health insurance for small businesses, self-employed and qualified individuals. *See*, NMSA 1978, Section 59A-56-1, *et seq.*, the "Health Insurance Act."

3. Pursuant to NMSA 1978, Section 59A-56-5.A, "[t]he [HIA] shall submit

a plan of operation to the superintendent and any amendments to the plan necessary or suitable to assure the fair, reasonable and equitable administration of the alliance.”

4. The HIA’s plan of operation was established by regulation, effective June 1, 2001, at 13.10.11.1 through 13.10.11.35 NMAC

5. The HIA proposes amendments to this existing plan of operation that would change i) the limiting age from, “19 or 25” to 26 for continuation of health care coverage for covered dependent children, and (ii) the allowable break in creditable coverage from, “63” days to 95 days for purposes of eligibility for individual coverage under an alliance plan.

6. This proposed rule is substantially the same as the rule adopted by the Superintendent in his *Final Order to Promulgate Rule for the Adoption of proposed Amendments to the New Mexico Health Insurance Alliance Plan of Operation and Eligibility Criteria*, dated January 13, 2012 and is attached to and incorporated into this Notice of Proposed Rulemaking (NOPR) by reference as Exhibit A (Proposed Rule).

7. The Superintendent will accept written comments on the Proposed Rule from any interested person. The public is encouraged to file written comments although oral comments will be accepted at the public hearing in this case. Interested persons shall file their written comments on the Proposed Rules no later than **June 27, 2012**. Any response comments shall be filed no later than **July 5, 2012**. Comments suggesting changes to the Proposed Rule shall state and discuss the particular reasons for the suggested changes, shall cite to any state or federal law, or other materials, referred to in the comment and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the Proposed Rule shall be in legislative format. All pleadings, including comments and suggested changes to the Proposed Rule, shall bear the caption and docket number contained at the top of this NOPR.

8. Written comments or written response comments shall be filed by sending original copies to:

Melanie Sandoval
Records and Docketing Division
New Mexico Public Regulation
Commission
Attention: Case No. 12-00149-IN
1120 Paseo de Peralta
Santa Fe, NM 87504

9. Copies of the proposed

rules may be downloaded from the New Mexico Public Regulation’s web site, www.nmprc.state.nm.us.

10. The Superintendent will review all timely submitted written comments and will hold a public comment hearing beginning at **1:30 p.m. on July 18, 2012**, at the Public Regulation Commission Hearing Room, 4th Floor, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

11. Any person with a disability requiring special assistance in order to participate in a hearing should contact Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the hearing.

12. 1.2.3.7(B) NMAC (Ex Parte Communications) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as ex parte communications. In order to assure compliance with 1.2.3.7(B) NMAC, the Superintendent should set a date on which it will consider the record to be closed. The Superintendent finds that date shall be the earlier of thirty (30) days following the Public Hearing; that is, **August 17, 2012**, or the date a Final Order is issued in this case. The setting of that record closure date will permit the Superintendent to conduct follow-up discussions with parties who have submitted initial or response comments to the Superintendent’s proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

13. Pursuant to his authority under NMSA 1978, Section 59A-4-1 *et seq.*, the Superintendent should designate Aaron Ezekiel, Insurance Division Hearing Officer, as the hearing officer for this case.

IT IS THEREFORE ORDERED:

A. A rulemaking proceeding should be, and hereby is, instituted in this Docket concerning amendments to the New Mexico Health Insurance Alliance Plan of Operation and Eligibility Criteria, currently codified in the New Mexico Administrative Code (NMAC) at 13.10.11. The Proposed Rule, attached to this NOPR as Exhibit A, is proposed for adoption as a permanent rule as provided by this NOPR.

B. This NOPR shall constitute due and lawful notice to all potentially interested parties.

C. Initial, written comments on the proposed rule must be filed by **June 27, 2012** and written response comments must be filed by **July 5, 2012**.

D. A public hearing on the proposed rule amendments shall be held beginning at **1:30 p.m. on July 18, 2012** at the offices of the Superintendent, at the following location:

Superintendent of
Insurance
4th Floor - Public
Regulation Commission
Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico
87501

E. Pursuant to 1.2.3.7(B) NMAC, the record in this case will be closed on the earlier of thirty (30) days following the public hearing; that is, **August 17, 2012**, or the date a Final Order is issued in this case.

F. Persons providing public comment and/or participating in this public hearing are encouraged to provide specific comment on the proposed rule and cite specifically to any federal or state laws or other materials referenced in a comment. Those wishing to make comments are also encouraged to address any other topic that may be relevant to this rulemaking.

G. Interested persons should contact the Superintendent to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the public hearing in this case.

H. The Superintendent designates Aaron Ezekiel, Insurance Division Hearing Officer, to preside over this matter and to take all action necessary and convenient thereto within the limits of the hearing officer’s authority and consistent with applicable procedural rules.

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

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

K. This NOPR, without Exhibit A, pursuant to NMSA 1978, Section 14.4.7.1.B(1), shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the New Mexico Register. Affidavits attesting to the publication of this NOPR as described above shall be filed in this docket.

L. In addition, this NOPR shall be posted on the Superintendent's official Web site.

M. This NOPR is effective immediately.

DONE AND ORDERED this 15th day of May, 2012.

JOHN G. FRANCHINI
Superintendent of Insurance

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN

that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on June 21, 2012. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Boardroom at 4900 Alameda Blvd. NE, Albuquerque, New Mexico.

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

Copies of the proposed rules may be obtained from Vince Mares, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested

persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

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

Vince Mares
Agency Director

Dated: May 11, 2012

NEW MEXICO RECYCLED METALS ADVISORY BOARD

LEGAL NOTICE

Public Rule Hearing

The New Mexico Recycled Metals Advisory Board will hold three Rule Hearings on Monday, July 2, 2012. The New Mexico Recycled Metals Advisory Board Rule Hearing will begin at 9:00 a.m. and will conclude at 1:00 pm. The meetings will be held at Regulation and Licensing Department located at 5200 Oakland Ave. NE, Albuquerque, NM 87113 in the Main Conference Room, Farmington City Hall, 800 N. Municipal Drive, Farmington, NM 87401, in the Council Chambers, and Las Cruces City Hall, 700 North Main Street, Las Cruces, NM, 88001, in Conference Room 2007A.

The purpose of the rule hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules and Regulations in 12.2 NMAC: Part 15 Sale of Recycled Metals, Part 16 Application for Registration, Part 17 Reporting Requirements, Part 18 Duties and Responsibilities.

You can contact the Regulation and Licensing Department, Office of the Superintendent located in the Toney Anaya Building located at 2550 Cerrillos Road, Santa Fe, NM 87505, call (505) 476-4508 or copies of the proposed rules are available on the website: www.RLD.state.nm.us/boards. Persons wishing to make comment regarding the proposed rules must present them to the Office of the Superintendent in writing no **later than June 25, 2012**. Persons wishing to present their comments at the hearing will need (1) one copy of any comment or proposed changes for distribution to staff.

If you have questions, or if you are an

individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4508 at least two weeks prior to the meeting or as soon as possible.

Andrea L. Sandoval, Program Administrator
PO Box 25101- Santa Fe, New Mexico
87505

NEW MEXICO STATE RECORDS CENTER AND ARCHIVES

NOTICE OF RULE HEARING STATE RECORDS ADMINISTRATOR

The State Records Administrator of the New Mexico State Records Center and Archives (SRCA) will hold a public hearing on Tuesday, July 3, 2012, at 9:00 a.m. to take public comment regarding the following proposed rulemaking actions:

Amendment

1.13.2 NMAC Public Records, Fees
1.13.11 NMAC Public Records, Access to Public Records, Research in the New Mexico Archives

A copy of the proposed rules are available at the Office of the State Records Administrator, 1205 Camino Carlos Rey, Santa Fe, NM 87507 and on the SRCA website at: www.nmcpr.state.nm.us/index.htm. Proposed rules can also be provided in various accessible formats.

The hearing will be held at the SRCA in the Commission Room, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902. The SRCA requests at least 5 business days advance notice to provide requested alternative formats and special accommodations.

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The New Mexico Taxation and Revenue Department proposes to adopt the following rule:

Gross Receipts and Compensating Tax Act

3.2.242.16 NMAC Section 7-9-95 NMSA 1978

(Items Considered to be Computers for Purposes of the Deduction Under Section 7-9-95)

The New Mexico Taxation and Revenue Department proposes to amend the following rules:

Gross Receipts and Compensating Tax Act

3.2.242.7 NMAC Section 7-9-95 NMSA 1978

(Definitions)

3.2.242.8 NMAC Section 7-9-95 NMSA 1978

(Items Normally Sold as a Unit)

3.2.242.9 NMAC Section 7-9-95 NMSA 1978

(Purchases Using a Rain Check)

3.2.242.10 NMAC Section 7-9-95 NMSA 1978

(Layaway Sales)

3.2.242.11 NMAC Section 7-9-95 NMSA 1978

(Exchanges and Refunds)

3.2.242.12 NMAC Section 7-9-95 NMSA 1978

(Internet, Mail Order and Telephone Sales)

3.2.242.13 NMAC Section 7-9-95 NMSA 1978

(Documenting Deductible Sales)

3.2.242.14 NMAC Section 7-9-95 NMSA 1978

(Items That Do Not Qualify for the Deduction Under Section 7-9-95 NMSA 1978)

3.2.242.15 NMAC Section 7-9-95 NMSA 1978

(Receipts that are not Deductible)

Uniform Division of Income for Tax Purposes Act

3.5.12.9 NMAC Section 7-4-12 NMSA 1978

(Property Factor - Valuation of Rented Property)

3.5.19.8 NMAC Section 7-4-19 NMSA 1978

(Special Rules - In General)

These proposals were placed on file in the Office of the Secretary on May 21, 2012. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about July 31, 2012.

A public hearing will be held on these proposals on Thursday, July 5, 2012, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before July 5, 2012.

3.2.242.7 **DEFINITIONS:**

A. ~~[As used in Laws 2005, Chapter 104, Section 25]~~ As used in Section 7-9-95 NMSA 1978 "standard classroom" means a classroom that:

- (1) is located in a school;
- (2) is configured for a general education curriculum; and
- (3) does not contain specialized equipment such as scientific laboratory equipment or musical instruments.

B. ~~[As used in Laws 2005, Chapter 104, Section 25]~~ As used in Section 7-9-95 NMSA 1978 "school supplies normally used by students in a standard classroom for educational purposes" means implements and materials used by typical students of a general education curriculum.

These include notebooks, paper, writing instruments, crayons, art supplies, paper clips, staples, staplers, scissors, and rulers valued at under ~~[\$15]~~ \$30 per unit, ~~[and]~~ book bags, backpacks, [handheld calculators,] maps and globes valued at under \$100 per unit, and handheld calculators valued under \$200. The items that qualify ~~as school supplies~~ for the deduction under [Laws 2005, Chapter 104, Section 25] Section 7-9-95 NMSA 1978 do not have to be used for school; they only have to be items normally used by students in a standard classroom setting.

[3.2.242.7 NMAC - N, 8/15/05; A, XXX]

3.2.242.8 **ITEMS NORMALLY SOLD AS A UNIT:**

Articles normally sold as a unit must be sold that way during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 to qualify for the deduction.

They cannot be priced separately and sold as individual items to qualify for the deduction. For example, shoes normally sold in a pair for \$180 cannot be sold singly for \$90 each to qualify for the deduction.

[3.2.242.8 NMAC - N, 8/15/05; A, XXX]

3.2.242.9 **PURCHASES USING A RAIN CHECK:**

A "rain check" is an assurance to a customer that an item on sale that is sold out or out of stock may be purchased later at the sale price. Receipts from qualified purchases of tangible personal property made with a rain check during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 are deductible. Purchases made after this time period with a rain check regardless of when the rain check was issued are not deductible.

[3.2.242.9 NMAC - N, 8/15/05; A, XXX]

3.2.242.10 **LAYAWAY SALES:**

A retailer performs a service when holding merchandise on a layaway plan at the request of the customer.

A. The initiation of a layaway plan does not constitute a sale even if the customer makes a deposit to the retailer. A sale of the merchandise under the layaway plan occurs only when the final payment is made and the merchandise is delivered to the customer.

B. If the final payment on a layaway plan and delivery of merchandise occur at a time other than during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978, the receipts from the sale are not deductible under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978.

C. If the final payment on a layaway plan and delivery of merchandise occur during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978, the receipts are deductible under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 if the other requirements of the section are met. [3.2.242.10 NMAC - N, 8/15/05; A, XXX]

3.2.242.11 **EXCHANGES AND REFUNDS:**

A. The exchange after the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 of tangible personal property that was purchased during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 remains deductible if there is no additional charge for the exchange.

B. If an item of tangible personal property purchased during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 and deductible under ~~[Laws 2005, Chapter 104,~~

Section 7-9-95 NMSA 1978 is exchanged at a later time for an item of different value, the receipts from the subsequent sale are subject to gross receipts tax.

[3.2.242.11 NMAC - N, 8/15/05; A, XXX]

3.2.242.12 INTERNET, MAIL ORDER AND TELEPHONE SALES:

Qualified items sold to purchasers with a New Mexico billing address by mail, telephone, email and internet shall qualify for deduction under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 if:

A. the item is both delivered to and paid for by the customer during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978; or

B. the customer orders and pays for the item and the retailer accepts the order during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 for immediate shipment, even if delivery of the item is made after the exemption period.

[3.2.242.12 NMAC - N, 8/15/05; A, XXX]

3.2.242.13 DOCUMENTING DEDUCTIBLE SALES:

Retailers claiming the deduction under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 are required to maintain in their records the type of item sold, the date sold and the sales price of deductible merchandise sold during the time period specified in ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978.

[3.2.242.13 NMAC - N, 8/15/05; A, XXX]

3.2.242.14 ITEMS THAT DO NOT QUALIFY FOR THE DEDUCTION UNDER ~~[LAWS 2005, CHAPTER 104, SECTION 25]~~ SECTION 7-9-95 NMSA 1978:

In addition to those items specifically excluded in the statute, the following are ineligible for the deduction:

A. ~~[handheld computers, internet, or email devices]~~ e-readers that only have the ability to access the internet but that have no other computing functions such as word processing, spreadsheet capabilities, etc.;

B. personal digital assistants (PDAs), MP3 players, cassette players and recorders, cameras, books, magazines and other periodicals;

C. all computer and computer-related equipment not specifically deductible under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 unless bundled with and included in the price of items that qualify for the deduction under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978;

D. all computer software

unless bundled with and included in the price of items that qualify for the deduction under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978;

E. all games including video games, board games, computer games, and handheld gaming devices;

F. musical instruments;

G. materials and equipment used for making, repairing or altering clothing such as cloth, thread, yarn, needles, buttons, zippers, and patterns;

H. athletic and protective gloves, pads, supporters, and helmets;

I. swimwear, cover-ups, and caps;

J. specialized footwear not readily adaptable for wearing on the street, such as ski boots, riding boots, waders, bowling shoes and shoes with cleats or spikes; and

K. briefcases and luggage; prerecorded CDs, DVDs, and cassette tapes; and

~~L. data storage devices such as CD drives and ZIP drives].~~

[3.2.242.14 NMAC - N, 8/15/05; A, XXX]

3.2.242.15 RECEIPTS THAT ARE NOT DEDUCTIBLE: Receipts from the following transactions are not deductible under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978;

A. Receipts from performing services on tangible personal property that are deductible under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978, such as the alteration or repair of clothing.

B. Receipts from leasing or renting tangible personal property. In order for the deduction under ~~[Laws 2005, Chapter 104, Section 25]~~ Section 7-9-95 NMSA 1978 to apply the qualified items must be sold at retail.

[3.2.242.15 NMAC - N, 8/15/05; A, XXX]

3.2.242.16 I T E M S CONSIDERED TO BE COMPUTERS FOR PURPOSES OF THE DEDUCTION UNDER SECTION 7-9-95 NMSA 1978:

In addition to those computers that are specifically authorized in the statute, the following items are considered to be computers and qualify for the deduction as long as the cost of the item does not exceed the one thousand dollars (\$1,000) threshold set in statute:

A. e-readers that have computing functions such as word processing, spreadsheet capabilities, etc.; and

B. tablets.

[3.2.242.16 NMAC - N, XXX]

3.5.12.9 P R O P E R T Y FACTOR - VALUATION OF RENTED

PROPERTY:

A. Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

B. "Annual rental rate" is the amount paid as rental for property for a twelve-month period (i.e., the amount of the annual rent). Where property is rented for less than a twelve-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of twelve or more months and the current tax period covers a period of less than twelve months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than twelve months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

C. "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(1) any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or a percentage of sales, profits or otherwise; and

(2) any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc.; if a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

D. "Annual rent" does not include:

(1) incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.; and

(2) royalties based on extraction of natural resources, whether represented by delivery or purchase, for this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property which constitutes a sharing of current or future production of natural resources from

such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty rental or otherwise.

E. Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor. [1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.12.9 NMAC - Rn & A, 3 NMAC 5.12.9, 6/29/01; A, XXX]

3.5.19.8 SPECIAL RULES - IN GENERAL:

A. Section 7-4-19 NMSA 1978 provides that if the allocation and apportionment provisions of Sections 7-4-2 to 7-4-18 NMSA 1978 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one or more of the factors;
- (3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

B. Section 7-4-19 NMSA 1978 permits a departure from the allocation and apportionment provisions of Sections 7-4-2 to 7-4-18 NMSA 1978 only in limited and specific cases[~~Section 7-4-19 NMSA 1978 may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in Sections 7-4-2 to 7-4-18 NMSA 1978] where the apportionment and allocation provisions contained in Sections 7-4-2 to 7-4-18 NMSA 1978 produce incongruous results.~~

[1/15/74, 9/15/88, 9/20/93, 1/15/97; 3.5.19.8 NMAC - Rn & A, 3 NMAC 5.19.8, 6/29/01; A, XXX]

NEW MEXICO BOARD OF THANATOPRACTICE

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Thanatopractice will hold a Rule Hearing on Monday, July 2, 2012. Following the Rule Hearing, the New Mexico Board of Thanatopractice will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Thanatopractice Rule Hearing will begin at 9:00 a.m. and the regular meeting will convene immediately following the Rule Hearing. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, 2nd Floor, in the Rio Grande conference room, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.64.1 NMAC General Provisions, 16.64.2 NMAC Fees, 16.64.3 NMAC Requirements for Licensure, 16.64.4 NMAC Requirements for Establishments and Crematories, 16.64.5 NMAC Examinations, 16.64.6 NMAC Continuing Education, 16.64.7 NMAC License Renewal, 16.64.8 NMAC Funeral Service Intern Practices, 16.64.9 Direct Disposition Practices, 16.64.10 NMAC Cremation Practices, 16.64.11 NMAC Complaints, 16.64.12 NMAC Parental Responsibility Act Compliance.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, (505)476-4970, or send an e-mail to thanatoboard@state.nm.us after May 21, 2012. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than June 18, 2012. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

The Board may enter into Executive Session pursuant to § 10-15-1 of the Open Meetings Act, to discuss matters related to the issuance, suspension, renewal or revocation of licenses.

If you have questions, or if you are an individual with a disability who wishes to

attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4970 at least two weeks prior to the meeting or as soon as possible.

End of Notices and Proposed Rules Section

This page intentionally left blank

Adopted Rules

NEW MEXICO BOARD OF DENTAL HEALTH CARE

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL HYGIENISTS,
ETC.)
PART 56 PARENTAL
RESPONSIBILITY COMPLIANCE**

16.5.56.1 ISSUING AGENCY:
New Mexico Board of Dental Health Care.
[16.5.56.1 NMAC - N, 06/14/12]

16.5.56.2 SCOPE: This part applies to disciplinary proceedings by an issuing agency pursuant to the Parental Responsibility Act against a license, certificate, registration or permit required to engage in a profession or occupation.
[16.5.56.2 NMAC - N, 06/14/12]

16.5.56.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA1978.
[16.5.56.3 NMAC - N, 06/14/12]

16.5.56.4 DURATION:
Permanent.
[16.5.56.4 NMAC - N, 06/14/12]

16.5.56.5 EFFECTIVE DATE:
June 14, 2012, unless a later date is cited at the end of a section.
[16.5.56.5 NMAC - N, 06/14/12]

16.5.56.6 OBJECTIVE:
This part is intended to implement the requirements of the Parental Responsibility Act as they apply to the issuance, renewal, suspension or revocation of any license, certificate, registration or permit required for dentists, dental hygienists, dental assistants, expanded fuction dental auxiliaries, community dental health coordinators and non-dentist owners for dental practices.
[16.5.56.6 NMAC - N, 06/14/12]

16.5.56.7 DEFINITIONS:
A. All terms defined in the Parental Responsibility Act shall have the same meanings in this part unless defined below.

B. As used in this part.
(1) "Board" means the New Mexico board of dental health care or any entity to which it has delegated authority to pursue violations of the Parental Responsibility Act.

(2) "HSD" means the New Mexico human services department.

(3) "License" means a license, certificate, registration or permit issued by the board that a person is required to have to engage in a profession or occupation in New Mexico.

(4) "Statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support, and has complied with subpoenas or warrants relating to paternity or child support proceedings.

(5) "Statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with judgment and order for support or has not complied with subpoenas or warrants relating to paternity or child support proceedings.
[16.5.56.7 NMAC - N, 06/14/12]

16.5.56.8 PARENTAL RESPONSIBILITY ACT; DELEGATION OF AUTHORITY: The authority of the New Mexico board of dental health care to issue a notice of contemplated action, to refer cases in which a notice of contemplated action has been issued for administrative prosecution, to hold hearings and issue decision and orders to any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq., may be delegated to the New Mexico regulation and licensing department. This section shall not be construed to deprive the board of its authority to issue a notice of contemplated action for any violation of the Parental Responsibility Act, to refer a case for administrative prosecution, hold a hearing or issue a decision and order for any violation of the Parental Responsibility Act.
[16.5.56.8 NMAC - N, 06/14/12]

16.5.56.9 DISCIPLINARY PROCEEDINGS:

A. Disciplinary action: If an applicant or licensee is not in compliance with a judgment and order for support, or has not complied with subpoenas or warrants, relating to paternity or child support proceedings the board shall follow:

- (1) shall deny an application for licensure;
- (2) shall deny the renewal of a license; and
- (3) has grounds for suspension or revocation of a license.

B. Certified list: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support or who have not complied with subpoenas or warrants relating to paternity or child support proceedings, the board shall

match the certified list against the current list of applicants and licensees. Upon the later receipt of an application for licensure or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

C. Initial action: Upon determination that an applicant or licensee appears on the certified list, the board shall:

(1) commence a formal proceeding under Subsection D of 16.5.56.8 NMAC to take the appropriate action under Subsection A of 16.5.56.8 NMAC; or

(2) for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance by the earlier of the application for license renewal or a specified date not to exceed six months, if the licensee fails to provide the statement, the board shall commence formal proceeding under Subsection D of 16.5.56.8 NMAC.

D. Notice of contemplated action: Prior to taking any action specified in Subsection A of 16.5.56.8 NMAC, the board shall serve upon the applicant or licensee a written notice stating that:

(1) the board has grounds to take such action, and that the board shall take such action unless the licensee or applicant:

- (a) mails a letter (certified mail, return receipt requested) within 20 days after service of the notice requesting a hearing; or
- (b) provides the board, within 30 days of the date of the notice, with a statement of compliance; and

(2) if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division.

E. Evidence and proof: If any hearing under this part, relevant evidence is limited to the following:

(1) a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under Subsection A of 16.5.56.8 NMAC unless:

(2) the applicant or licensee can provide the board with subsequent statement of compliance which shall preclude the board from taking any action based solely on the prior statement of non-compliance.

F. Order: When an action is taken under this part solely because the applicant or licensee is not in compliance with a judgement and order for support or has

not complied with subpoenas or warrants relating to paternity or child support proceedings the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplication or reinstatement of lapsed license.

G. **Procedures:** Proceedings under this part shall be governed by the Uniform Licensing Act, NMSA 1978, Section 61-1-1 *et seq.*, or any other adjudicatory procedures adopted by the board.

[16.5.56.9 NMAC - N, 06/14/12]

**HISTORY OF 16.5.56 NMAC:
[RESERVED]**

**NEW MEXICO BOARD OF
DENTAL HEALTH CARE**

This is an amendment to 16.5.1 NMAC, Section 7; add Sections 21, 22 and 23, effective 06-14-12.

16.5.1.7 DEFINITIONS:

A. "Act" means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

B. "Assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment.

C. "Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

D. "Close personal supervision" means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of New Mexico licensed or certified employees or staff.

[D:] E. "Consulting dentists" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee.

[E:] E. "CRDTS" means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

G. "Current patients of

record" means the New Mexico licensed dentist has seen the patient in the practice in the last 18 months.

[F:] H. "Dental hygiene-focused assessment" means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

[G:] L. "Dental record" means electronic, photographic, radiographic or manually written records.

[H:] J. "Diagnosis" means the identification or determination of the nature or cause of disease or condition.

[I:] K. "Direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(1) is physically present throughout the performance of the act;

(2) orders, controls and accepts full professional responsibility for the act performed;

(3) evaluates and approves the procedure performed before the patient departs the care setting; and

(4) is capable of responding immediately if any emergency should arise.

[J:] L. "Extenuating circumstances" are defined as a serious, physician-verified illness or death in immediate family, or military service. The extenuating circumstances must be presented for the board's consideration on a case-by-case basis.

[K:] M. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

[L:] N. "Impaired Act" means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11, NMSA 1978.

[M:] O. "Indirect supervision" means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student as defined in 61-5A-3 NMSA 1978.

[N:] P. "Jurisprudence exam" means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.

[O:] Q. "Licensee" means an individual who holds a valid license to

practice dentistry or dental hygiene in New Mexico.

[P:] R. "NERB/ADEX" means the north east regional board of dental examiners, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

[Q:] S. "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in 61-5A-5 G, NMSA 1978.

[R:] T. "Palliative procedures" means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

[S:] U. "Professional background service" means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

[T:] V. "Provider" means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.

W. "Specialist" means a specialty is an area of dentistry that has been formally recognized by the board and the American dental association as meeting the specified requirements for recognition of dental specialists.

[U:] X. "SRTA" means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

[V:] Y. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

[W:] Z. "Supervision" means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and clinical individuals that the dentist supervises.

[X:] AA. "Teledentistry" means a dentist's use of health information technology in real time to provide limited

diagnostic treatment planning services in cooperation with another dentist, a dental hygienist, a community health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist.

[Y:] **BB.** "WREB" means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

[Z:] **CC.** "Written authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

[3-11-89, 5-31-95, 9-30-96, 12-15-97; 16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12-14-00; A, 06-14-01; A, 03-29-02; A, 03-06-05; A, 07-16-07; A, 07-17-08; A, 07-19-10; A, 01-09-12; A, 06-14-12]

16.5.1.21 CONSULTING SERVICES; CLAIMS REVIEW BY INSURANCE COMPANIES:

A dentist who reviews insurance claims for New Mexico licensed dentists who are treating patients in New Mexico must be a current New Mexico licensed dentist who is a resident and in good standing. All insurance claims that have been reviewed by a consultant dentist and subsequently denied or offer an alternate treatment plan must identify the consultant by their name and New Mexico license number.

[16.5.1.21 NMAC - N, 06-14-12]

16.5.1.22 LEGAL EXPERT WITNESS REQUIREMENTS:

A dentist who testifies in a malpractice case(s) or legal case(s) involving New Mexico licensed dentists and procedures performed in New Mexico must also be a current New Mexico licensed dentist and in good standing.

[16.5.1.22 NMAC - N, 06-14-12]

16.5.1.23 PARENTAL RESPONSIBILITY ACT; DELEGATION OF AUTHORITY:

The authority of the New Mexico board of dental health care to issue a notice of contemplated action, to refer cases in which a notice of contemplated action has been issued for administrative prosecution, to hold hearings and issue decision and orders to any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq., may be delegated to the New Mexico regulation and licensing department. This section shall not be construed to deprive the board of its authority to issue a notice of contemplated action for any violation of the Parental Responsibility Act, to refer a

case for administrative prosecution, hold a hearing or issue a decision and order for any violation of the Parental Responsibility Act. [16.5.1.23 NMAC - N, 06-14-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.2 NMAC, Sections 9 and 10, add Sections 11, 12, 13, 14 and 15, effective 06-14-12.

16.5.2.9 P R O C E S S :

[Complaints received in the board office that allege impaired practice will be processed in the following manner, unless there are exceptional circumstances which require the board to consider the complaint without referral to the complaint committee because of a potential threat to the health or safety of the licensee or his patients:

A. The complaint committee of the board shall review the complaint to determine if the board has jurisdiction over the matter and if the complaint may have merit.

B. The complaint committee may conduct a preliminary investigation to determine if the allegations in the complaint are supported by facts:

C. Upon completion of the review and or investigation, the complaint committee shall submit its recommendations to the board:

D. The board shall determine if an examination to ascertain impaired practice is required. Complaints received in the board office that allege impaired practice will be processed in the following manner.

A. The complaint committee of the board shall review the complaint to determine if the board has jurisdiction over the matter and if the complaint may have merit.

B. If the complaint committee has reasonable cause to believe that a person licensed to practice dentistry or dental hygiene is unable to practice with reasonable skill and safety to patients because of a condition listed in 16.5.2.8 NMAC, the committee shall refer the matter to the board.

C. The board shall designate an examining committee consisting of two licensed dentists or two licensed hygienists, if the licensee is a dental hygienist and two licensed physicians, one of whom shall be a psychiatrist who is knowledgeable and experienced in the field of chemical dependency if a question of mental illness or dependency is involved.

(1) The board may consider nominations from the New Mexico dental association for dentist members or the New Mexico dental hygienists' association for

dental hygienist members of the examining committee; the board may consider nominations from the New Mexico medical society for the physician members of the committee; and

(2) no current member of the board or dental hygienists committee shall be a member of an examining committee.

D. The examining committee shall examine a licensee referred by the board to determine the licensee's fitness to practice dentistry or dental hygiene with reasonable skill and safety to patients, on a restricted or unrestricted basis. The committee may recommend intervention as necessary.

(1) The examining committee shall order the licensee to appear before it for hearing. The committee shall give the licensee 15 days notice of the time and place for the hearing and the reason for the examination. Notice shall be served personally or by registered or certified mail with return receipt requested.

(2) if the examining committee feels that a mental or physical examination of the licensee is necessary to determine the licensee's fitness to practice, the committee shall order the licensee to submit to the examination:

(a) a person licensed to practice dentistry or dental hygiene gives consent to submit to a mental or physical examination when directed to do so by the committee by practicing dentistry or dental hygiene or filing an annual registration; the licensee also waives objections on the grounds of privileged communication to the admissibility of the report of the examining committee to the board or dental hygienists committee; and

(b) a licensee who submits to a diagnostic mental or physical examination as ordered by the examining committee has a right to designate an individual to be present at the examination and make an independent report to the board or dental hygienists committee;

(3) failure of a licensee to appear for an examining committee hearing or submit to a mental or physical examination shall be reported to the board or dental hygienists committee; this may be grounds for the immediate and summary suspension of the licensee's license to practice dentistry or dental hygiene unless the failure is due to circumstances beyond the licensee's control; the suspension remains in effect until further order of the board;

(4) the examining committee shall report its findings and recommendations to the board.

[9/30/96; 16.5.2.9 NMAC - Rn, 16 NMAC 5.2.9, 04/17/06; A, 06/14/12]

16.5.2.10 [DISCIPLINARY ACTION: No action or investigation or

proceedings under the Impaired Dentists and Hygienists Act (61-5B-1 through 11 NMSA - 1978) precludes the board from investigating or acting simultaneously, in its sole discretion, under the Dental Health Care Act (61-5A-1 through 30 NMSA + 1978);] **VOLUNTARY RESTRICTION OF LICENSE:** A licensee may request a restriction to practice under his/her license. The request must be in writing to the board or the dental hygienists committee. The board or the dental hygienists committee has the authority to attach stipulations to the licensee's licensure, if appropriate and to waive commencement of any proceedings.

A. As a condition for accepting a voluntary limitation, the board may require a licensee to:

(1) agree to and accept care, counseling or treatment of physicians or other appropriate health care providers acceptable to the board; and

(2) participate in a program of education prescribed by the board; or

(3) practice under the direction of a dentist acceptable to the board for a specified period of time.

B. A violation of any of the conditions of the voluntary limitation of practice by the licensee shall be cause for the refusal of renewal, or the suspension or revocation of the license by the board.

C. Removal of a voluntary restriction on a license is subject to the procedure for reinstatement of a license. [9/30/96; 16.5.2.10 NMAC - Rn, 16 NMAC 5.2.10, 04/17/06; A, 06/14/12]

16.5.2.11 ACTION ON THE REPORT OF THE EXAMINING COMMITTEE:

The recommendations by the examining committee are advisory and are not binding on the board. The board or the dental hygienists committee may accept or reject a recommendation by the committee to permit a licensee to practice dentistry or dental hygiene with or without any restrictions or may refer the matter back to the examining committee for further examination or report. In the absence of a voluntary agreement for restriction of her/his license, a licensee shall be entitled to a hearing before the board in accordance with the procedures in the Uniform Licensing Act and a determination on the evidence as to whether or not restriction, suspension or revocation of licensure shall be imposed. [16.5.2.11 NMAC - N, 06/14/12]

16.4.2.12 PROCEEDINGS:

The board may proceed formally against a licensee under the Impaired Dentists and Dental Hygienists Act in accordance with the procedures contained in the Uniform Licensing Act. When the licensee is a dental hygienist, the board shall act upon the recommendation of the dental hygienists

committee on all procedures in the Impaired Dentists and Dental Hygienists Act.

A. At the conclusion of a hearing, the board shall make the following findings:

(1) whether or not the licensee is impaired by one of the conditions listed in 16.5.2.8 NMAC;

(2) whether or not such impairment does in fact limit the licensee's ability to practice dentistry or dental hygiene skillfully and safely;

(3) to what extent such impairment limits the licensee's ability to practice dentistry or dental hygiene skillfully and safely and whether the board or the dental hygienists committee finds that the impairment is such that the license should be suspended, revoked or restricted; and

(4) if the finding recommends suspension or restriction, then the board shall make specific recommendations as to the length and nature of the suspension or restriction and how it shall be carried out and supervised.

B. In addition to the findings listed in Subsection A of 16.4.2.12 NMAC, at the conclusion of a hearing, the board or the dental hygienists committee shall make a determination of the merits and may order one or more of the following:

(1) placement of the licensee on probation on such terms and conditions as it deems proper for the protection of the public;

(2) suspension or restriction of the license of the licensee to practice dentistry or dental hygiene for the duration of the licensee's impairment;

(3) revocation of the license of the licensee to practice dentistry or dental hygiene; or

(4) reinstatement of the license of the licensee to practice dentistry or dental hygiene without restriction.

C. The board may temporarily suspend the license of any licensee without a hearing, simultaneously with the institution of proceedings under the Uniform Licensing Act if it finds that the evidence in support of the determination of the examining committee is clear and convincing and that the licensee's continuation in practice would constitute an imminent danger to public health and safety.

D. Neither the record of the proceedings nor any order entered against a licensee may be used against the licensee in other legal proceeding except upon judicial review. [16.5.2.12 NMAC - N, 06/14/12]

16.5.2.13 DISCIPLINARY ACTION:

No action or examination or proceedings under the Impaired Dentists and Dental Hygienists Act precludes the board from investigating or acting simultaneously,

in its sole discretion, under the Dental Health Care Act.

[16.5.2.13 NMAC - N, 06/14/12]

16.5.2.14 REINSTATEMENT

OF LICENSE: A licensee whose license has been restricted, suspended or revoked under the Impaired Dentists of Dental Hygienists Act, voluntarily or by action of the board, shall have a right at reasonable intervals to petition for reinstatement of the license and to demonstrate that the licensee can resume the competent practice of dentistry or dental hygiene with reasonable skill and safety to patients.

A. The licensee shall make the petition in writing. If the licensee is a dental hygienist, the dental hygienists committee shall be advised and given all information so that its recommendation can be given to the board.

B. Once the board receives a licensee's petition for reinstatement, it shall be referred to the examination committee for an examination of the licensee.

C. The board, in its discretion, upon written recommendation of the examination committee, may restore the license of the licensee on a general or limited basis.

[16.5.2.14 NMAC - N, 06/14/12]

16.5.2.15 DISCIPLINARY

ACTION: No action or examination or proceedings under the Impaired Dentists and Dental Hygienists Act precludes the board from investigating or acting simultaneously, in its sole discretion, under the Dental Health Care Act.

[16.5.2.14 NMAC - N, 06/14/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.7 NMAC, Sections 9, 10 and 15, effective 06-14-12.

16.5.7.9 PREREQUISITE REQUIREMENTS FOR TEMPORARY AND PUBLIC SERVICE LICENSURE:

Presumptive public service practitioners as defined in Subsection G of 16.5.7.8 NMAC are not required to comply with Subsection D, E and F of this section. Residents or students as defined in Subsection C of 16.5.7.8 NMAC are not required to comply with Subsection C, E and F of this section. All other applicants for temporary or public service licensure must possess each of the following qualifications:

A. graduated and received a diploma from an accredited dental school or college as defined in 61-5A-12, A;

B. if the temporary or public service license is for a practice specialty, the applicant must have obtained

a postgraduate degree or certificate from an accredited dental college, school of dentistry or other residency program that is accredited by the commission on dental accreditation;

C. hold a valid license in good standing from another state or territory of the United States;

D. applicants requesting a six or 12 month temporary or public service license must pass the jurisprudence exam with a score of at least a 75 percent;

E. for those applying for an initial temporary or public service license in public health dentistry or as a replacement practitioner, the board requires a level III background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fee directly to a board designated professional background service to initiate this service; the license may be provisionally issued while awaiting the report from a board designated professional background service; and

F. must have successfully passed clinical examination through WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board; the results of the clinical examination must be sent directly to the board office.

[3-14-73, 5-31-95; 16.5.7.9 NMAC - Rn & A, 16 NMAC 5.7.9, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08; A, 09-18-10; A, 01-09-12; A, 06-14-12]

16.5.7.10 DOCUMENTATION

REQUIREMENTS: Except as otherwise required by Subsection F of 16.5.7.8 NMAC, presumptive public service practitioners do not need to comply with the following for temporary or public service licensure. Residents or students as defined in Subsection C of 16.5.7.8 NMAC shall provide only documents described in Subsection F of this section. All other applicants for temporary or public service licensure must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within six months. Applications are valid for one year from the date of receipt;

B. verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession [~~in good standing~~]; verification must be sent directly to the office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, expiration date and other information contained on the form;

C. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the

American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

D. an affidavit from the New Mexico licensed dentist who is sponsoring the applicant attesting to the qualifications of the applicant and the activities the applicant will perform; applicants for temporary licensure in underserved areas and state institutions must:

(1) provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist, and bearing the signature of both; or

(2) provide an affidavit from the New Mexico department of health specifying supervision will be by a licensed New Mexico dentist and bearing the signature of both;

(3) report any changes in supervision or oversight of the temporary licensee to the board within 30 days of the change; and

(4) provide proof of acceptable liability insurance coverage;

E. in addition, applicants requesting temporary licensure in public health dentistry or as a replacement practitioner must submit the following:

(1) official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card;

(3) copy of clinical examination score card or certificate from the accepted examining agent;

(4) proof of having taken a course in infection control technique within the past 12 months;

(5) applicant shall authorize the drug enforcement administration (DEA) and American association of dental examiners clearinghouse to send verification of status directly to the board office;

(6) the board will obtain verification of applicant status from the national practitioners data bank; and

(7) a level III status report from a board designated professional background service must be received directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board; the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these

rules, or if it is determined that the applicant poses a threat to the welfare of the public;

(8) in addition to the documentation required above, an applicant for temporary licensure in a specialty area must request official transcripts from the residency program or postgraduate training program to be sent directly to the board office from the accredited program.

F. Residents or students as defined in Subsection C of 16.5.7.8 NMAC must submit the required fees and following documentation:

(1) completed application signed and notarized with a passport quality photo taken within six months; applications are valid for one year from the date of receipt;

(2) office transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

(3) copy of national board examination certificate or score card;

(4) proof of having taken a course in infection control technique within the past 12 months or have graduation from dental school within the past 12 months;

(5) pass the jurisprudence exam with a score of at least 75 percent;

(6) if resident or student has or holds a license to practice dentistry or other health care profession they must submit verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, expiration date and other information contained on the form; and

(7) issue date of the license will correspond with the first date of the residency start date.

[3-14-73, 5-31-95, 9-30-96; 16.5.7.10 NMAC - Rn, 16 NMAC 5.7.10, 12-14-00; A, 06-14-01; A, 3-29-02, A, 07-16-07; A, 09-18-10; A, 01-09-12; A, 06-14-12]

16.5.7.15 CONVERSION OF TEMPORARY LICENSE TO LICENSE BY CREDENTIALS:

A. Following the completion of the requirements listed in [~~Subsection D of~~] 16.5.7.8 NMAC of these rules, the temporary licensee may complete an application for licensure by credentials.

B. Any additional licenses acquired during the time practicing under a temporary license must be reported on the application for licensure by credentials.

C. Any actions taken against the applicant's license in any other jurisdiction while licensed in New Mexico under a temporary license must be reported

on the application for license by credentials.

D. Upon receipt of a complete application the board shall issue a New Mexico license by credentials unless there is any action pending against the temporary license. Then at the discretion of the board or its agent, the temporary license may be extended until pending action is settled. If action is taken against the temporary license, conversion to a license by credentials will be halted and the temporary license will no longer be renewed.

E. Conversion of a temporary license to practice dentistry does not allow conversion of a temporary anesthesia permit into one lasting more than the initial 12 months. After the 12 month period, an additional permit requires successful completion of an additional anesthesia exam and a facilities inspection. See Subsection C of 16.5.15.15 NMAC.

[16.5.7.15 NMAC - N, 3-29-02; A, 07-16-07; A, 01-09-12; A, 06-14-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.8 NMAC, Section 9, effective 06-14-12.

16.5.8.9 PREREQUISITE REQUIREMENTS FOR LICENSE IN SPECIALTY PRACTICE: Any dentist who has taken a clinical examination accepted by the board and who has completed and passed a CODA accredited specialty program in one of the ADA recognized specialties may be issued a specialty license by the board. Each applicant for a license to practice a dental specialty by credentials must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area.

A. Graduated and received a diploma from an accredited dental school as defined in 61-5A-12 A.

B. Have a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in 61-5A-12 E, in one of the specialty areas of dentistry recognized by the ADA.

C. Completed 60 hours of continuing education during the past 36 months in compliance with 16.5.1.15 NMAC of these rules.

D. Successfully completed the dental national board examination as defined in Section 61-5A-12 A.

E. An applicant in any specialty defined in Subsection E of 16.5.8.9 NMAC for which there is no specialty examination may substitute diplomate status for the examination.

F. Successfully completed an examination for diplomate status or a

specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology, other specialties approved by the American dental association; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomate status given by the American board of public health dentistry.

G. Completed the jurisprudence exam with a score of at least 75 percent.

H. Hold a current active license in good standing by examination in another state or territory of the United States.

I. The board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

J. The board requires a level II background status report from a board designated professional background service. Application for this service will be included with other application materials. The applicant will apply and pay fees directly to a board designated professional background service to initiate this service. [3-16-94, 8-15-95, 9-30-96, 8-16-99, 06-13-01; 16.5.8.9 NMAC - Rn, 16 NMAC 5.8.9, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08; A, 01-09-12; A, 06-14-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.15 NMAC, Section 10, effective 06-14-12.

16.5.15.10 ADMINISTRATION OF NITROUS OXIDE OR ENTERAL ANXIOLYSIS (MINIMAL SEDATION) ANALGESIA:

A. NITROUS OXIDE:

(1) Registration required: Each licensed dentist who administers or supervises the prescribed administration of nitrous oxide inhalation analgesia shall be registered with the board. A registration form will be provided upon initial application or upon request, and contain information to verify the dentist, facility, and staff meet the requirements specified in Paragraph (2) of

Subsection A of 16.5.15.10 NMAC. When the registration has been approved by the secretary-treasurer of the board the applicant will be sent a wall certificate which does not expire. Administration of nitrous oxide inhalation analgesia without registration is a violation of these rules and may result in disciplinary action against the licensee.

(2) Requirements for registration: Each licensed dentist who administers or prescribes administration of nitrous oxide inhalation analgesia shall meet the following requirements:

(a) completed a course of training leading to competency while a student in an accredited school of dentistry or through postgraduate training;

(b) have adequate equipment which includes fail-safe features and a 25% minimum oxygen flow and an effective scavenging system;

(c) each dentist and auxiliary personnel who monitors the use of, or administers nitrous oxide shall have current basic life support certification;

(d) all use of nitrous oxide inhalation analgesia shall be under the indirect supervision of a licensed dentist;

(e) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate; and

(f) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

B. ENTERAL ANXIOLYSIS (MINIMAL SEDATION):

~~[(1) Each licensed dentist who holds a nonrestricted DEA license and who administers or supervises the administration of enteral anxiolytic medication shall be responsible for the following:~~

~~————(a) completed a course of training while a student in an accredited school of dentistry or through postgraduate training;~~

~~————(b) enteral shall be administered only in the office setting and patient shall be monitored;~~

~~————(c) have adequate equipment to monitor patients vital signs;~~

~~————(d) each dentist and auxiliary personnel who monitors shall have current basic life certification;~~

~~————(e) all use of enteral medication shall be under the indirect supervision of a licensed dentist;~~

~~————(f) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate during procedures and effect of medication;~~

~~————(g) shall verify the patient has other means of transportation to be released from the office;~~

~~————(h) administration of enteral anxiolytic medications in doses that do~~

not exceed the normal therapeutic dosage recommended by the manufacturer in published literature and that are within the accepted scope of the practice and prescriptive authority of the dentist does not produce oral conscious sedation; does not require the dentist to hold a conscious sedation I permit.] The following requirements for anxiolysis do not require a conscious sedation permit. Each licensed dentist who holds a nonrestricted DEA license and who administers or supervises the administration of enteral anxiolytic medication shall be responsible for the following:

(1) completed a course of training while a student in an accredited school of dentistry or through postgraduate training;

(2) have adequate equipment to monitor patient's vital signs;

(3) each dentist and auxiliary personnel who monitors shall have current basic life certification;

(4) all use of enteral medication shall be under the indirect supervision of a licensed dentist;

(5) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate during procedures and effect of medication;

(6) shall verify the patient has other means of transportation to be released from the office;

(7) administration of enteral anxiolytic medications in doses that do not exceed the normal therapeutic dosage recommended by the manufacturer in published literature and that are within the accepted scope of the practice and prescriptive authority of the dentist so as not to produce conscious sedation; does not require the dentist to hold a conscious sedation I permit.

[16.5.15.10 NMAC - Rp, 16.5.15.10 NMAC, 3-17-05; A, 07-16-07; A, 01-09-12; A, 06-14-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.16 NMAC, Sections 8 and 10, effective 06-14-12.

16.5.16.8 COMPLAINTS:

Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act, the Dental Health Care Act [and] or the Impaired Dentists and Dental Hygienists Act.

[9-13-69...5-31-95; 16.5.16.8 NMAC - Rn, 16 NMAC 5.16.8, 12-14-00; A, 06-14-12]

16.5.16.10 GUIDELINES: The board shall use the following as guidelines

for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

(2) failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copy of that patient's records and x-rays regardless whether patient has an outstanding balance;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience;

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a dentist to comply with the following advertising guidelines, no person shall:

(a) practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;

(b) ~~conduct, maintain, operate, own, or provide a dental office in the state of licensure, either directly or indirectly, under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name as it appears on the license or renewal certificate as issued by the board or his/her commonly used name;~~

(c) ~~hold himself/herself out to the public, directly or indirectly, as soliciting patronage or as being qualified to practice dentistry in the state of licensure under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name as it appears on the license or renewal certificate as issued by the board or~~

his/her commonly used name;

(d) ~~operate, manage, or be employed in any room or office where dental service is rendered or conducted under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name as it appears on the license or renewal certificate as issued by the board or his/her commonly used name;~~

(e) (b) practice dentistry without displaying his/her full name [~~or his/her commonly used name~~] as it appears on the license [~~or renewal certificate as~~] issued by the board [~~in front of each dental office location if the office is in a single-story or single-occupancy building, or without displaying his/her full name or his/her commonly used name as it appears on the license or renewal certificate as issued by the board~~] on [~~the outside of~~] the entrance [~~door~~] of each dental office [~~if the office is in a multi-occupancy or multi-story building~~];

(f) (c) [~~shall include in the advertisement~~] fail to include in all advertising media for the practice (excluding building signage and promotional items) the dentist's name, address and telephone number or direct reference where the names of the dentist(s) can be found;

(g) (d) [~~shall not~~] advertise a practice in a false, fraudulent or misleading manner; if the name of the practice or office contains one of the American dental association recognized specialties and only a general dentist performs that service, the advertisement, signage, or broadcast media must say "services provided by a general dentist", so as not to imply that a specialist is performing such procedures; and

(h) (e) [~~shall not~~] advertise as a specialist unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by commission on dental accreditation (CODA) in one of the specialty areas of dentistry recognized by the American dental association.

(7) failure to use appropriate infection control techniques and sterilization procedures;

(8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another dentist licensed or applying for licensure by the board;

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental

assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;

(10) prescribe, dispense or administer drugs outside the scope of dental practice;

(11) charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

(12) sexual misconduct;

(13) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American dental association;

(14) the use of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;

(15) employing abusive billing practices;

(16) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(17) violation of any order of the board, including any probation order;

(18) injudicious prescribing, administration, or dispensing of any drug or medicine;

(19) failure to report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee; the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(20) negligent supervision of a dental hygienist or dental assistant;

(21) cheating on an examination for licensure; or

(22) failure to comply with the terms of a signed collaborative practice agreement;

(23) failure of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care under part 17 of these rules;

(24) assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(25) ~~[failure to make available to patients a method to contact the treating dentist or other licensed dentist, when the dentist is not available for patient emergencies; dentists who practice in communities with fewer than five dentists may refer their patients to a medical facility in case of dental emergency;] failure to make available to current patients of record a reasonable method of contacting the treating dentist or on-call service for~~

~~dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted dentist deems it necessary for the patient's well-being;~~

(26) conviction of either a misdemeanor or a felony punishable by incarceration;

(27) aiding and abetting a dental assistant, expanded function dental auxiliary or community dental health coordinator who is not properly certified;

(28) patient abandonment;

(29) habitually addicted as defined in NMSA 1978, Sections 61.5A-21 4 & 6 ~~[and] or~~ 61.5B-3 (C) and (D) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [30-31-1 NMSA 1978] or habitual or excessive use or abuse of alcohol;

(30) failure of the licensee to furnish the board; its investigators or representatives with information requested by the board; ~~[and]~~

(31) failure to appear before the board when requested by the board in any disciplinary proceeding; ~~and~~

~~(32) failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq. [9-13-69, 10-21-70, 4-11-81, 3-9-89, 3-11-89, 10-16-92, 5-31-95, 6-4-96, 2-14-00; 16.5.16.10 NMAC - Rn & A, 16 NMAC 5.16.10, 12-14-00; A, 07-16-07; A, 07-19-10; A, 01-09-12; A, 06-14-12]~~

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.33 NMAC, Section 9, effective 06-14-12.

16.5.33.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR DENTAL RADIOGRAPHY:

A. Education requirements:

(1) study by independent preparation or in a training course on radiation health and safety within the past 36 months; and

(2) have assisted with or observed five cases of full mouth intra oral radiographic series or five extra oral radiographs if applying for a limited certificate.

B. Examination requirements:

(1) Pass the board or DANB written examination on radiation health and safety. ~~[Evidence of successful completion shall be posted in the dental office or dental assisting school and will serve as a training permit for six months from the date of examination:]~~

~~(2) After passing the board or DANB written exam must apply to the board~~

~~for a training permit which allows the dental assistant to perfect radiography technique. The permit is valid for six months after passing the written exam.~~

~~[(2)] (3) Pass the technique test demonstrating proficiency in the exposure of a full-mouth intra oral radiographic series or panoramic film as established by the board within six months of passing the written exam.~~

~~[(3)] (4) If an applicant chooses to provide only a panoramic film the certificate holder is limited to taking only extra oral films.~~

~~[(4)] (5) The technique test will be taken on a phantom or human patient. The applicant shall expose a full mouth intra oral radiographic series of radiographs or a panoramic film, develop, mount, and label the films. The exam must be done independently and submitted to the board office with an affidavit signed by the dentist, dental hygienist, or dental assistant certified in radiography attesting to the independent exam. The radiographs must be of diagnostic quality and will be graded by at least two board or committee members and serve as the technique test required for certification.~~

~~[(5)] (6) Pass the take home jurisprudence examination.~~

~~(7) When extenuating circumstances exist as defined in 16.5.1.7 NMAC, and the dental assistant cannot submit to the board exposed radiographs, the dental assistant may request an extension of time. The request must be put in writing and submitted to the board office prior to the deadline.~~

C. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who having passed a curriculum in dental radiography, may be granted a certificate to expose radiographs without an examination.

(2) A dental assistant certified to perform dental radiography in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

[9-7-84, 5-31-95, 9-30-96, 1-1-98, 2-14-00; 16.5.33.9 NMAC - Rn & A, 16 NMAC 5.33.9, 12-14-00; 16.3.33.9 NMAC - A, 2-28-02; A, 12-30-02; A, 03-06-05; A, 07-16-07; A, 01-09-12; A, 06-14-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.40 NMAC, Section 10, effective 06-14-12.

16.5.40.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because

of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of dental assisting;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any renewal or reinstatement application;

E. cheating on an examination for expanded function certification;

F. performing any procedure which requires certification unless so certified; ~~and~~

G. ~~injurious~~ administration of any drug or medicine;

H. conviction of either a misdemeanor or a felony punishable by incarceration; ~~and~~

I. ~~failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq. [10/16/92, 8/15/95, 9/30/96; 16.5.40.10 NMAC - Rn, 16 NMAC 5.40.10, 04/17/06; A, 07/16/07; A, 07/19/10; A, 06/14/12]~~

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.42 NMAC, Sections 9 and 10, effective 06-14-12.

16.5.42.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR EXPANDED FUNCTION DENTAL AUXILIARY:

A. satisfactory completion of an accepted expanded function dental auxiliary course at an institution accredited by the board or joint commission on dental accreditation where in the offering program is also accredited by the commission; or

B. for dental auxiliaries that have five years experience and "independent preparation" for the requirements:

(1) applicant must have a minimum of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(2) achieved certification in all expanded functions as defined in 16.5.33 NMAC;

(3) taken a course of study in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and

occlusion function and passed a post-test approved by the board verifying readiness for taking the certification examination;

(4) recommended for an EFDA certification by the supervising dentist as defined in Subsection G of 16.5.42.7 NMAC;

C. pass the WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board for certification of EFDA;

D. completed the jurisprudence examination with a score of at least 75 percent;

E. exemptions; an expanded function dental auxiliary who is certified to perform EFDA duties in another state or jurisdiction with requirements not less stringent than those in New Mexico may be certified based on credentials;

F. after passing a board accepted examination or being certified by credentials, EFDA candidates must complete an apprenticeship under the close personal supervision of a supervising dentist~~[-an affidavit to be signed by the supervising dentist attesting to the apprenticeship will be sent by the board to the candidate upon receipt of the completed application; the affidavit shall serve as the permit to start the apprenticeship;~~

~~(1) the affidavit shall state that the supervising dentist assures that the EFDA candidate is competent in the procedures allowed by an EFDA and that the supervising dentist assumes full responsibility and liability for the training and actions of the EFDA;~~

~~(2) once the affidavit is issued by the board office the EFDA candidate will have 180 days to complete the apprenticeship and submit the signed affidavit to the board; and~~

~~(3) once the signed affidavit has been received and verified by the board a certificate for EDFA may be issued.]~~

(1) the board will send to the EFDA candidate upon receipt of the completed application the following:

(a) permit to start apprenticeship to be displayed during apprenticeship; and

(b) affidavit form to be signed by supervising dentist at start and completion of apprenticeship;

(2) the affidavit shall state that the supervising dentist assures that the EFDA candidate is competent in the procedures allowed by an EFDA and that the supervising dentist assumes full responsibility and liability for the training and actions of the EFDA;

(3) once the permit is issued by the board office the EFDA candidate has 180 days to complete the apprenticeship; and

(4) upon completion of the apprenticeship the candidate must return the EFDA permit and the signed affidavit to the board; once the permit and signed affidavit

have been received and verified by the board a certificate for EFDA may be issued.

[16.5.42.9 NMAC - N, 01/09/12; A, 06/14/12]

16.5.42.10 REQUIRED DOCUMENTATION:

Each applicant for an expanded function dental auxiliary certification shall submit to the board or its agent the required fees and following documentation. Applications are valid for one year from the date of receipt by the board; after one year, the applicant shall submit to the board a new application.

A. Each application for licensure who completed an EFDA program must submit the following documentation:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) official transcripts or certification verifying successful completion of an EFDA program accredited by the commission on dental accreditation;

(3) copy of WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board for certification as EDFA; the results of the exam are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to WREB, CRDTS, NERB/ADEX, or SRTA for examination;

(b) results of the clinical examination shall be sent directly to the board office; and

(4) affidavit letter from supervising dentists.

B. An applicant who has not graduated from an accredited expanded function dental auxiliary program can apply for licensure certification if they meet all requirements in Subsection B, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) shall provide proof of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(3) shall have achieved certification in all expanded function as defined in 16.5.33 NMAC;

(4) shall provide proof of successful completion of courses in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function;

(5) shall provide a letter from supervising dentist recommending applicant for EFDA certification; must be on dentist letterhead;

(6) copy of WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board; and

(7) affidavit letter from the supervising dentist of competency.

C. Certification by credentials. Applicants can apply for certification by credentials if they meet all requirements as defined in Subsections A, C, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) verification of a current active certification in good standing from another state; and

(3) copy of WREB, CRDTS, NERB/ADEX, SRTA or other clinical examination accepted by the board; the results of the examination are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to WREB, CRDTS, NERB/ADEX or SRTA for examination, and

(b) the results of the clinical examination must be sent directly to the board office; and

(4) affidavit letter from the supervising dentist of competency. [16.5.42.10 NMAC - N, 01/09/12; A, 06/14/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.46 NMAC, Section 9, effective 06-14-12.

16.5.46.9 ALLOWABLE DUTIES UNDER DIRECT SUPERVISION: The following EFDA procedures are allowable under direct supervision as set forth in 16.5.46.8 NMAC.

A. Placing and shaping of direct restorative materials into cavity preparations completed by a dentist; EFDA may use instrumentation as necessary and proper for this purpose.

B. Taking of impressions for permanent fixed or removable prosthetics involving single teeth. These include single crowns or single tooth replacement prosthetics. EFDA shall NOT take final impressions for multiple units of single crowns, bridges, cast framework partial dentures or full dentures.

C. Cement permanent or provisional restorations with temporary or provisional cement, provided the permanent cementation will be completed or monitored by the dentist within six months.

D. Place pit and fissure sealants under supervision as certification or licensure allows.

E. Place temporary or sedative restorations in open carious lesions after hand excavation of gross decay and debris. If pain is perceived by the

patient dentist shall evaluate lesion before completion by EFDA. The EFDA shall NOT use any automated method to clean out the lesion or prepare the tooth, including but not limited to high speed, slow speed, air abrasion, ultrasonic, laser etc.

F. The EFDA may place temporary or sedative restorative material into unprepared tooth fractures as a palliative measure. The EFDA shall NOT use any automated method to clean out the [lesion] fracture or prepare the tooth, including but not limited to high speed, slow speed, air abrasion, ultrasonic, laser etc.

G. Remove residual orthodontic bracket or band cement or resin from teeth after the brackets or bands have been removed by the dentist performing the orthodontic treatment, or to prepare the tooth or teeth for re-cementation of a debonded bracket or band. This removal of cement/resin may include the use of instrumentation, as necessary and proper for this purpose.

H. Perform preliminary fitting and shaping of stainless steel crowns which shall undergo final evaluation and cementation by a dentist.

I. In emergency situation recement temporary or permanent crowns or bridges using provisional cement under the general supervision of a dentist and when instructed to do so by the dentist provided the permanent cementation will be completed or monitored by the dentist within six months. [16.5.46.9 NMAC - N, 01/09/12; A, 06/14/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.47 NMAC, Section 10, effective 06-14-12.

16.5.47.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of expanded function dental auxiliary;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any renewal or

reinstatement application;

E. cheating on an examination for expanded function dental auxiliary certification;

F. performing any procedure which requires certification unless so certified;

G. i n j u d i c i o u s administration of any drug or medicine; [and]

H. conviction of either a misdemeanor or a felony punishable by incarceration; and

I. failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq. [16.5.47.10 NMAC - N, 01/09/12; A, 06/14/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.52 NMAC, Sections 8 and 9, effective 06-14-12.

16.5.52.8 HOURS REQUIRED: 36 hours of continuing education, a maximum of 12 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 12 hours per year for individuals [licensed] certified for less than three years.

[16.5.52.8 NMAC - N, 01/09/12; A, 06/14/12]

16.5.52.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of community dental health coordinator. The following courses are required for [license] certificate renewal:

A. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period;

B. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course; and

C. 12 hours in preventive or emergency dentistry. [16.5.52.9 NMAC - N, 01/09/12; A, 06/14/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.54 NMAC, Section 9, effective 06-14-12.

16.5.54.9 ALLOWABLE DUTIES UNDER GENERAL SUPERVISION:

The following community dental health coordinator procedures are allowable under general supervision as set forth in 16.5.54.8 NMAC:

- A. take a complete health and dental history;
- B. expose and develop necessary radiographs as ordered by the supervising dentist or as established in protocol by a supervising dentist;
- C. observe and transmit patient data through teledentistry means to a dentist;
- D. place temporary and sedative restorative materials in unexcavated carious lesions and unprepared tooth fractures;
- E. transmit prescription or medication orders on the direct order of a dentist;
- F. CDHC may provide the following limited palliative procedures:
 - (1) application of hot/cold compresses to the face or mouth;
 - (2) instruct patient in the uses of various rinses containing salt, sodium bicarbonate, chlorhexidine, etc. as ordered by the dentist;
 - (3) instruct patients as to the proper use and dosage of over the counter or prescribed medications recommended by the supervising dentists;
 - (4) place avulsed teeth in the proper preservation solution for transport to a dentist;
 - (5) apply pressure compresses to intraoral wounds;
 - (6) performance of any other palliative procedures as directly instructed by the supervising dentist, and within the scope of practice of the CDHC;
 - (7) instruct the patient on brushing, flossing, gingival massage or cleaning for gingival inflammation or infection;

G. patient and community education on an individual basis or with groups within the community to improve dental health and dental health awareness;

H. act as an advocate for patients and the community in accessing dental care; and

I. rubber cup coronal polishing, which is not to be represented as a prophylaxis, topical application of fluorides; application of pit and [fissures] fissure sealants when previously authorized by the supervising dentist or dental hygienist and cavitation of the enamel is not present.

[16.5.54.9 NMAC - N, 01/09/12; A, 06/14/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.55 NMAC, Section 10, effective 06-14-12.

16.5.55.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: “unprofessional conduct” means, but is not limited to because of enumeration:

- A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of community dental health coordinator;
- B. sexual misconduct;
- C. failure to use appropriate infection control techniques and sterilization procedures;
- D. fraud, deceit or misrepresentation in any renewal or reinstatement application;
- E. cheating on an examination for community dental health coordinator certification;
- F. performing any procedure which requires certification unless so certified;
- G. inj u d i c i o u s administration of any drug or medicine; [and]
- H. conviction of either a misdemeanor or a felony punishable by incarceration; and
- I. failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq.

[16.5.55.10 NMAC - N, 01/09/12; A, 06/14/12]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

**TITLE 3 TAXATION
CHAPTER 2 GROSS RECEIPTS TAXES
PART 250 D E D U C T I O N
- GROSS RECEIPTS AND COMPENSATING TAXES -
LOCOMOTIVE FUEL**

3.2.250.1 ISSUING AGENCY: Economic Development Department [3.2.250.1 NMAC - N, 7/1/2012]

3.2.250.2 SCOPE: This part applies to each person claiming the locomotive fuel deduction from gross receipts or in computing the compensating tax. [3.2.250.2 NMAC - N, 7/1/2012]

3.2.250.3 STATUTORY AUTHORITY: The promulgation of rules for the issuance of a certificate of eligibility for the purposes of claiming a deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts and of claiming a deduction of the value of fuel to be loaded or used by a common carrier in a locomotive engine in computing the compensating tax shall be the responsibility of the economic development department pursuant to the governing legislation, NMSA 1978, Section 7-9-110.3(D). [3.2.250.3 NMAC - N, 7/1/2012]

3.2.250.4 DURATION: Permanent. [3.2.250.4 NMAC - N, 7/1/2012]

3.2.250.5 EFFECTIVE DATE: July 1, 2012. [3.2.250.5 NMAC - N, 7/1/2012]

3.2.250.6 OBJECTIVE: The purpose of the deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts and of the deduction of the value of fuel to be loaded or used by a common carrier in a locomotive engine in computing the compensating tax is to encourage the construction, renovation, maintenance and operation of railroad locomotive refueling facilities and related activities in New Mexico. [3.2.250.6 NMAC - N, 7/1/2012]

3.2.250.7 DEFINITIONS: For the purposes of this section, “locomotive engine” means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks. [3.2.250.7 NMAC - N, 7/1/2012]

3.2.250.8 QUALIFICATIONS AND REQUIREMENTS:
A. To be eligible for the deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts, the sale shall be made to a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars (\$100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold, and the common carrier shall deliver an appropriate nontaxable transaction certificate to the seller.

B. To be eligible for the deduction of the value fuel loaded or used by a common carrier in a locomotive engine in computing the compensating tax, the fuel shall be used or loaded by a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars (\$100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is loaded or used.

C. A common carrier may request a certificate of eligibility from the economic development department to provide to the taxation and revenue department to establish eligibility for a nontaxable transaction certificate for the deduction of receipts from the sale of fuel loaded or used by a common carrier in a locomotive engine from gross receipts and for the deduction of the value of fuel loaded or used by a common carrier in a locomotive engine in computing the compensating tax.

(1) A common carrier shall apply to the economic development department for a certificate of eligibility on forms provided by the economic development department.

(2) Applications shall be considered in the order received.

(3) A common carrier requesting a certificate of eligibility from the economic development department shall provide such information as the economic development department deems necessary to determine that the common carrier has made a capital investment of one hundred million dollars (\$100,000,000) or more in new construction or renovations at a railroad locomotive refueling facility after July 1, 2011.

(4) If the economic development department determines that a common carrier has applied for a certificate of eligibility on forms provided by the economic development department in the manner prescribed by these rules, made a capital investment of one hundred million dollars (\$100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold, and complied with all reporting requirements, it shall issue a certificate of eligibility to the common carrier.

(5) The certificate of eligibility shall be dated.
[3.2.250.8 NMAC - N, 7/1/2012]

3.2.250.9 REPORTING:

A. Every taxpayer that claims a deduction under Section 7-9-110.1 NMSA 1978 shall report to the economic development department, on forms provided by the department, the following information no later than 30 days after reporting the deduction to the taxation and revenue department:

(1) the amount of the deduction claimed;

(2) the number of permanent jobs created by the taxpayer as a result of the deductions claimed;

(3) the number of temporary jobs created by the taxpayer as a result of the deductions claimed; and

(4) an estimate of the net revenue to the state as a result of the deductions claimed.

B. Every taxpayer that claims a deduction under Section 7-9-110.2 NMSA 1978 shall report to the economic development department, on forms provided by the department, the amount of the deduction claimed, no later than 30 days after reporting the deduction to the taxation and revenue department.

C. If any deduction amount reported in Subsections A and B above is subsequently denied by the taxation and revenue department, the taxpayer must report the amount of the denial to the economic development department no later than 30 days after receiving notice of the denial or after the resolution of all administrative proceedings, whichever is later.
[3.2.250.9 NMAC - N, 7/1/2012]

HISTORY OF 3.2.250 NMAC:
[RESERVED]

NEW MEXICO EDUCATIONAL RETIREMENT BOARD

2.82.3 NMAC. Member and Administrative Unit Contributions, filed 11-16-2001 is repealed and replaced by 2.82.3 NMAC. Member and Administrative Unit Contributions, effective 7-1-2012.

NEW MEXICO EDUCATIONAL RETIREMENT BOARD

**TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 3 MEMBER AND ADMINISTRATIVE UNIT CONTRIBUTIONS**

2.82.3.1 ISSUING AGENCY: Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129
[2.82.3.1 NMAC - Rp, 2.82.3.1 NMAC, 7-1-2012]

2.82.3.2 SCOPE: This rule defines member contributions, refund of contributions, purchase of contributory service, and the payment of interest on refunds.
[2.82.3.2 NMAC - Rp, 2.82.3.2 NMAC, 7-1-2012]

2.82.3.3 STATUTORY AUTHORITY: The Educational Retirement Act, Section 22-11-1 to 22-11-55, NMSA 1978.

[2.82.3.3 NMAC - Rp, 2.82.3.3 NMAC, 7-1-2012]

2.82.3.4 DURATION: Permanent

[2.82.3.4 NMAC - Rp, 2.82.3.4 NMAC, 7-1-2012]

2.82.3.5 EFFECTIVE DATE: July 1, 2012, unless a later date is cited at the end of a section.

[2.82.3.5 NMAC - Rp, 2.82.3.5 NMAC, 7-1-2012]

2.82.3.6 OBJECTIVE: Clarification of the definition of earnings on which member contributions shall be made, the process to obtain refunds and to purchase contributory employment and non-reported service and the calculation of interest on such refunds and purchases.

[2.82.3.6 NMAC - Rp, 2.82.3.6 NMAC, 7-1-2012]

2.82.3.7 DEFINITIONS:

A. Terms used herein shall have the definitions as set forth in the Educational Retirement Act. Additional definitions used in this regulation are set forth below.

B. "Non-reported service" means service for which contributions should have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act, but which were not made.

C. "Refund rate" means the rates at which interest is calculated for refunds to a member pursuant to Section 22-11-15 NMSA 1978, or to the beneficiary or estate of a member for refunds pursuant to Section 22-11-29 NMSA 1978. The refund rate shall be calculated based upon the process adopted by the board in its resolution entitled "the educational retirement board of trustees' adoption of a revised process for calculating and credit interest for refunds", June 4, 2010, or by a superseding resolution.

D. "Student teacher" means a person engaged in classroom teaching as part of a teacher education or training program whose employment in a local administrative unit is incidental to that person's status as a student. For purposes of example, a student in a teacher training program who receives a stipend, salary or other compensation while student teaching is a "student teacher"; a regular employee of a local administrative unit who also is enrolled in classes, possibly related to that employee's employment, in that or another local administrative unit, is not a student teacher.

[2.82.3.7 NMAC - N, 7-1-2012]

2.82.3.8 EARNINGS COVERED:

A. Except as otherwise set forth herein and subject to the limitations set forth in Section 22-11-21.2, a member's annual salary for the purpose of contributions to the fund and computation of the member's benefit shall consist of total compensation or wages paid to the member for services rendered during each of the four calendar quarters of a fiscal year, beginning July 1 and ending June 30, excluding any salary earned while employed under the return to work program of the Educational Retirement Act.

(1) Salary includes payments made directly to the member or to a third party on behalf of or for the benefit of the member. Salary includes, without limitation:

(a) base salary, compensation, or wages;

(b) salary, compensation or wages for additional services rendered; examples include: teaching courses in addition to or above a full teaching load during the September to May academic year; teaching courses or performing research during summer (e.g., June through August) where such courses or research are not included in the duties on which the member's salary is based; and, performing work in addition to that specified in the employee's job description; performing administrative duties, such as serving as a department head, head of a faculty or staff group, or for providing other additional services;

(c) salary, compensation or wages based on professional certifications or qualifications, or skills such as being bilingual or multilingual;

(d) overtime, shift differential, and 'on-call' or call back pay.

(2) Retirement contributions shall be made by a local administrative unit and a member on base salary earnings before the salary is reduced due to the local administrative unit and member entering into a voluntary "cafeteria" plan.

(3) The salary or compensation paid to a member under a school bus owner-driver contract shall be covered for contributions and benefit calculation purposes. Contributions for compensation paid under a school bus owner-driver contract shall be based upon and limited to the compensation amount paid to a person who drives a single school bus owned by that person over a regularly established route under a regular contract in that person's name with a local administrative unit.

(4) Tips or other remuneration paid to a member by a third party are considered salary to the extent that a local administrative unit reports such amounts as the member's income for tax purposes.

B. The following items

shall not be considered annual salary for the purposes of contributions to the fund and computation of the member's annual benefit:

(1) Bonuses, awards and prizes, pay supplements or salary supplements or other "one-time" payments which do not increase an employee's annual base pay or which are made in lieu of an increase in base pay, and similar additional payments, as well as allowances or reimbursements for travel, housing, food, equipment or similar items.

(2) Lump-sum payments to the member for accrued sick leave made at any time, and lump-sum payments of accrued annual leave (also referred to as "vacation leave") made after July 1, 2010. Lump-sum payments for accrued annual leave made on or before July 1, 2010 shall be includable as annual salary only to the extent that it does not include payment for more than thirty (30) days of such leave.

(3) Payments made by a local administrative unit to a member where services are not rendered. By way of example, and with limitation to such examples: (a) payments by an employer to "buy-out" the remaining term of a member's employment contract or in connection with an early retirement program are not payments for services rendered, irrespective of whether payment is made in a lump-sum or distributed over a period of time, and (b) payments as a result of a legal settlement, whether related to the member's employment or otherwise, are not payments for services rendered, unless such payments are specifically made for salary that was not previously paid.

(4) Stipends, salary, or other compensation paid to student teachers.

(5) Stipends or one-time payments for attending training sessions where such payments are not reimbursements for travel expenses.

(6) Allowances or reimbursements for, or expenses related to, travel, housing, food, equipment, cars, or similar items.

(7) After July 1, 2012, additional pay or a pay differential that is based solely on a member performing duties at (a) a location that is different than the location at which the member regularly performs his or her job duties or (b) that is based on the member performing duties outside of the United States and its insular areas, territories, and possessions (e.g., a location differential or hazard or hazardous duty pay).

[2.82.3.8 NMAC - Rp, 2.82.3.8 NMAC, 7-1-2012]

2.82.3.9 REFUNDS OF CONTRIBUTIONS:

A. In the event that a member should terminate employment for reasons other than retirement, disability, or death, the member shall be entitled to a refund of the member's contributions, plus

interest calculated at the refund rate, reduced by the sum of any disability benefits which that member might have previously received. Contributions made by an employer on behalf of an employee (also referred to as a "member") pursuant to Section 22-11-21(A) are "employee contributions" and are subject to refund. A member is not entitled to a refund of any "employer contributions" (also referred to as "local administrative unit contributions") made pursuant to Section 22-11-21(B) NMSA 1978.

B. Any employee who was retired pursuant to the Public Employees Retirement Act (Chapter 10, Article 11 NMSA 1978) and who had made contributions to the fund prior to July 1, 2003, shall be entitled to a refund of such contributions, with interest calculated at the refund rate upon a bona fide termination of employment with the local administrative unit.

C. In order to obtain a refund of contributions, the eligible member must file a written request with the director on forms provided by the board.

D. A refund of a terminated member's contributions shall be made as soon as practical after receipt of a fully executed refund request form in the office of the board. If the terminated member's last employer has certified the member's termination on the last employer report filed with the board, or if the member's record has been inactive for a full calendar quarter, the refund may be processed without further certification of termination by the last employer. If the member requesting a refund has an active record (i.e., a record reflecting contributions made in the preceding completed calendar quarter), and is not certified to be terminated on the last monthly report filed by the member's employer, the refund request cannot be processed without the last employer's certification of termination on the refund request form.

E. Whenever a member's refund request is properly filed, with the appropriate certification of termination, if required, and the member's termination date has passed, the director shall refund the amount of contributions on deposit with the board through the date of the last quarterly reporting period, if the member desires, and any balance owing to the member shall be paid when received by the board.

F. Refund of contributions for any period of service performed subsequent to July 1, 1957, will cancel all "prior service" credit which may have been credited to the member at the time of the refund. Restoration of all contributions withdrawn, together with interest calculated at the refund rate, will cause the prior service to be restored; provided, however, that as set forth Subsection C of 2.82.3.10 NMAC, effective July 1, 2011, a member who was

a member at any time prior to July 1, 2010 and who, on or before June 30, 2010, had all of his or her member contributions refunded pursuant to Section 22-11-15 NMSA 1978, and who, on or after July 1, 2010, returns to employment or returns the withdrawn contributions to the fund together with interest at the rate set by the board, is eligible to retire as if initially becoming a member on or after July 1, 2010.

G. Whenever a terminated member leaves a balance of \$500.00 or less in the member's account, the account shall be closed into "unallocated income" after the member has been terminated for a period of not less than two years. The record of the terminated member's contribution balance at the time that it was closed into "unallocated income" shall be maintained. If the terminated member subsequently returns to employment, the balance shall be restored to that member's account. Alternatively, if the terminated member should later claim or request a refund of the amount transferred to unallocated income, such amount shall be restored to the terminated member's account and refunded.

H. Whenever a terminated member has received a refund in excess of the amount due the member, such excess may be "closed out" into unallocated income by the director if it does not exceed \$1,000.00 after the excess refund has been outstanding for a period of not less than two years, provided that staff has first made two or more separate attempts to contact the terminated member in writing and collect the excess refund. All such attempts must be documented by staff. All such "close out" actions shall be reported to the board in writing at its first regular meeting following that action. If a terminated member who received an excess refund that was closed into "unallocated income" should return to employment, such excess refund shall be charged to the member's contribution account.

I. If a terminated member shall have received a refund in excess of \$1,000.00 over the amount due that member, and two or more separate attempts have been made to contact the terminated member and collect the excess refund, the director may, after taking into account the costs of doing so, direct staff to pursue legal action to recover the excess. If the amount is deemed uncollectible by the director, the matter shall be brought before the board to determine any further action.

J. Member contributions which have been withheld and paid to the educational retirement fund in error for a member who is not eligible to receive service credit for the time covered by the withholding, shall be returned to the employer, without interest, upon the member's written request or upon the board learning that the member was not eligible to

receive service credit for the time covered. The employer shall be responsible for returning such contributions to the member. [2.82.3.9 NMAC - Rp, 2.82.3.9 NMAC, 7-1-2012]

2.82.3.10 PURCHASE OF CONTRIBUTORY EMPLOYMENT:

A. In the event of the death of an active member who is not vested, member contributions together with interest calculated at the refund rate shall be refunded to the member's beneficiary or to the member's estate upon completion of the proper refund forms as provided for herein.

B. In the event of the death of a vested member who did not select Option B benefits prior to the effective date of retirement, the deceased member's beneficiary shall be have the option of electing to receive a refund of the member's contributions or receiving benefits in the form of Option B as provided in Section 22-11-29 NMSA 1978. Refunds, together with interest calculated at the refund rate and reduced by the sum of any disability benefits which that member might have previously received, shall be paid to the member's surviving beneficiary or estate. If a beneficiary defers payment after the member dies as described in Section 22-11-29 NMSA 1978 and requests a lump sum payment in lieu of benefit under Option B, interest shall be calculated at the refund rate though the end of the calendar quarter prior to the date on which the completed refund request is received by the ERB. Under the provisions of Options B and C, if both the member and the designated beneficiary die before the total of the retirement benefits received by the member and the beneficiary equal the total contributions made by the member, the difference, less any disability benefits previously paid to the member, shall be paid to the member's or the beneficiary's estate.

C. In order to obtain a refund of contributions after the death of a member, the member's beneficiary must notify the director of the member's death and furnish a copy of the death certificate or other proof of death acceptable to the director, whereupon the director shall furnish the beneficiary the proper forms to request a refund.

D. If the amount of a deceased member's contribution does not exceed the sum of \$1,000.00 and no written claim is made to the board for it within one year from the date of the member's death, by the member's surviving beneficiary or estate, payment thereof may be made to the named beneficiary or, if none is named, to the person that the board determines to be entitled to the contribution under the laws of New Mexico.

[2.82.3.10 NMAC - Rp, 2.82.3.10 NMAC,

7-1-2012]

2.82.3.11 INTEREST CREDITS AND PAYMENTS ON MEMBER CONTRIBUTIONS:

A. Member contributions which have been withdrawn from the fund by a member who has terminated employment may be returned to the fund, together with interest at the rate set by the board, without the member being required to return to employment if the termination was under one of the following circumstances:

(1) the member terminated employment for reasons other than by retirement, disability or death;

(2) the member exempted himself or herself from the Educational Retirement Act; or

(3) the member has not been reemployed following a period of disability during which the member received disability benefits.

B. Contributions restored to the fund after having been withdrawn by a member that were originally made prior to July 1, 1971 shall not be considered as having been paid to the fund after July 1, 1971 for the purpose of earning interest and no interest shall be paid on such restored contributions.

C. Effective July 1, 2011, a member who was a member at any time prior to July 1, 2010 and who, on or before June 30, 2010, had all of his or her member contributions refunded pursuant to Section 22-11-15 NMSA 1978, and who, on or after July 1, 2010, returns to employment or returns the withdrawn contributions to the fund together with interest at the rate set by the board, is eligible to retire as if initially becoming a member on or after July 1, 2010. [2.82.3.11 NMAC - Rp, 2.82.3.11 NMAC, 7-1-2012]

2.82.3.12 PURCHASE OF NON-REPORTED SERVICE:

Non-reported service must be purchased at the time it is discovered at a rate adopted by the board.

[2.82.3.12 NMAC - N, 7-1-2012]

2.82.3.13 INTEREST CREDITS AND PAYMENTS ON MEMBER CONTRIBUTIONS:

At the time of refund of a member's contributory balance, interest shall be paid at the refund rate through the end of the calendar quarter preceding the date of the refund; except that no interest shall be paid on contributions credited to a member's account for any period prior to July 1, 1971, nor shall interest be paid on contributions on deposit for less than one year.

[2.82.3.13 NMAC - N, 7-1-2012]

HISTORY OF 2.82.3 NMAC:

Pre-NMAC History: The material in this

part was derived from that previously filed with the State Records Center and Archives under:

ERB 67-3, Rules and Procedures, filed 6-30-67.

ERB 78-1, Rules and Procedures, filed 8-7-78.

ERB Rule III, Member and Administrative Unit Contributions, filed 7-2-82.

History of Repealed Material:

2.82.3 NMAC, Member and Administrative Unit Contributions, filed 11-16-2001 - Repealed effective 7-1-2012.

NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.2 NMAC, Sections 2, 3, 8-11 and 13, effective 5/31/2012

2.82.2.2 SCOPE: This rule defines membership status and processes within the Educational Retirement Act, Section 22-11-1 to ~~[22-11-53]~~ 22-11-55, NMSA 1978.

[6-30-99; 2.82.2.2 NMAC - Rn, 2 NMAC 82.2.2, 11-30-2001; A, 5-31-2012]

2.82.2.3 STATUTORY AUTHORITY: The Educational Retirement Act Section 22-11-1 to ~~[22-11-52]~~ 22-11-53, NMSA 1978.

[6-30-99; 2.82.2.3 NMAC - Rn, 2 NMAC 82.2.3, 11-30-2001; A, 5-31-2012]

2.82.2.8 EMPLOYEES AND EMPLOYERS COVERED BY THE EDUCATIONAL RETIREMENT ACT:

A. Employers who are designated by statute as "local administrative units" shall be the following schools, institutions, and agencies:

(1) all public school districts in New Mexico;

(2) ~~[the]~~ educational institutions enumerated in Article XII, Section 11 of the Constitution of New Mexico;

(3) ~~[state department of education]~~ public education department;

(4) ~~[the]~~ educational retirement board;

(5) ~~[the New Mexico school for the visually handicapped at Alamogordo]~~ New Mexico girls' school;

~~[(6) the girls' welfare home;~~

~~[(7) (6) [the] New Mexico boys' school [at Springer];~~

~~[(8) (7) [the Los Lunas hospital and training school]~~ Los Lunas medical center;

~~[(9) (8) technical and vocational institutes created pursuant to the Technical and Vocational Institute Act;~~

~~[(10) (9) community colleges (also known as "junior colleges") created pursuant to [the Junior Colleges Act] Chapter 21, Article 13 NMSA 1978 (the "Community College Act"); and~~

~~[(11) (10) [and the] New Mexico activities association [(The NMAA was added to the statute effective July 1, 1982)].~~

B. In addition to the local administrative units enumerated in Subsection A of this section, any state institution or agency providing an educational program and employing certified school instructors shall be ~~[an]~~ a local administrative unit with coverage in such unit limited to certified school instructors.

C. All employees of the schools, institutions and agencies enumerated in Subsection A of this section, except for those employees enumerated in Section 11 of this rule, are either "regular" "retired" or "provisional" members under the "Educational Retirement Act."

[6-30-99; 2.82.2.8 NMAC - Rn & A, 2 NMAC 82.2.8, 11-30-2001; A, 5-31-2012]

2.82.2.9 REGULATORY MEMBERS:

A. In ~~[the institutions of higher learning]~~ four year colleges, technical and vocational institutes and community or junior colleges, "regular members" shall be all regularly employed teaching staff, whether full-time or part-time (except retired members participating in the return to work program and exclusions under Section 11 of this rule); all regularly employed administrators, whether full-time or part-time, who hold a bachelor's degree ~~[of]~~ or the professional equivalent thereof and who have managerial and supervisory responsibilities, (except retired members participating in the return to work program and exclusions under Section 11 of this rule); and all regularly employed nurses, whether full-time or part-time (except retired members participating in the return to work program and exclusions under Section 11 of this rule).

B. In the public school districts and state operated schools other than ~~[colleges]~~ those listed in Subsection A above, "regular members" shall be all regularly employed teachers, administrators, and nurses who are holders of appropriate certificates issued by the ~~[state department of education]~~ public education department, regardless of whether employed full-time or part-time, (except retired members participating in the return to work program and exclusions under Section 11 of this rule).

C. Any member except a retired member participating in the return to work program, who is regularly employed in any of the following local administrative units, shall be a "regular member" if he holds a teacher's, nurse's or administrator's

certificate (which is issued by the ~~[state department of education]~~ public education department) at the time of commencement of employment in such local administrative units:

(1) northern New Mexico state school;

(2) ~~[N.M. boys' school]~~ New Mexico boys' school;

(3) ~~[girls' welfare home]~~ New Mexico girls' school;

(4) Los Lunas ~~[hospital and training school]~~ medical center;

(5) ~~[state department of education]~~ public education department;

(6) educational retirement board;

(7) New Mexico school for the blind and visually ~~[handicapped]~~ impaired;

(8) New Mexico school for the deaf; and

(9) New Mexico activities association ~~[(was added to the statute effective July 1, 1982)].~~

D. Except retired members participating in the return to work program, regular membership is a condition of employment and all local administrative unit employees who qualify as "regular members" must be covered under ~~[ERA]~~ the Educational Retirement Act, commencing with the first day of employment.

E. Except retired members participating in the return to work program, any person regularly employed, whether full-time or part-time, in any state institution or agency described in Subsection B of 2.82.2.8 NMAC, shall be a regular member if he is employed in an educational program and if he holds a certified school instructor's certificate issued by the ~~[state board]~~ public education department.

[6-30-99; 2.82.2.9 NMAC - Rn & A, 2 NMAC 82.2.9, 11-30-2001; A, 5-31-2012]

2.82.2.10 PROVISIONAL MEMBERS:

A. All persons regularly employed by the schools, institutions, and agencies outlined in Section 8 of this rule who are not "regular members" are "provisional members" and if employed or re-employed after July 1, 1971 must be covered under ~~[ERA]~~ the Educational Retirement Act beginning with the first day of employment or re-employment, as a condition of employment, or if employed by ~~[an]~~ a local administrative unit set forth in Subsection E of 2.82.2.10 NMAC, such provisional member may make the election provided therein.

B. Provisional members who entered employment prior to July 1, 1971 could exempt themselves from coverage under ~~[ERA]~~ the Educational Retirement Act in the manner provided in Section 22-11-17 NMSA 1978 Compilation, as that section existed prior to July 1,

1971. If such provisional member did not exempt [himself, he] him- or herself, that provisional member must be covered under the provisions of the Educational Retirement Act beginning with the first day of his employment.

C. For the purpose of coverage under the [ERA] Educational Retirement Act, school bus owner-drivers shall be considered as provisional members. The term "owner-driver" shall be taken to mean the person who drives a school bus owned by [him] the person, over a regularly established route, under a regular contract in [his] that person's name, approved by the state director of school transportation, and using equipment approved by the state director of school transportation for the regular transportation of children.

D. Any provisional member who has exempted [himself] him-or herself may, at any future date, revoke such exemption and commence coverage under [ERA] the Educational Retirement Act on the first day of the month following his revocation.

E. Any provisional member employed by any of the following local administrative units may elect to be covered under the public employees' retirement association in lieu of coverage under the Educational Retirement Act within the first 6 months of his employment or re-employment, but may not exempt himself.

(1) [N.M. boys' school] New Mexico boys' school;

(2) [girls' welfare home] New Mexico girls' school;

(3) [N.M.] New Mexico school for the deaf;

(4) educational retirement board

(5) [state department of education] public education department;

(6) northern New Mexico state school;

(7) Los Lunas [hospital & training school] medical center;

(8) [N.M.] New Mexico school for the blind and visually [handicapped] impaired.

(9) until or unless such provisional member does elect coverage under [PERA, he] the Public Employees Retirement Act that provisional member must be covered under the Educational Retirement Act commencing with the first day of his employment, or re-employment in any of the local administrative units enumerated in this section. Likewise, the [selection of PERA requires the continued PERA coverage] election of coverage under the Public Employees Retirement Act requires continued coverage under that act for the duration of employment or re-employment in any of the units specified in this section.

(10) It shall be the policy of the board, in cooperation with [PERA] the

Public Employees Retirement Association ("PERA"), to determine annually if there are provisional members employed by these local administrative units who are retired from one system while having elected to participate in the second system.

F. To elect [membership under PERA, a provisional member must complete ERA Form 44, "election of coverage under PERA," in triplicate. The administrative unit shall obtain all three copies from the member and forward them to the educational retirement board. The director of the educational retirement shall approve the election if it is in order, and forward one copy to the executive secretary of the public employees' retirement association which shall serve as the employees' notice to said association of his election to be covered by PERA. One copy of the election shall be returned to the administrative unit as evidence of approval of the member's election to be covered under PERA, and the original copy shall be a permanent record on file with the educational retirement board] coverage under the Public Employees Retirement Act, a provisional member must complete a form provided by the board for that purpose. The local administrative unit shall forward the completed form to the director. The director shall approve the election of such coverage if it is in order and forward a copy of the approved form to PERA and to the local administrative unit as notice that the employee's election to be covered under the Public Employees Retirement Act has been approved. The director shall retain the original approved election form as the board's record of the approved election.

G. No provisional member may be covered under the [public employees' retirement association in lieu of ERA unless a properly executed "election of coverage under PERA," Form 44, is filed with the director of educational retirement] Public Employees Retirement Act in lieu of the Educational Retirement Act unless a properly approved form electing such coverage is on file with the director.

H. All employees of the public schools who are engaged as teacher aides or classroom aides but who do not teach shall be classified as provisional members even though such employees may hold certificates in some form issued by the [department of education] public education department.

I. There shall be no provisional membership extended to employees of the local administrative units described in Subsection B of 2.82.2.8 NMAC.

[6-30-99; 2.82.2.10 NMAC - Rn, 2 NMAC 82.2.10, 11-30-2001; A, 5-31-2012]

2.82.2.11

E M P L O Y E E S

EXCLUDED FROM COVERAGE:

A. Any person enrolled as a student in any of the local administrative units outlined in Subsection A of 2.82.2.8 NMAC, and who is also employed by the local administrative unit in which he is enrolled, shall be considered a student and not eligible for either "regular" or "provisional" membership under the [ERA] Educational Retirement Act, except that members of the faculty or full-time staff, who may be incidentally enrolled in classes, shall not be affected by this rule. Under no circumstances shall graduate assistants, teaching fellows, or students in positions of similar nature, be considered eligible for coverage under the [ERA] Educational Retirement Act. This includes any and all participation in the teacher enhancement program or participation in similar graduate programs.

B. Any person whose full time equivalency ("FTE") is .25 or less, and who is not a covered employee of another local administrative unit, shall not be covered for contribution purposes. Any person employed on [the effective date of this rule and who is currently] July 1, 1994 who was then covered under the [act] Educational Retirement Act shall continue to be covered for the duration of that employment.

(1) [An ERA retiree] A retired member may return to employment (includes "substitution") and earn up to \$15,000 per fiscal year or the amount possible under the .25 or less FTE provision, whichever is greater, without [effect to the retirement benefit if] effecting the retired member's retirement benefit:

(2) In the event that a retired member enters into an agreement which provides for [or actually has earnings in excess of the above limits, the] earnings in excess of the above limits or the retired member actually has earnings in excess of the above limits, the retired member's retirement benefit will be suspended for the duration of the employment, and the retired member will be returned to an active status.

C. Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a "substitute" and shall not be covered under the [ERA] Educational Retirement Act. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a "substitute" and must be covered under [ERA] the Educational Retirement Act.

D. I n d e p e n d e n t contractors who perform services for local administrative units on a fee basis are not eligible for membership under the [ERA] Educational Retirement Act as a result of having performed such service, and sums paid for such service shall not be covered

for [contributory purposes. To be classified as an independent contractor a person must meet at least the following criteria] purposes of contributions. The following factors shall be considered in determining whether an individual qualifies as an independent contractor:

(1) [registered] registration with the New Mexico department of taxation and revenue to pay gross receipts tax;

(2) [contract must have been bid in accordance with the State Procurement Code] the existence of a written contract with the local administrative unit setting forth the services to be provided and the compensation to be paid;

(3) [the person is not eligible for fringe benefits afforded regular employees of the local administrative unit and is not paid through the unit's payroll system] whether the person receives benefits such as paid annual or sick leave, health insurance and other benefits that the local administrative unit provides its regular employees or is paid as an employee by the local administrative unit;

(4) [consultants must meet the criteria for an independent contractor established by FICA:] whether the person satisfies internal revenue service guidelines for determining that an individual is an independent contractor rather than an employee;

~~[(5)]~~ (a) ~~[the board shall provide each local administrative unit with employee vs. independent contractor (IC) determination form for their use] as, necessary, the director shall make available forms for use by local administrative units for use in making this determination;~~

~~[(6)]~~ (b) ~~[the board shall further reserve the right to examine such completed forms and copies of contracts or other agreements that exist between employers and individuals for the purpose of determining the relationship] the board reserves the right to examine the complete forms, contracts and other agreements, and any other materials as may be necessary for the purpose of determining whether an individual is an independent contractor or employee.~~

E. All students enrolled in any public school, grade 1-12.

F. Employees who have a portion of their salaries paid through the Comprehensive Employment and Training Act (Public Law 95-524), shall not be covered for contributions on that portion except those employees who have vested.

[6-30-99; 2.82.2.11 NMAC - Rn, 2 NMAC 82.2.11, 11-30-2001; A, 10-31-2002; A, 9-15-2006; A, 5-31-2012]

2.82.2.13 MEMBERSHIP ENROLLMENT; RECORDS:

A. Enrollment; changes in

contact information.

(1) Members are required to complete a new employment form each time that they are hired or rehired by a local administrative unit and to provide the board with contact information, including their mailing address and e-mail address.

(2) Active members and retirees are responsible for providing the board notice in writing of any change of their mailing address or e-mail address on forms made available for this purpose by the director.

B. Local administrative units. For the purposes of providing members information regarding the board and the members' accounts, local administrative units are required to provide the educational retirement board the e-mail addresses assigned to members by a local administrative unit upon the board's request. [2.82.2.12 NMAC - N, 5-31-2012]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

Notice of Repeal of Rule: 20.2.100 NMAC – Greenhouse Gas Reduction Program, filed December 27, 2010, was repealed by the New Mexico Environmental Improvement Board effective June 07, 2012.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Explanatory paragraph: This is an amendment to 8.311.2 NMAC, Section 12, which will be effective June 1, 2012. The Medical Assistance Division is amending Subparagraph (f) of Paragraph (6) of Subsection F of 8.311.3.12 NMAC, *prospective payment methodology for hospitals*, to amend the current language related to the Sole Community Provider Fund to provide that if in any year the Department uses any portion of the funds provided by a county to make a refund to the federal government of the federal share of previous payments, the calculation of the payment amount by the Department shall include the portion of the county transferred funds used to make the refund plus the federal share that those funds would have earned had they been used for payments to the hospital.

8.311.3.12 PROSPECTIVE PAYMENT METHODOLOGY FOR HOSPITALS: Payment for all covered inpatient services rendered to eligible recipients admitted to acute care hospitals (other than those identified in Subsections C through D of 8.311.3.10 NMAC) on or after October 1, 1989 shall be made

based on a prospective payment approach which compensates hospitals an amount per discharge for discharges classified according to the diagnosis related group (DRG) methodology. The prospective rates for each hospital's MAD discharges will be determined by the department in the manner described in the following subsections.

F. **Special prospective payment provisions:**

(6) **Sole community hospital payment adjustment:** Effective for the quarter beginning July 1, 1993, in-state care hospitals that qualify as sole community hospitals are entitled to receive a sole community hospital payment adjustment in accordance with the provisions specified below:

(f) ~~[For years subsequent to the initial payment year, the sole community hospital payment adjustment will be the lesser of the amount paid by the department for the previous year trended forward. The department will use the market basket forecast published periodically in the CMS regional medical services letter, or an amount mutually agreed upon by the hospital and the county government.] For the years subsequent to the initial payment year, the sole community hospital payment adjustment will be the lesser of the hospital's payment request amount mutually agreed upon by the hospital and the county government for each year or the amount for the previous year trended forward, provided that if any year the department utilizes any portion of the funds provided by the county to make a refund to the federal government of the federal share of previous payments, the calculation of the base amount paid by the department for the previous year shall include the portion of the county transferred funds used to make the refund plus the federal share that those funds would have earned had they been used for payments to the hospital. The department will use the market basket forecast published periodically in the CMS regional medical services.~~

~~[2-1-95, 10-31-97, 6-30-98, 9-1-98, 1-1-99, 8.311.3.12 NMAC - Rn, 8 NMAC 4.MAD.721.D.III & A, 1-1-01; A, 10-1-02; A, 7-1-04; A, 4-1-11; A, 6-1-12]~~

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC, Section 65, effective 06-15-2012.

16.19.20.65 SCHEDULE I:

A. NMSA 1978 Section 30-31-6 schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIATES**, unless specifically

exempt or unless listed in another schedule, any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

- (1) Acetylmethadol
- (2) Allylprodine
- (3) Alphacetylmethadol
- (4) Alphameprodine
- (5) Alphamethadol
- (6) Alpha-methyl fentanyl
- (7) Benzethidine
- (8) Betacetylmethadol
- (9) Betameprodine
- (10) Betamethadol
- (11) Betaprodine
- (12) Clonitazene
- (13) Dextromoramide
- (14) Diampromide
- (15) Diethylthiambutene
- (16) Dimethylthiambutene
- (17) Difenoxin
- (18) Dimenoxadol
- (19) Dimepheptanol
- (20) Dimethylthiambutene
- (21) Dioxaphetyl Butyrate
- (22) Dipipanone
- (23) Ethylmethylthiambutene
- (24) Etonitazene
- (25) Etoperidine
- (26) Furethidine
- (27) Hydroxypethidine
- (28) Ketobemidone
- (29) Levomoramide
- (30) Levophenacymorphan
- (31) Morpheridine
- (32) Noracymethadol
- (33) Norlevorphanol
- (34) Normethadone
- (35) Norpipanone
- (36) Phenadoxone
- (37) Phenampromide
- (38) Phenomorphan
- (39) Phenoperidine
- (40) Piritramide
- (41) Proheptazine
- (42) Properidine
- (43) Propiram
- (44) Racemoramide
- (45) Tilidine
- (46) Trimeperidine

B. O P I U M

DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.

- (1) Acetorphine
- (2) Acetyl dihydrocodeine
- (3) Benzyl morphine
- (4) Codeine methylbromide
- (5) Codeine-N-Oxide
- (6) Cyprenorphine

- (7) Desomorphine
- (8) Dehydro morphine
- (9) Etorphine
- (10) Heroin
- (11) Hydromorphenol
- (12) Methyl-desorphine
- (13) Methyl-dihydromorphine
- (14) Morphine methylbromide
- (15) Morphine methylsulfonate
- (16) Morphine-N-Oxide
- (17) Morphone
- (18) Nicocodeine
- (19) Nicomorphine
- (20) Normorphine
- (21) Pholcodine
- (22) Thebacon
- (23) Droteranol
- (24) Beta-Hydroxy-3-

Methylfentanyl

- (25) 3-Methylthiofentanyl
- (26) Acetyl-Alpha-Methyl

fentanyl

- (27) Alpha-Methylthiofentanyl
- (28) Beta-hydroxfentanyl
- (29) Para-Fluoro fentanyl
- (30) Thiofentanyl

C. HALLUCINOGENIC

SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical position, and geometric isomers).

- (1) 3,4 -methylenedioxy amphetamine
- (2) 5 - methoxy - 3,4-methylenedioxy amphetamine
- (3) 3,4,5 -trimethoxy amphetamine
- (4) Bufotenine
- (5) Diethyltryptamine; DET
- (6) Dimethyltryptamine; DMT
- (7) 4-methyl-2,5-dimethoxy-amphetamine; DOM or STP
- (8) Lysergic acid diethylamide
- (9) Lysergic acid diethylamide
- (10) Marijuana
- (11) Mescaline
- (12) Peyote
- (13) N-ethyl-3-piperidyl benzilate
- (14) N-methyl-3-piperidyl benzilate

benzilate

- (15) Psilocybin
- (16) Psilocyn
- (17) Tetrahydrocannabinols
- (18) Parahexyl (synthetic analog of delta9tetrahydrocannabinol (THC) an active ingredient of cannabis)
- (19) Hashish
- (20) 2, 5 -dimethoxyamphetamine; 2, 5-DMA
- (21) 4-bromo-2, 5-dimethoxy-

amphetamine; 2,5-DMA

- (22) 4-methoxyamphetamine; PMA
- (23) Ethylamine N-ethyl-1-phenylcyclohexylamine (PCE)
- (24) Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine
- (25) Thiophene (analog of phencyclidine) TCP or TPCP
- (26) Alpha-ethyltryptamine
- (27) 2, 5-dimethoxy-4-ethylamphet-amine
- (28) Ibogaine
- (29) 2,5 dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7)
- (30) Alpha-methyltryptamine (AMT)

(31) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)

(32) Synthetic cannabinoids:

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture of preparation which contains any quantity of the following synthetic cannabinoids which demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity:

- (a) CP 55,244 ((hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl)phenyl] 1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol)
- (b) CP 55,940 (5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]-5-(2-methyloctan-2-yl)phenol)
- (c) JWH-081 (1-pentyl-3-[1-(4-methoxynaphthoyl)]indole)
- (d) JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole)
- (e) JWH-133 3-(1,1-dimethylbutyl)-6a,7,10,10a-tetrahydro -6,6,9-trimethyl-6H dibenzo[b,d]pyran
- (f) JWH 203 1-pentyl-3-(2-chlorophenylacetyl)indole)
- (g) JWH 210 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone
- (h) AM-694 (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole)
- (i) AM-1221 (1-(N-methylpiperidin-2-yl)methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole)
- (j) AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole)
- (k) RCS-4 or SR-19 (1-pentyl-3-[(4-methoxy)-benzoyl]indole)
- (l) RCS-8 or SR-18 (1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)
- (m) JWH-210 (1-pentyl-3-(4-ethylnaphthoyl)indole)
- (n) WIN-49,098 (Pravadoline) (4-methoxyphenyl)-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]methanone
- (o) WIN-55,212-2 (2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)

pyrrolo-1,4-benzooxazin-6-yl)-1-naphthalenylmethanone)

(p) Any of the following synthetic cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation.

(i) Naphthoylindoles:

Any compound containing a 3-(1-naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398 and AM-2201.

(ii) Naphthylmethylindoles:

Any compound containing a 1Hindol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-175, JWH-184, and JWH-199.

(iii) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-307.

(iv) Naphthylmethylindenes:

Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-176.

(v) Phenylacetylindoles:

Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the

indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8.

(vi) Cyclohexylphenols:

Any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5- position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol (CP 47,497 C8 homologue), CP 47,497 and CP 55,490.

(vii) Benzoylindoles:

Any compound containing a 3-(benzoyl) [5] OTS-3833.4 indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241.

(33) Substances determined by the board to have the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of 30-31-23C NMSA 1978. Substances include but are not limited to:

(a) salvia divinorum

(b) salvinorin A (methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2H-benzo[f]isochromene-7-carboxylate)

(34) 4-methyl-ethylcathinone (4-MEC)

(35) 4-ethyl-methcathinone (4-EMC)

(36) 2-ethylamino-1-phenylpropan-1-one (ethcathinone)

(37) 3',4'-methylenedioxyethcat hinone (ethylone)

(38) beta-keto-N-methyl-3,4-benzodioxolybutanamine (bk-MBDB, butylone)

(39) naphthylpyrovalerone (NRG-1, naphyrone)

(40) N,N-dimethylcathinone (metamfepramone)

(41) alpha-pyrrolidinopropiophenone (alpha-PPP)

(42) alpha-pyrrolidinobutiophenone (alpha-PBP)

(43) 4'-methoxy-alpha-pyrrolidinopropiophenone (MOPPP)

(44) 4'-methyl-alpha-pyrrolidinopropiophenone (MPPPP)

(45) 3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPPP)

(46) 3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone (MDPBP)

(47) 4'-methyl-alpha-pyrrolidinobutiophenone (MPBP)

(48) alpha-pyrrolidinovalerophenone (alpha-PVP)

(49) 5,6-methylenedioxy-2-aminoindane (MDAI)

(50) alpha-methylamino-butyrophenone (buphedrone)

(51) beta-keto-ethylbenzodioxolylbutanamine (eutylyone)

(52) beta-keto-ethylbenzodioxolylpentanamine (pentylyone)

D. DEPRESSANTS:

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone

(2) Methaqualone

(3) Benzodiazepines

(a) bromazepam

(b) camazepam

(c) clobazam

(d) clonazepam

(e) delorazepam

(f) ethylloflazepate

(g) fludiazepam

(h) flunitrazepam

(i) haloxazolam

(j) ketazolam

(k) loprazolam

(l) lorazepam

(m) medazepam

(n) nimetazepam

(o) nitrazepam

(p) nordiazepam

(q) oxazolam

(r) pinazepam

(s) tetrazepam

(4) Gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB.

(5) Gamma butyrolactone and any chemical compound that is metabolically converted to GHB.

(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB.

E. STIMULANTS:

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which

contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers, and salts of isomers.

- (1) Fenethylline
- (2) N-ethylamphetamine
- (3) cis-4-methylaminorex
- (4) N, N-dimethylamphetamine
- (5) N-benzylpiperazine (BZP, 1-benzylpiperazine)

F. Any material, compound, mixture of preparation which contains any quantity of the following substances.

- (1) 3-Methylfentanyl(N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its' optical and geometric isomers, salts and salts of isomers.
- (2) 3, 4-methylenedioxyamphetamine (MDMA), its' optical, positional and geometric isomers, salts and salts of isomers.
- (3) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its' optical isomers, salts, and salts of isomers.
- (4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its' optical isomers, salts and salts of isomers.
- (5) Cathinone.
- (6) Methcathinone.

[16.19.20.65 NMAC - Rp 16 NMAC 19.20.28, 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10; A, 11-27-11; A, 06-15-12]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.23 NMAC, Sections 1, 2, 3, 6, 7, 9, 10, 11, 12, 13 and 14, effective 06-15-2012.

16.19.23.1 ISSUING AGENCY: [Regulation and Licensing Department] New Mexico Board of Pharmacy[-1650 University Blvd., NE - Ste. 400B-, Albuquerque, NM 87102, (505) 841-9102]. [10-14-95; 16.19.23.1 NMAC - Rn, 16 NMAC 19.23.1, 03-30-02; A, 06-15-12]

16.19.23.2 SCOPE: All [licensed pharmacists and pharmacist applicants] persons subject to licensure or registration by the board of pharmacy. [10-14-95; 16.19.23.2 NMAC - Rn, 16 NMAC 19.23.2, 03-30-02; A, 06-15-12]

16.19.23.3 S T A T U T O R Y AUTHORITY: Section [61-11-6.A(t)] 61-11-6(A)(1) of the Pharmacy Act directs the

[State] board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act after hearings open to the public. The board adopts [this] part 23 of Chapter 19 pursuant to the Parental Responsibility Act (NMSA 1978, Sections 40-5A-1 through 40-5A-13, Ch. 25, Laws of 1995), [which] that requires all professional licensing boards to promulgate rules and regulations to implement the Parental Responsibility Act.

[10-14-95, A, 04-30-98; 16.19.23.3 NMAC - Rn, 16 NMAC 19.23.3, 03-30-02; A, 06-15-12]

16.19.23.6 OBJECTIVE: The objective of part [24] 23 of Chapter 19 is to ensure [that pharmacists] compliance with the Parental Responsibility Act by all persons licensed by, [and applicants] registered with, applying for [pharmacist] licensure or registration from, the board of pharmacy [comply with the Parental Responsibility Act (Ch. 25, Laws of 1995)]. [10-14-95; 16.19.23.6 NMAC - Rn, 16 NMAC 19.23.6, 03-30-02; A, 06-15-12]

16.19.23.7 DEFINITIONS:
A. "Applicant" means an individual seeking a license or registration issued by the board of pharmacy pursuant to either the Pharmacy Act, Controlled Substance Act or Drug Precursor Act.

[A:] **B. [HSD]"HSD"** means the New Mexico Human Services Department.

C. "License" means a license or registration issued to an individual by the board of pharmacy pursuant to either the Pharmacy Act, Controlled Substance Act or Drug Precursor Act.

D. "Licensee" means an individual holding any license issued by the board of pharmacy or an individual registrant holding any registration issued by the board of pharmacy.

[B:] **E. [Statement of Compliance]"Statement of compliance"** means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support. [and] [C:] **E. [Statement of Non-compliance]"Statement of non-compliance"** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[10-14-95; 16.19.23.7 NMAC - Rn, 16 NMAC 19.23.7, 03-30-02; A, 06-15-12]

16.19.23.9 CERTIFIED LIST: [Upon receipt of HSDs certified list of obligors not in compliance with a judgment and order for support, the Board shall match the certified list against the current list of Board licensees and applicants. Upon the

later receipt of an application for license or renewal, the Board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the Board shall report to HSD the names of Board applicants and licensees who are on the certified list and the action the Board has taken in connection with such applicants and licensees.] HSD shall provide the board with a certified list of obligors not in compliance with a judgement and order for child support on a monthly basis. The board shall report to HSD the names of applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

[10-14-95; 16.19.23.9 NMAC - Rn, 16 NMAC 19.23.9, 03-30-02; A, 06-15-12]

16.19.23.10 INITIAL ACTION: Upon determination that an applicant or licensee appears on the certified list, the board shall:

A. Commence a formal proceeding under section [13] 11 of part 23 to take the appropriate action under section [9] 8 of part 23; or

B. For current licensees only, informally notify the licensee that the licensee name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed sixty (60) days. If the licensee fails to provide this statement, the board shall commence a formal proceeding under section [14] 11 of part 23.

[10-14-95; 16.19.23.10 NMAC - Rn, 16 NMAC 19.23.10, 03-30-02; A, 06-15-12]

16.19.23.11 NOTICE OF CONTEMPLATED ACTION: Prior to taking any action specified in section [9] 8 of part 23, the board shall serve upon the applicant or licensee a written notice stating that:

A. The board has grounds to take such action, and that the board shall take such action unless the licensee or applicant:

(1) mails a letter (certified mail return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(2) provides the board, within thirty (30) days of the date of the notice, with a statement of compliance from HSD; and

B. If the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division.

[10-14-95; 16.19.23.11 NMAC - Rn, 16 NMAC 19.23.11, 03-30-02; A, 06-15-12]

16.19.23.12 EVIDENCE AND PROOF: In a hearing under this section, relevant evidence is limited to the following:

A. a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under section [H] **8** of [this part] **part 23**, unless

B. the applicant or licensee provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this part.

[10-14-95; 16.19.23.12 NMAC - Rn, 16 NMAC 19.23.12, 03-30-02; A, 06-15-12]

16.19.23.13 ORDER: When a disciplinary action is taken under [this] part **23** solely because the applicant or licensee is not in compliance with a judgment and order for support, the **board's** order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

[10-14-95; 16.19.23.13 NMAC - Rn, 16 NMAC 19.23.13, 03-30-02; A, 06-15-12]

16.19.23.14 PROCEDURES: Proceedings under this part shall be governed by the Uniform Licensing Act, **NMSA 1978**, Section 61-1-1[~~et seq~~] **through 61-1-31**.

[10-14-95; 16.19.23.14 NMAC - Rn, 16 NMAC 19.23.14, 03-30-02; A, 06-15-12]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to Sections 6, 7, 8, 9, 10 and 11 of 6.19.8 NMAC (GRADING OF PUBLIC SCHOOLS), effective May 31, 2012. Section 6 is amended to clarify that the ratings for schools apply to charter schools. Section 7 (DEFINITIONS) is amended to add definitions for "Accuplacer," "International baccalaureate," "Plan," "Supplemental accountability model," and to renumber the succeeding paragraph accordingly. Section 8 (REQUIREMENTS) is amended to add language to Subsection C regarding the grading of high schools using the PLAN, accuplacer, international baccalaureate or IB. Additionally, Subsection F is amended to strike a misplaced word. Section 9 (DETERMINATION OF A SCHOOL'S GRADE) is amended as follows. Subsection C is amended at paragraph (6) to clarify that schools in the 4-year cohort graduation rate without any members

of any cohort are exempted from the graduation component of school grading and that their grade will be comprised of the remaining grading components with overall points being adjusted to the standardized scale. Paragraph (7) of Subsection C is amended to clarify that schools in the 5-year and 6-year cohort graduation rate without any members of any cohort are exempted from the graduation component of school grading and that their grade will be comprised of the remaining grading components with overall points being adjusted to the standardized scale. Subsection D is amended by adding new language that establishes how schools be rating can qualify as a supplemental accountability model or SAM and how a SAM school must meet all indicators for high schools except three modified indicators listed in the paragraphs. Subsection F is amended by adding new language that establishes that schools and districts must test 95% or more of students enrolled in tested grades including 95% of those students in the lowest quartile. It also provides that schools that failure to meet the 95% testing requirement will result in their overall grade being reduced by one letter grade.

Section 10 (PRIORITIZATION OF SCHOOL RESOURCES) is amended to add language to Subsection B that scores from the SAT, the PLAN, accuplacer, international baccalaureate or IB to determine the prioritization of resources of a school rated D or F. Section 11 (SMALL SCHOOL AND NON-ASSESSMENT CONSIDERATIONS) is amended to add language to Subsection A that clarifies that a small school is one with an enrollment of fewer than 30 students in the assessed grades, which will be graded where possible by application of an alternate proficiency calculation.

6.19.8.6 OBJECTIVE: The purpose of this rule is to implement the A-B-C-D-F Schools Rating Act and to establish a rating system for grading public schools in a way that the ratings are meaningful to parents, school personnel and the interested community. Additionally, this rule establishes criteria for rating public schools that includes charter schools and provides options for students in a failing school.

[6.19.8.6 NMAC - N, 12-15-11; A, 5-31-12]

6.19.8.7 DEFINITIONS:

A. "ACT" means American college testing and is a standardized test offered by ACT, inc. for high school achievement and college admissions in the United States.

B. "Accuplacer" means a standardized test offered by the college board

that provides information about academic skills in math, English and reading. The assessment is used for community college admissions and for placement in core college courses.

[B-] **C.** "AP" means advanced placement which is a curriculum based program sponsored by the college board that offers standardized courses to high school students that are generally recognized to be equivalent to undergraduate courses in college and for which participating colleges may grant college credit to students who obtained high enough scores on the exams to qualify.

[C-] **D.** "Career readiness" means organized programs offering a sequence of courses, including technical education and applied technology education, which are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate or degree which can be applied towards their graduation from high school. To be considered successfully career ready, students must also graduate with a New Mexico diploma of excellence.

[D-] **E.** "Cohort graduation rate" means the percentage of students who graduate high school in four years with a New Mexico diploma of excellence. The four-year cohort consists of all first-time ninth graders in the first year, joined by incoming tenth graders in the second year, eleventh graders in the third year, and twelfth graders in the fourth year. The members of the five-year cohort shall be followed by the PED for one additional year to form the five-year cohort graduation rate, and two additional years to form the six-year graduation rate. Students are excused from cohort membership if they transfer out, emigrate to another country, or die during that same period.

[E-] **F.** "College readiness" means the readiness of New Mexico high school students for success in higher education based on their dual credit, ACT, PSAT [or] SAT, PLAN, accuplacer, international baccalaureate or IB, AP test scores, or other measurements approved by the PED.

[F-] **G.** "Department" means the New Mexico public education department and is identified by the acronym, "PED".

[G-] **H.** "Dual credit" means a program that allows high school students to enroll in college-level courses offered by a postsecondary institution that may be academic or career technical but not remedial or developmental, and simultaneously to earn credit toward high school graduation and a postsecondary degree or certificate.

I. "International baccalaureate" or "IB" means an educational foundation that requires the use of and

monitors a standardized curriculum leading to internationally recognized certification.

[H:] J. "Opportunity to learn survey" means a brief survey that asks students about their teacher's predominant instructional practices in the classroom.

[I:] K. "Performance level" means a level of performance as indicated by scale scores on the New Mexico standards-based assessment.

L. "PLAN" means a 10th grade assessment published by ACT that is designed to guide a student's review of their progress towards college and career readiness.

[J:] M. "Proficiency in reading and mathematics" means a student's score of proficient or advanced on the New Mexico standards-based assessments.

[K:] N. "PSAT" or "PSAT/NMSQT" means the preliminary SAT/national merit scholarship qualifying test which is a standardized test offered by the college board for both preliminary and primary selection to determine a student's eligibility and qualification for the national merit scholarship program.

[L:] O. "RTI [programs] framework" means a multi-tiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions. The model includes primary, secondary and tertiary levels of intervention based on progress monitoring to determine the student's response or lack of response to the instruction/intervention.

[M:] P. "SAT" means a standardized test offered by the college board for college admissions in the United States.

[N:] Q. "School growth" means growth of a school performance over a three year period, as calculated by value added modeling (VAM).

[O:] R. "School options" means a right to transfer to any public school not rated an F in the state or have children continue their schooling through distance learning offered through the statewide or a local cyber academy.

[P:] S. "Secretary" means the secretary of public education of the PED.

[Q:] T. "Standards-based assessments" means the collection of instruments that assess student academic performance and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards, and are administered annually in grades three, four, five, six, seven, eight, ten and eleven.

[R:] U. "Status" means a single year measurement of a school.

[S:] V. "Student growth" means learning a year's worth of knowledge in

one year's time, which is demonstrated by a student's performance on New Mexico standards-based assessments that shows the student:

- (1) moving from one performance level to a higher performance level; or
- (2) maintaining a proficient or advanced proficient performance level; or
- (3) remaining in beginning step or nearing proficient performance level but improving a number of scale score points.

W. "Supplemental accountability model" or "SAM" refers to any schools that qualify for a modified accountability calculation. To be eligible as a SAM school, the school must serve a student population where 10% or more of the students are 19 years of age or older, or where 20% or more of the non-gifted students qualify for special educational services. Additionally the school, when established, must have the primary mission to address the needs of students who are at risk of educational failure as indicated by poor grades, truancy, disruptive behavior, eligibility for special education services, or other factors associated with temporary or permanent withdrawal from school.

[F:] X. "VAM or "value added model" means estimating conditional school growth and conditional status, where "conditional" refers to taking student background characteristics into account. [6.19.8.7 NMAC - N, 12-15-11; A, 5-31-12]

6.19.8.8 REQUIREMENTS:

A. The department shall grade all public schools annually by assigning a letter grade of either A, B, C, D or F to each school. Assessment results of all students, including students with a disability and students who are English language learners, shall be considered in assigning schools a letter grade.

B. Elementary and middle schools shall be graded based on:

- (1) student performance, including achievement on the New Mexico standards-based assessments;
- (2) student growth in achievement based on the New Mexico standards-based assessment;
- (3) student growth of the lowest twenty-fifth percentile of students in the public school based on the New Mexico standards-based assessments;
- (4) school growth based on the New Mexico standards-based assessments;
- (5) school attendance; and
- (6) the results of an opportunity to learn survey.

C. High schools shall be graded based on:

- (1) student performance, including achievement on the New Mexico standards-based assessments;
- (2) student growth in achievement

based on the New Mexico standards-based assessments;

(3) student growth of the lowest twenty-fifth percentile of students in the public school based on the New Mexico standards-based assessments;

(4) school growth based on the New Mexico standards-based assessments;

(5) 4-year and 5-year cohort graduation rate, and beginning with the 2012-2013 school year, a 6-year cohort graduation rate;

(6) school growth in the 4-year cohort graduation rate;

(7) college readiness (i.e., ACT, PSAT, dual credit, SAT, PLAN, accuplacer, international baccalaureate or IB, or AP scores) or career readiness (i.e., pre-apprenticeship programs, and cooperative education programs);

(8) school attendance; and

(9) the results of an opportunity to learn survey.

D. The department shall annually publish disaggregated school grading data on its website.

E. The parent of a student enrolled in a public school rated F for two of the last four school years shall have a right to either:

(1) transfer the student in the same grade to any public school in the state not rated F; or

(2) continue their schooling by means of distance learning through the statewide cyber academy or distance learning offered by any New Mexico school district or charter school, provided that the entire cost of distance learning shall be paid by the school that was rated F and in which student is still enrolled.

F. The transfer of any student pursuant to the A-B-C-D-F Schools Rating Act shall be conducted pursuant to the open enrollment provisions of Section 22-1-4 NMSA 1978, provided that no school district or charter school shall adopt enrollment policies that exclude the enrollment of a student from a school rated F for two of the last four school years, and provided further that students seeking to enroll in a charter school must participate in that school's lottery unless the school has not exceeded its enrollment limit and in any event the enrollment procedures set forth in Section 22-8B-4.1 NMSA 1978 shall apply. A school district shall not be responsible for the transportation cost or transportation of a student who transfers to a charter school or to a school in another New Mexico school district. A school district shall, however, be responsible for the transportation and transportation cost of a student who transfers to another school within the [school] same district even where that school is outside of the student's attendance zone.

G. The options available

pursuant to Subsection E of Section 6.19.8.8 NMAC, which shall be available to students with a disability and students who are English language learners, shall be in addition to any remedies provided for in the Assessment and Accountability Act (Chapter 22, Article 2C NMSA 1978) for students in schools in need of improvement or any other interventions prescribed by the federal No Child Left Behind Act of 2001.

[6.19.8.8 NMAC - N, 12-15-11; A, 5-31-12]

6.19.8.9 DETERMINATION OF A SCHOOL'S GRADE:

A. For elementary and middle schools, the indicators shall be weighted by assigning up to a maximum of 100 points as follows:

(1) 40 points for student performance, including achievement on the New Mexico standards-based assessments of which 25 points shall be based on status proficiency and 15 points shall be based on VAM;

(2) 20 points for student growth based on the New Mexico standards-based assessments;

(3) 20 points for student growth of the lowest twenty-fifth percentile of students in the public school based on the New Mexico standards-based assessments;

(4) 10 points for school growth based on the New Mexico standards-based assessments;

(5) 5 points for school attendance;

(6) 5 points for results of an opportunity to learn survey; and

(7) in addition to the 100 points described above, an elementary or middle school may be assigned a total of five percent bonus points for either demonstrated parental involvement or demonstrated student participation in extracurricular activities, where:

(a) parental involvement shall include but not be limited to innovative school programs involving parental input, detailed parental surveys on key educational initiatives, successful school and parent partnerships, increasing parental volunteerism, parental membership on audit committees pursuant to 22-8-12.3 NMSA 1978, and improvement of communication, all of which shall be verifiable;

(b) extracurricular activities shall include any single or combination of student participatory activities that include but are not limited to campus based academic and fine arts activities, campus based leadership activities, or any of the activities governed by the New Mexico activities association, all of which shall be verifiable.

B. For elementary and middle schools after totaling the points of each indicator, the following grade shall be assigned:

(1) a grade of A indicates a score

of 75.0 points or higher;

(2) a grade of B indicates a score of 60.0 to less than 75.0 points;

(3) a grade of C indicates a score of 50.0 to less than 60.0 points;

(4) a grade of D indicates a score of 37.5 to less than 50.0 points; and

(5) a grade of F indicates a score of less than 37.5 points.

C. For high schools, the indicators shall be weighted by assigning up to a maximum of 100 points as follows:

(1) 30 points for student performance, including achievement on the New Mexico standards-based assessments of which 20 points shall be based on status proficiency and 10 points shall be based on VAM;

(2) 10 points for student growth based on the New Mexico standards-based assessment;

(3) 10 points for student growth of the lowest twenty-fifth percentile of students in the high school based on the New Mexico standards-based assessment;

(4) 10 points for school growth based on the New Mexico standards-based assessment;

(5) 8 points for the 4-year cohort graduation rate;

(6) 5 points for school growth in the 4-year cohort graduation rate; however, schools that do not have members of any cohort are exempted from the graduation component of school grading for that year; the exempted school's overall grade will be comprised of the remaining grading components and its overall points will be adjusted to the standardized scale;

(7) 4 points for the 5-year and 6-year graduation rates; however, schools that do not have members of any cohort are exempted from the graduation component of school grading for that year; the exempted school's overall grade will be comprised of the remaining grading components and its overall points will be adjusted to the standardized scale;

(8) 5 points for student participation in college or career readiness;

(9) 10 points for student success in college or career readiness;

(10) 3 points for school attendance;

(11) 5 points for the results of an opportunity to learn survey; and

(12) in addition to the 100 points described above, a high school may be assigned a total of 5 bonus points for either demonstrated parental involvement or demonstrated student participation in extracurricular activities where:

(a) parental involvement shall include but not be limited to verifiable innovative school programs involving parental input, detailed parental surveys on key educational initiatives, successful school and parent partnerships, increasing parental

volunteerism, parental membership on audit committees pursuant to 22-8-12.3 NMSA 1978, and improvement of communication, all of which shall be verifiable;

(b) extracurricular activities shall include any single or combination of verifiable student participatory activities that include but are not limited to campus based academic and fine arts activities, campus based leadership activities, or any of the activities governed by the New Mexico activities association.

D. A school will qualify as a supplemental accountability model or SAM when they serve a higher proportion of returning dropouts or students with disabilities. Utilizing modifications for graduation, career and college readiness, and bonus points, SAM schools must meet all other indicators for high schools, with the exception of these modified indicators:

(1) graduation cohort assignments will be made at the time the student enters the SAM school, based on the student's grade at entry;

(2) career and college readiness participation and success may be demonstrated by meeting benchmark scores on career readiness assessments approved by the PED; and

(3) bonus points can include evidence that the school is meeting goals specialized for the non-traditional student population.

~~D.~~ E. For high schools after totaling the percentage scores and corresponding points of each indicator, the following grade shall be assigned:

(1) a grade of A indicates a score of 75.0 points or higher;

(2) a grade of B indicates a score of 65.0 to less than 75.0 points;

(3) a grade of C indicates a score of 50.0 to less than 65.0 points;

(4) a grade of D indicates a score of 35.0 to less than 50.0 points; and

(5) a grade of F indicates a score of less than 35.0 points.

F. To determine the participation rate, schools and districts must test 95% or more of students enrolled in tested grades, as well as 95% of those students in the lowest quartile. In the event that either all students tested or those in the lowest quartile comprise fewer than 40 students, participation will be averaged across the current and prior two years for that group. A school or district's failure to meet 95% in either all students tested or in the lowest quartile will result in their overall grade being reduced by one letter grade.

[E.] G. Despite the grading of public schools as established by this rule, any school that meets adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001 during the 2011-2012 school year shall not be assigned a grade lower

than a C. This consideration shall not be available in subsequent school years. [6.19.8.9 NMAC - N, 12-15-11; A, 5-31-12] [The department maintains a school grading technical guide on its website, which can be accessed at <http://ped.state.nm.us/> and provides a description of the variables and formula used to determine school grading, as well as the assessments and measurements that can be used.]

6.19.8.10 PRIORITIZATION OF SCHOOL RESOURCES:

A. As part of the annual budget approval process pursuant to Section 22-8-11 NMSA 1978, on or before July 1 of each year, the department shall ensure that a local school board or governing body of a charter school is prioritizing resources of a public school rated D or F toward proven programs and methods linked to improved student achievement until the public school earns a grade of C or better for two consecutive school years.

B. To determine the prioritization of resources of a public school rated D or F, the department shall examine any combination of:

- (1) a school's core curricula in reading and mathematics;
- (2) a school's intervention curricula in reading and mathematics;
- (3) a school's current professional development activities for licensed staff including any efforts or plans to align that professional development to the school's deficiencies in reading and mathematics;
- (4) a school's educational plan for student success;
- (5) the licensure and documented skill set of the school's teachers and administrators;
- (6) any short cycle assessments administered by the school in reading or mathematics;
- (7) any learning software used by the school to teach reading or mathematics;
- (8) any district or PED data related to student proficiency in reading or mathematics, high school graduation rates, advanced placement courses, growth in high school graduation rates, and ACT, PSAT, SAT, PLAN, accuplacer, international baccalaureate or IB, or AP scores; and
- (9) specific expenditures by the school related to teaching and assessing student proficiency in reading or mathematics; ~~[Rtl programs]~~ intervention programs under the state's Rtl framework; alignment of curriculum, instruction and professional development to common core; alignment to cultural based education principles; and parental involvement.

C. The department shall recommend additional proven programs and methods to local school boards and charter school governing bodies that are

linked to improved student achievement. Each local school board and charter school governing body shall carefully consider the implementation of one or more recommended program or method until their failing school earns a grade of C or better for two consecutive school years. If after two consecutive school years a school continues to earn a grade of F, the local school board and charter school governing body shall implement new proven programs or methods that will result in increased student achievement.

D. A local school board or charter school governing body choosing not to implement PED recommended proven programs or methods must demonstrate with student achievement data and in writing to the department that they have already identified and implemented a proven program or method linked to improved student achievement in reading and mathematics. [6.19.8.10 NMAC - N, 12-15-11; A, 5-31-12]

6.19.8.11 SMALL SCHOOL AND NON-ASSESSMENT CONSIDERATIONS:

A. A small school is a school with ~~[an enrollment of]~~ fewer than ~~[25]~~ 30 students in the assessed grades. To calculate the school grade of a small school, the department shall where possible ~~[apply an alternate proficiency calculation that accumulates student performance based on one or two immediately preceding years until a minimum group size is met. Once the minimum group size is met, the assessment data shall be used in grading that school.]~~ mitigate the impact of school size by using multiple years of data and consider the reliability of school estimates in calculations.

B. Schools such as kindergarten through grade two schools or ninth grade that are comprised of grades that are not included in the administration of standards-based assessments, shall be assigned the assessment data using a reconstituted student group of alumnae from that school in their first tested grade. If no alumnae exist, the school's feeder pattern will be used to assign a grade from the receiving school. If no feeder pattern exists, the school will be assigned the grade from the parent district.

[6.19.8.11 NMAC - N, 12-15-11; A, 5-31-12]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.10.17.16 NMAC, effective May 31, 2012.

13.10.17.16 NOTICE OF INITIAL DETERMINATION:

A. **Certification.** The health care insurer shall notify the grievant and provider of the certification by written or electronic communication within two (2) working days of the date the health care service was certified, unless earlier notice is required by the medical exigencies of the case:

B. **24-hour notice of adverse determination; explanatory contents.** The health care insurer shall notify a grievant and provider of an adverse determination by telephone or as required by the medical exigencies of the case, but in no case later than twenty-four (24) hours after making the adverse determination, unless the grievant fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the plan or have insurance coverage. If the grievant fails to provide such information, he or she must be afforded a reasonable amount of time, taking into account the circumstances, but not less than forty-eight (48) hours, to provide the specified information. Additionally, the health care insurer shall notify the covered person and provider of the adverse determination by written or electronic communication sent within one (1) working day of the telephone notice.

C. Contents of notice of adverse determination.

(1) if the adverse determination is based on a lack of medical necessity, clearly and completely explain why the requested health care service is not medically necessary; a statement that the health care service is not medically necessary will not be sufficient;

(2) if the adverse determination is based on a lack of coverage, identify all health benefits plan provisions relied on in making the adverse determination, and clearly and completely explain why the requested health care service is not covered by any provision of the health benefits plan; a statement that the requested health care service is not covered by the health benefits plan will not be sufficient;

(3) the date of service, the health care provider, the claim amount (if applicable), and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding

meaning [of these codes, the denial code and its corresponding meaning];

(4) include a description of the health care insurer standard that was used in denying the claim;

(5) provide a summary of the discussion which triggered the final determination;

(6) advise the grievant that he or she may request internal or external review of the health care insurer's adverse determination; and

(7) describe the procedures and provide all necessary forms to the grievant for requesting internal appeals and external reviews.

[13.10.17.16 NMAC - Rp, 13.10.17.17 NMAC, 5-3-04; A, 2-1-08; A, 5-15-12; A, 5-31-12]

End of Adopted Rules Section

This page intentionally left blank

Other Material Related to Administrative Law

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

Public Meeting Notice

A meeting of the Acequia and Community Ditch Fund Committee will be held to determine distribution of the 2012 Acequia and Community Ditch Fund. The meeting will be held on Thursday, June 28, 2012, at 10:00 a.m. in Santa Fe, New Mexico, Room 326, State Capitol Building.

Copies of the agenda may be obtained by contacting the New Mexico Department of Agriculture, at (575) 646-1091, or by writing New Mexico Department of Agriculture, Agricultural Programs and Resources, MSC-APR, P O Box 30005, Las Cruces, New Mexico 88003-8005.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the New Mexico Department of Agriculture at least three (3) days prior to the meeting, at (575) 646-1091. Disabled persons who need documents such as agendas or minutes in accessible form should contact the New Mexico Department of Agriculture.

**NEW MEXICO BOARD OF
THANATOPRACTICE**

NMAC Chapter Name Change

The State Records Administrator has approved to change the name of Chapter 64 of Title 16 from "FUNERAL HOMES AND DISPOSERS (THANATOPRACTITIONERS)" to "FUNERAL HOMES AND DISPOSERS" as approved by Governor Martinez signing of House Bill 64. This name change will take effect on July 1, 2012.

**End of Other Related Material
Section**

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.