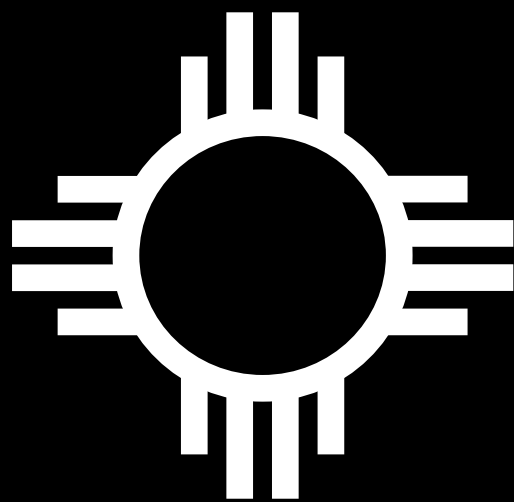


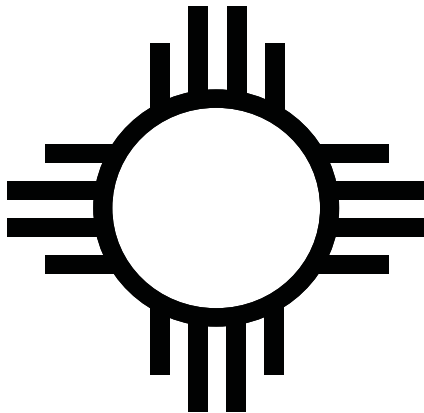
**NEW
MEXICO
REGISTER**



Volume XXIV
Issue Number 18
September 30, 2013

New Mexico Register

Volume XXIV, Issue Number 18
September 30, 2013



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

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Administrative Law Division
Santa Fe, New Mexico
2013

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New Mexico Register

Volume XXIV, Number 18

September 30, 2013

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **October 17th & 18th, 2013** at **9:00 a.m.** and continue until finished in the **Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM** for the purpose of conducting a regular Board meeting.

Interested persons wishing to comment and/or present proposed language regarding rule hearings must submit documentation via fax (505)222-9845, mail or email to Larry Loring, Larry.Loring@state.nm.us or Debra Wilhite, debra.wilhite@state.nm.us no later than Friday, October 11, 2013, if in attendance please provide 12 copies for distribution to board members. To receive copies of the agenda and any proposed rule, you may access the links on the agenda for printing via our website listed below or contact Debra Wilhite, Administrative Secretary, at (505) 222-9835 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us

Anyone who needs special accommodations for the meeting should contact the board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting October 7, 2013 through the board's website: www.rld.state.nm.us/boards/pharmacy

The board may go into executive session at any time to discuss licensee and/or personnel matters.

The Board will address:

Rule Hearings:

16.19.4 NMAC Pharmacists

16.19.5 NMAC Internship Training Program

16.19.20 NMAC Controlled Substances

16.19.30 NMAC Compounding of Non-Sterile Pharmaceuticals

Hearings, Board Orders and Surrenders:

Approval of Applications:

Other Board Matters:

Committee Reports:

Public Requests:

Petitioners must be present or available telephonically to present their request. Petitioners, if in attendance must provide 12 copies of the documentation regarding the request and/or any proposed language for distribution to board members no later than Friday, October 11, 2013 for presentation. (*Board staff is not required to make copies.*)

*Executive Director's Report:
Case presentations*

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

NOTICE OF P.E.R.A. RULEMAKING

The Public Employees Retirement Association ("PERA") will consider changes to its rules promulgated under the Public Employees Retirement Act. Changes are proposed for the following Rules:

Public Employees Retirement

- 2.80.100 NMAC General Provisions
- 2.80.500 NMAC Remittance of Contributions
- 2.80.600 NMAC Service Credit and Purchase of Service Credit
- 2.80.700 NMAC Normal Retirement
- 2.80.900 NMAC Pre-Retirement Survivor Pensions
- 2.80.1100 NMAC Retired Members
- 2.80.2100 NMAC Member Contributions

Judicial Retirement

- 2.83.400 NMAC Service Credit
- 2.83.700 NMAC Retirement
- 2.83.800 NMAC Survivor Pension
- 2.83.1200 NMAC Remittance of Contributions

Magistrate Retirement

- 2.84.400 NMAC Service Credit
- 2.84.700 NMAC Retirement
- 2.84.800 NMAC Survivor Pension
- 2.84.1200 NMAC Remittance of Contributions

Volunteer Firefighters

- 2.87.100 NMAC Volunteer Firefighters

Copies of the draft rules are available for inspection in PERA's Office of General Counsel. Hard copies of the draft rules may be purchased for \$3.00. Written comments, inquiries or requests for copies should be directed to PERA's Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 476-9353 or 1-800-342-3422. Written comments or requests for copies may be submitted electronically to: LaurieAnn Trujillo at lauriea.trujillo@state.nm.us. To be considered, written comments, arguments, views or relevant data should be submitted by 5:00 p.m. on November 1, 2013. The PERA Board will review and consider all written comments addressing the proposed rule changes.

A formal rulemaking hearing will be held on November 12, 2013 at 8:30 a.m. in the Fabian Chavez Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. Oral comments will be taken at the public hearing. Final action on the rules will occur at the monthly meeting of the PERA Board on November 21, 2013, which will be begin at 9:00 a.m. in the Fabian Chavez Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico.

Individuals with a disability who are 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 may contact Judy Olson at (505) 476-9305 or toll free at 1-800-342-3422 seven days prior to the hearing or as soon as possible.

**NEW MEXICO
COMMISSIONER OF
PUBLIC LANDS
AND
NEW MEXICO STATE LAND
OFFICE**

NOTICE OF RULE MAKING

NOTICE IS HEREBY GIVEN that Ray Powell, M.S., D.V.M., New Mexico Commissioner of Public Lands (Commissioner), and the New Mexico State Land Office (NMSLO) propose to repeal 19.2.19 NMAC “**RELATING TO RECREATIONAL ACCESS TO STATE TRUST LANDS** in its entirety and replace it with “**RELATING TO RECREATIONAL AND EDUCATIONAL ACCESS TO STATE TRUST LANDS**”, which incorporates various changes, amendments, additions to and deletions from the previous rule.

The proposed new rule provides new and/or amended guidelines and requirements that pertain to all recreational and educational access permits on lands held in the Trust managed by the New Mexico Commissioner of Public Lands pursuant to the Act of June 20, 1910, 36 Stat. 557, Chapter 310; N.M. Const. Art. XIII; and NMSA 1978, Chapter 19.

The Commissioner will take written comments on the proposed rule from any interested person. Interested persons shall file their written comments no later than November 13, 2013. Comments suggesting changes to the proposed new rule shall state and discuss the particular reasons for the suggested changes and shall include specific language proposed to effectuate the changes being suggested. Specific proposed language suggesting changes to the proposed new rule should, whenever possible, be in the same format as the proposed rule. An electronic copy of the proposed rule may be obtained from the Commissioner to facilitate this requirement. Any proposed changes to the proposed rule shall be submitted either in hard copy or by e-mail. The Commissioner strongly encourages all persons submitting comments in hard copy to file an additional copy in electronic format. The electronic medium shall clearly designate the name of the person submitting the proposed changes.

One formal public hearing to receive oral and written comments on proposed amendments to Rule 19 will be held in Santa Fe, New Mexico, at Morgan Hall, State Land Office, 310 Old Santa Fe Trail, from 10:00 a.m. to 12:00 p.m. on November 6, 2013.

Please submit any written comments regarding the proposed rule to the attention of Ley Schimoler at the address set forth below and/or by e-mail to Ley Schimoler at lschimoler@slo.state.nm.us. Comments received by e-mail will be printed by the NMSLO and entered in the rule-making record. The Commissioner will review and take into consideration all timely submitted written comments.

A copy of the proposed amended rule may be obtained from:
Ley Schimoler
Office of the General Counsel
New Mexico State Land Office
PO Box 1148
Santa Fe, NM 87504-1148
Tel: 505/827-5713
Fax: 505/827-4262

Copies of the proposed rule may also be viewed at, or downloaded from the NMSLO website (www.nmstatelands.org). The documents may be made available in alternative formats upon request.

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 October 17, 2013. 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, NM.

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. 15.2.1 NMAC, 15.2.3 NMAC, 15.2.6 NMAC, 15.2.5 NMAC and 16.47.1 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, Executive 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
Executive Director

Dated: September 17, 2013

**NEW MEXICO REGULATION AND LICENSING
DEPARTMENT**

ALCOHOL AND GAMING DIVISION

Legal Notice for publication in the Register September 30, 2013

Notice is hereby given that the Alcohol and Gaming Division will convene a Rule Hearing to consider the repeal and replace of the following Rules and Regulations:

Title 15, Chapter 10, Part 2	Definitions
Title 15, Chapter 10, Part 32	Premises – Location and Description of Licensed Premises
Title 15, Chapter 10, Part 33	Premises-Minors on Licensed Premises
Title 15, Chapter 10, Part 51	Sales-Restrictions on Sales

Title 15, Chapter 10, Part 52	Segregated Alcohol Sales
Title 15, Chapter 10, Part 53	Sales-Wholesalers
Title 15, Chapter 10, Part 54	Sales – Clubs
Title 15, Chapter 10, Part 61	Citations – Fines and Penalties
Title 15, Chapter 10, Part 70	Operation and Profiting by Authorized Persons
Title 15, Chapter 11, Part 2	Required Documents on Licensed Premises
Title 15, Chapter 11, Part 21	Licenses and Permits – Applications
Title 15, Chapter 11, Part 22	Licenses and Permits – Renewal and Suspension
Title 15, Chapter 11, Part 23	Licenses and Permits – Change in Licensee
Title 15, Chapter 11, Part 24	Licenses and Permits – Restaurant License
Title 15, Chapter 11, Part 25	Licenses and Permits – Special Dispenser, Public Celebration and Sunday Sales Permits
Title 15, Chapter 11, Part 26	Licenses and Permits – Fees
Title 15, Chapter 11, Part 27	Licenses and Permits – Inter-Local Option District Transfers
Title 15, Chapter 11, Part 31	Alcohol Server Training – Certification

The Division will consider whether to repeal the following Part at the Rule Hearing:
 Title 15, Chapter 10, Part 31 Premises-General Requirements

The Division will also consider whether to add the following new Parts at the Rule Hearing:
 Title 15, Chapter 11, Part 28 Licenses and Permits – Bed & Breakfast License
 Title 15, Chapter 11, Part 29 Licenses and Permits – Tasting Permits

Copies of red-line drafts of the proposed rule changes may be downloaded on the Alcohol & Gaming Division’s website at: <http://www.rld.state.nm.us/alcoholandgaming/default.aspx> or upon request at the Division located at 2550 Cerrillos Rd., PO Box 25101, Santa Fe, New Mexico, 87505-5101. Anyone wishing to present their views on the proposed rules may send written comments to the Division and may appear in person at the Rule Hearing.

A two day Rule Hearing will convene at the Toney Anaya Bldg. located at 2550 Cerrillos Rd., Santa Fe, NM in the Rio Grande Conference Room on November 7, 2013 beginning at 9:00 a.m. Individuals who wish to testify at the Rule Hearing are encouraged to bring a written copy of their testimony and documentation that supports their comments. Copies of the agenda for the Rule Hearing will be available on the Division’s website in advance of the hearing.

Please submit all written public comment on the proposed rules by e-mail to AGD.Rulemaking@state.nm.us or by mail to P.O. Box 25101, Santa Fe, NM 87505-5101. Written comments must be submitted on or by November 6, 2013 to be considered.

Disabled members of the public who wish to attend the hearing and are in need of reasonable accommodations for their disabilities should contact the Division at least one week prior to the hearing. If you have questions please contact Debra Lopez (505) 476-4551 or Vanessa Sandoval (505) 476-4543.

NEW MEXICO WATER TRUST BOARD

NEW MEXICO WATER TRUST BOARD NOTICE OF PUBLIC HEARINGS TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATIONS FOR REVIEW AND ELIGIBILITY OF PROPOSED WATER PROJECTS, 19.25.10 NMAC

The New Mexico Water Trust Board (the “Board”) will hold two public hearings to consider proposed amendments to 19.25.10 NMAC, Review and Eligibility of Proposed Water Projects. The Board is the proponent of the proposed amendments.

The proposed amendments relate to the review and eligibility of proposed water projects, to provide the appropriate means

for approval of qualified water projects, to clarify terms and conditions of financial assistance, and to ensure that the Rules are compatible with the Water Project Finance Act, Section 72-4A-1 et seq., NMSA 1978.

The proposed amendments to the regulations may be reviewed during regular business hours at the office of the New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501. Copies of the proposed amendments may be obtained by contacting Jana Amacher at (505) 984-1454 or 1-877-ASK-NMFA, or by e-mail to jamacher@nmfa.net.

Hearings will be conducted at the following times and locations:

November 13, 2013, from 5:00 p.m. to 8:00 p.m. at the Nancy Rodriguez Community

Center, 1 Prairie Dog Loop, Santa Fe, New Mexico 87507.

November 20, 2013, from 5:00 p.m. to 8:00 p.m. at the Dona Ana County Government Center, 845 N. Motel Blvd., Room 1-113, Las Cruces, New Mexico 88007.

All interested persons are invited to attend any of the hearings and will be given reasonable opportunity to submit relevant evidence, data, views and comments, orally or in writing, and to introduce exhibits and examine witnesses. Any person who wishes to submit a written statement for the record in lieu of oral testimony must file such statement no later than 12:00 noon, MDT, on November 11, 2013. Written statements for the record should be submitted to:

Jana Amacher
 Director of Water Resources
 New Mexico Finance Authority
 207 Shelby Street
 Santa Fe, New Mexico 87501

If you are an individual with a disability and you require assistance or an auxiliary aid, such as a sign language interpreter, to participate in any of the hearings, please contact Jana Amacher at the New Mexico Finance Authority so that appropriate arrangements can be made. Jana Amacher can be reached at 207 Shelby Street, Santa Fe, New Mexico 87501, (505) 984-1454 or 1-877-ASK-NMFA, or by e-mail to jamacher@nmfa.net TDD or TDY users may access these numbers via the New Mexico Relay Network (Albuquerque TDD users: (505) 2757333; outside of Albuquerque: 1-800-659-1779).

The New Mexico Water Trust Board will consider and take formal action on the proposed amendments at a duly called regular or special meeting following the conclusion of the hearings, taking into account the testimony, evidence and other materials presented during the hearing process.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

**TITLE 21 AGRICULTURE AND
RANCHING
CHAPTER 18 SEEDS, FEEDS, AND
FERTILIZERS
PART 3 C O M M E R C I A L
FEEDS**

21.18.3.1 ISSUING AGENCY:
New Mexico State University, New Mexico
Department of Agriculture.
[21.18.3.1 NMAC - Rp, 21.18.3.1 NMAC,
09/30/2013]
[MSC 3189, Box 30005, Las Cruces, New
Mexico 88003-8005, Telephone No. (575)
646-3007]

21.18.3.2 SCOPE: Part 3 shall
apply to any person distributing commercial
feeds in New Mexico.
[21.18.3.2 NMAC - Rp, 21.18.3.2 NMAC,
09/30/2013]

**21.18.3.3 S T A T U T O R Y
AUTHORITY:** Granted to the board of
regents of New Mexico state university
under the New Mexico Commercial Feed
Act, Chapter 76, Article 19A, Sections 1
through 17, New Mexico Statutes Annotated
1978.
[21.18.3.3 NMAC - Rp, 21.18.3.3 NMAC,
09/30/2013]

21.18.3.4 D U R A T I O N :
Permanent.
[21.18.3.4 NMAC - Rp, 21.18.3.4 NMAC,
09/30/2013]

21.18.3.5 EFFECTIVE DATE:
September 30, 2013, unless a later date is
cited at the end of a section.
[21.18.3.5 NMAC - Rp, 21.18.3.5 NMAC,
09/30/2013]

21.18.3.6 OBJECTIVE: The
objective of Part 3 of Chapter 18 is to protect
the consumers of commercial feed products
by establishing standards for their labeling,
registration, and sale.
[21.18.3.6 NMAC - Rp, 21.18.3.6 NMAC,
09/30/2013]

21.18.3.7 DEFINITIONS:

A. The names and
definitions for commercial feeds shall be
the official definition of feed ingredients
adopted by the association of American feed
control officials, except as the department
designates otherwise in specific cases.

B. The terms used in
reference to commercial feeds shall be the

official feed terms adopted by the association
of American feed control officials, except
as the department designates otherwise in
specific cases.

C. The following
commodities are hereby declared exempt
from the definition of commercial feed, under
the provisions of 76-19A-5A, NMSA 1978:
raw meat and loose salt when unground and
when not mixed or intermixed with other
materials: provided that these commodities
are not adulterated within the meaning of 76-
19A-8, NMSA 1978.

D. The definitions in 76-
19A-2, NMSA 1978 shall apply in addition
to the following:

(1) Principal display panel means
the part of a label that is most likely to be
displayed, presented, shown, or examined
under normal and customary conditions of
display for retail sale.

(2) Ingredient statement means a
collective and contiguous listing on the label
of the ingredients of which the pet food or
specialty pet food is composed.

(3) Immediate container means the
unit, can, box, tin, bag, or other receptacle
or covering in which a pet food or specialty
pet food is displayed for sale to retail
purchasers, but does not include containers
used as shipping containers.

(4) All life stages means gestation/
lactation, growth, and adult maintenance life
stages.

(5) Family means a group of
products, which are nutritionally adequate
for any or all life stages based on their
nutritional similarity to a lead product, which
has been successfully test-fed according
to an association of American feed control
officials feeding protocol(s).

[21.18.3.7 NMAC - Rp, 21.18.3.7 NMAC,
09/30/2013]

21.18.3.8 LABEL FORMAT:

A. Commercial feed, other
than customer-formula feed, shall be labeled
with the information prescribed in this
regulation on the principal display panel of
the product and in the following format:

(1) product name and brand name,
if any, as stipulated in Subsection A of
21.18.3.9 NMAC;

(2) if a drug is used, label as
stipulated in Subsection B of 21.18.3.9
NMAC;

(3) purpose statement as stipulated
in Subsection C of 21.18.3.9 NMAC;

(4) guaranteed analysis as
stipulated in Subsection D of 21.18.3.9
NMAC;

(5) feed ingredients as stipulated
in Subsection E of 21.18.3.9 NMAC and in
21.18.3.12 NMAC;

(6) directions for use and
precautionary statements as stipulated in
Subsection F of 21.18.3.9 NMAC and in
21.18.3.13 NMAC;

(7) name and principal mailing
address of the manufacturer or person
responsible for distributing the feed as
stipulated in Subsection G of 21.18.3.9
NMAC;

(8) quantity statement.

**B. P R I N C I P A L
DISPLAY PANEL:**

(1) The information as required in
Paragraphs (1), (2), (3), and (8) of Subsection
A of 21.18.3.8 NMAC must appear in its
entirety on the principal display panel.

(2) The information required by
Paragraphs (4), (5), (6), and (7) of Subsection
A of 21.18.3.8 NMAC shall be displayed in a
prominent place on the feed tag or label, but
not necessarily on the principal display panel.
When a precautionary statement required by
Paragraph (6) of Subsection A of 21.18.3.8
NMAC does not appear on the principal
display panel, it must be referenced on the
principal display panel with a statement such
as "See back of label for precautions."

C. None of the information
required by 21.18.3.8 NMAC shall be
subordinated or obscured by other statements
or designs.

D. Customer-formula feed
shall be accompanied with the information
prescribed in this regulation using labels,
invoice, delivery ticket, or other shipping
document bearing the following information:

(1) the name and address of the
manufacturer;

(2) the name and address of the
purchaser;

(3) the date of sale or delivery;

(4) the customer-formula feed
name and brand name if any;

(5) the product name and net
quantity of each registered commercial
feed and each other ingredient used in the
mixture;

(6) the direction for use and
precautionary statements as required by
21.18.3.13 NMAC and 21.18.3.14 NMAC.

(7) If a drug containing product is
used:

(a) the purpose of the medication
(claim statement);

(b) the established name of each
active drug ingredient and the level of each
drug used in the final mixture expressed in
accordance with Subsection D of 21.18.3.10
NMAC.

[21.18.3.8 NMAC - Rp, 21.18.3.9 & 10
NMAC, 09/30/2013]

**21.18.3.9 L A B E L
INFORMATION:** Commercial feed, other
than customer-formula feed, shall be labeled

with the information prescribed in this regulation.

A. Product name and brand name, if any.

(1) The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A commercial feed for a particular animal class must be suitable for that purpose.

(2) Commercial, registered brand, or trade names are not permitted in guarantees or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.

(3) The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: Provided that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredients or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

(4) The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen.

(5) When the name carries a percentage value, it shall be understood to signify protein or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein": provided that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer.

(6) Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the association of American feed control officials unless the department designates otherwise.

(7) The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in Subsection C of 21.18.3.10 NMAC.

(8) The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT." When so used, the product must contain significant amounts of trace minerals, which are

recognized as essential for animal nutrition.

(9) The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and goats.

(10) If the commercial feed consists of raw milk, the words "Raw (blank) Milk" shall appear conspicuously on the principal display panel. (Blank is to be completed by using the species of animal from which the raw milk is collected.)

B. If a drug is used:

(1) The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

(2) Purpose statement as required in Subsection C of 21.18.3.9 NMAC.

(3) The purpose of medication (claim statement).

(4) An active ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with Subsection D of 21.18.3.10 NMAC.

C. Purpose statement:

(1) The statement of purpose shall contain the specific species and animal class(es) for which the feed is intended as defined in Subsection D of 21.18.3.9 NMAC.

(2) The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, species, and purpose while being consistent with the category of animal class defined in Subsection D of 21.18.3.9 NMAC which may include, but is not limited to, weight range(s), sex, or ages of the animal(s) for which the feed is manufactured.

(3) The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.

(4) The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user of the premix. (This section applicable to commercial feeds regulated under (x) of Subparagraph (b) of Paragraph (11) of Subsection D of 21.18.3.9 NMAC.

(5) The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products, or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to

provide for formulation into various animal species feeds. (This section applicable to commercial feeds regulated under (x) of Subparagraph (b) of Paragraph (11) of Subsection D of 21.18.3.9 NMAC.)

(6) The purpose statement of a product shall include a statement of enzyme functionality if enzymatic activity is represented in any manner.

D. Guarantees - crude protein, equivalent crude protein from non-protein nitrogen, amino acids, crude fat, crude fiber, acid detergent fiber, calcium, phosphorus, salt, and sodium shall be the sequence of nutritional guarantees when such guarantee is stated. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, international units, etc.) are listed in a sequence that provides a consistent grouping of the units of measure.

(1) Required guarantees for swine formula feeds.

(a) animal classes:

(i) pre-starter - 2 to 11 pounds;

(ii) starter - 11 to 44 pounds;

(iii) grower - 44 to 110 pounds;

(iv) finisher - 110 to market weight;

(v) gilts, sows, and adult boars;

(vi) lactating gilts and sows;

(b) guaranteed analysis for swine complete feeds and supplements (all animal classes):

(i) minimum percentage of crude protein;

(ii) minimum percentage of lysine;

(iii) minimum percentage of crude fat;

(iv) maximum percentage of crude fiber;

(v) minimum and maximum percentage of calcium;

(vi) minimum percentage of phosphorus;

(vii) minimum and maximum percentage of salt (if added);

(viii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) minimum selenium in parts per million (ppm);

(x) minimum zinc in parts per million (ppm).

(2) Required guarantees for formula poultry feeds (broilers, layers, and turkeys).

(a) animal classes:

(i) layer - chickens that are grown to produce eggs for food, e.g., table eggs: 1) starting/growing - from day of hatch to approximately 10 weeks of age; 2) finisher - from approximately 10 weeks of age to time first egg is produced. (approximately 20 weeks of age); 3) laying - from time first egg is laid throughout the time of egg production; 4) breeders - chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their productive cycle;

(ii) broilers - chickens that are grown for human food: 1) starting/growing - from day of hatch to approximately 5 weeks of age; 2) finisher - from approximately 5 weeks of age to market, (42 to 52 days); 3) breeders - hybrid strains of chickens whose offspring are grown for human food, (broilers), any age and either sex;

(iii) broilers, breeders - chickens whose offspring are grown for human food (broilers): 1) starting/growing - from day of hatch until approximately 10 weeks of age; 2) finishing - from approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age; 3) laying - fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced;

(iv) turkeys: 1) starting/growing - turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (females) and 16 weeks of age (males); 2) finisher - turkeys that are grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age and males from 16 weeks of age to 20 weeks of age (or desired market weight); 3) laying - female turkeys that are producing eggs from time first egg is produced throughout the time they are producing eggs; 4) breeder - turkeys that are grown to produce fertile eggs from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes;

(b) guaranteed analysis for poultry complete feeds and supplements (all animal classes):

- (i) minimum percentage of crude protein;
- (ii) minimum percentage of lysine;
- (iii) minimum percentage of methionine;
- (iv) minimum percentage of crude fat;
- (v) maximum percentage of crude fiber;
- (vi) minimum and maximum percentage of calcium;
- (vii) minimum percentage of phosphorus;
- (viii) minimum and

maximum percentage of salt (if added);

(ix) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(3) Required guarantees for beef cattle formula feeds.

(a) animal classes:

(i) calves (birth to weaning);

(ii) cattle on pasture (may be specific as to production stage; e.g. stocker, feeder, replacement heifers, brood cows, bulls, etc.);

(iii) feedlot cattle;

(b) guaranteed analysis for beef complete feeds and supplements (all animal classes):

(i) minimum percentage of crude protein;

(ii) maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(iii) minimum percentage of crude fat;

(iv) maximum percentage of crude fiber;

(v) minimum and maximum percentage of calcium;

(vi) minimum percentage of phosphorus;

(vii) minimum and maximum percentage of salt (if added);

(viii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) minimum percentage of potassium;

(x) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added);

(c) guaranteed analysis for beef mineral feeds (if added):

(i) minimum and maximum percentage calcium;

(ii) minimum percentage of phosphorus;

(iii) minimum and maximum percentage of salt;

(iv) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(v) minimum percentage of magnesium;

(vi) minimum percentage of potassium;

(vii) minimum copper in parts per million (ppm);

(viii) minimum selenium in parts per million (ppm);

(ix) minimum zinc in parts per million (ppm);

(x) minimum vitamin A, other than precursors of vitamin A, in international units per pound.

(4) Required guarantees for dairy formula feeds.

(a) animal classes:

(i) veal milk replacer - milk replacer to be fed for veal production;

(ii) herd milk replacer - milk replacer to be fed for herd replacement calves;

(iii) starter - approximately 3 days to 3 months;

(iv) growing heifers, bulls and dairy beef: 1) grower 1 - 3 months to 12 months of age; 2) grower 2 - more than 12 months of age;

(v) lactating dairy cattle;

(vi) non-lactating dairy cattle;

(b) guaranteed analysis for veal and herd replacement milk replacer:

(i) minimum percentage of crude protein;

(ii) minimum percentage of crude fat;

(iii) maximum percentage of crude fiber;

(iv) minimum and maximum percentage calcium;

(v) minimum percentage of phosphorus;

(vi) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added);

(c) guaranteed analysis for dairy cattle complete feeds and supplements:

(i) minimum percentage of crude protein;

(ii) maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(iii) minimum percentage of crude fat;

(iv) maximum percentage of crude fiber;

(v) maximum percentage of acid detergent fiber (ADF);

(vi) minimum and maximum percentage of calcium;

(vii) minimum percentage of phosphorus;

(viii) minimum selenium in parts per million (ppm);

(ix) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added);

(d) required guaranteed analysis for dairy mixing and pasture mineral (if added):

(i) minimum and maximum percentage of calcium;

(ii) minimum percentage of phosphorus;

(iii) minimum and maximum percentage of salt;

(iv) minimum and

maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(v) minimum percentage of magnesium;

(vi) minimum percentage of potassium;

(vii) minimum selenium in parts per million (ppm);

(viii) minimum vitamin A, other than the precursors of vitamin A, in international units per pound.

(5) Required guarantees for equine formula feeds.

(a) animal classes:

(i) foal;

(ii) mare;

(iii) breeding;

(iv) maintenance;

(b) guaranteed analysis for equine complete feeds and supplements (all animal classes):

(i) minimum percentage of crude protein;

(ii) minimum percentage of crude fat;

(iii) maximum percentage of crude fiber;

(iv) minimum and maximum percentage of calcium;

(v) minimum percentage of phosphorus;

(vi) minimum copper in parts per million (ppm);

(vii) minimum selenium in parts per million (ppm);

(viii) minimum zinc in parts per million (ppm);

(ix) minimum vitamin A, other than the precursors of vitamin A, in international units per pound (if added).

(c) guaranteed analysis for equine mineral feeds (all animal classes):

(i) minimum and maximum percentage of calcium;

(ii) minimum percentage of phosphorus;

(iii) minimum and maximum percentage of salt (if added);

(iv) minimum and maximum percentage of sodium shall be guaranteed only when the total sodium exceeds that furnished by the maximum salt guarantee;

(v) minimum copper in parts per million (ppm);

(vi) minimum selenium in parts per million (ppm);

(vii) minimum zinc in parts per million (ppm);

(viii) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(6) Required guarantees for goat formula feeds.

(a) animal classes:

(i) starter;

(ii) grower;

(iii) finisher;

(iv) breeder;

(v) lactating;

(b) guaranteed analysis for goat complete feeds and supplements (all animal classes):

(i) minimum percentage of crude protein;

(ii) maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(iii) minimum percentage of crude fat;

(iv) maximum percentage of crude fiber;

(v) minimum and maximum percentage of calcium;

(vi) minimum percentage of phosphorus;

(vii) minimum and maximum percentage of salt (if added);

(viii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) minimum and maximum copper in parts per million (ppm) (if added);

(x) minimum selenium in parts per million (ppm);

(xi) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(7) Required guarantees for sheep formula feeds:

(a) animal classes:

(i) starter;

(ii) grower;

(iii) finisher;

(iv) breeder;

(v) lactating;

(b) guaranteed analysis for sheep complete feeds and supplements (all animal classes):

(i) minimum percentage of crude protein;

(ii) maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(iii) minimum percentage of crude fat;

(iv) maximum percentage of crude fiber;

(v) minimum and maximum percentage of calcium;

(vi) minimum percentage of phosphorus;

(vii) minimum and maximum percentage of salt (if added);

(viii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) minimum and maximum copper in parts per million (ppm) (if added, or if total copper exceeds 20 ppm);

(x) minimum selenium in parts per million (ppm);

(xi) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(8) Required guarantees for duck and geese formula feeds.

(a) animal classes:

(i) ducks: 1) starter - 0 to 3 weeks of age; 2) grower - 3 to 6 weeks of age; 3) finisher - 6 weeks to market; 4) breeder developer - 8 to 19 weeks of age; 5) breeder - 22 weeks to end of lay;

(ii) geese: 1) starter - 0 to 4 weeks of age; 2) grower - 4 to 8 weeks of age; 3) finisher - 8 weeks to market; 4) breeder developer - 10 to 22 weeks of age; 5) breeder - 22 weeks to end of lay.

(b) guaranteed analysis for duck and geese complete feeds and supplements (for all animal classes):

(i) minimum percentage of crude protein;

(ii) minimum percentage of crude fat;

(iii) maximum percentage of crude fiber;

(iv) minimum and maximum percentage of calcium;

(v) minimum percentage of phosphorus;

(vi) minimum and maximum percentage of salt (if added);

(vii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(9) Required guarantees for fish complete feeds and supplements.

(a) animal species shall be declared in lieu of animal class:

(i) trout;

(ii) catfish;

(iii) species other than trout or catfish;

(b) guaranteed analysis for all fish complete feeds and supplements:

(i) minimum percentage of crude protein;

(ii) minimum percentage of crude fat;

(iii) maximum percentage of crude fiber;

(iv) minimum percentage of phosphorus.

(10) Required guarantees for rabbit complete feeds and supplements.

(a) animal classes:

(i) grower - 4 to 12 weeks of age;

(ii) breeder - 12 weeks of age and over;

(b) guaranteed analysis for rabbit

complete feeds and supplements (all animal classes):

- (i) minimum percentage of crude protein;
 - (ii) minimum percentage of crude fat;
 - (iii) minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units);
 - (iv) minimum and maximum percentage of calcium;
 - (v) minimum percentage of phosphorus;
 - (vi) minimum and maximum percentage of salt (if added);
 - (vii) minimum and maximum percentage of total sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee;
 - (viii) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).
- (11) The required guarantees of grain mixtures with or without molasses and feeds other than those described in Paragraphs (1) through (9) of Subsection D of 21.18.3.9 NMAC shall include the following items, unless exempt in Paragraph 12 of Subsection D of 21.18.3.9 NMAC, in the order listed:
- (a) animal class(es) and species for which the product is intended.
 - (b) guaranteed analysis:
 - (i) minimum percentage crude protein;
 - (ii) maximum or minimum percentage of equivalent crude protein from non-protein nitrogen as required in Subsection E of 21.18.3.10 NMAC;
 - (iii) minimum percentage of crude fat;
 - (iv) maximum percentage of crude fiber;
 - (v) minerals in formula feeds, to include in the following order: 1) minimum and maximum percentages of calcium; 2) minimum percentage of phosphorus; 3) minimum and maximum percentage of salt (if added); 4) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee; 5) other minerals;
 - (vi) minerals in feed ingredients - as specified by the official definitions of the association of American feed control officials;
 - (vii) vitamins in such terms as specified in Subsection C of 21.18.3.10 NMAC;
 - (viii) total sugars as invert on dried molasses products or products being sold primarily for their sugar content;
 - (ix) viable lactic acid producing microorganisms for use in

silages in terms specified in Subsection G of 21.18.3.10 NMAC;

(x) a commercial feed (e.g. vitamin/mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose.

(12) Exemptions.

(a) A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal and herd milk replacers, is not required when:

(i) the feed or feed ingredient is not intended or represented or does not serve as a principal source of that mineral to the animal; or

(ii) the feed or feed ingredient is intended for non-food producing animals and contains less than 6.5% total mineral.

(b) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

(c) Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

(d) Guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product and no specific label claims are made.

(e) The indication for animal class(es) and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class(es) or species.

E. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of 76-19A-9A(4), NMSA 1978.

(1) The name of each ingredient as defined in the official publication of the association of American feed control officials, common or usual name, or one approved by the department.

(2) Collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the official publication of the association of American feed control officials in lieu of the individual ingredients; provided that:

(a) when a collective term for a

group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label;

(b) the manufacturer shall provide the feed control official, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

(3) The registrant may affix the statement, "ingredients as registered with the state" in lieu of ingredient list on the label. The list of ingredients must be on file with the department. This list shall be made available to the feed purchaser upon request.

F. Directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by 21.18.3.13 NMAC and 21.18.3.14 NMAC appear elsewhere on the label.

G. Name, city, state, and zip code of the manufacturer or person responsible for distributing the feed.

H. Quantity statement.

(1) Net quantity shall be declared in terms of weight, liquid measure, or count based on applicable requirements under the Fair Packaging and Labeling Act (Title 15 U.S.C. 1453).

(2) Net quantity labeled in terms of weight shall be expressed both in pounds, with any remainder in terms of ounces or common or decimal fractions of the pound and in appropriate Si metric system units; or in the case of liquid measure, both in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint of quart and in appropriate Si metric system units.

(3) When the declaration of quantity of contents by count does not give adequate information as to the quantity of feed in the container, it shall be combined with such statement of weight, liquid measure, or size of the individual units as will provide such information.

[21.18.3.9 NMAC - Rp, 21.18.3.9 & 10 NMAC, 09/30/2013]

21.18.3.10 EXPRESSION OF GUARANTEES:

A. The guarantees for crude protein, equivalent crude protein from non-protein nitrogen, lysine, methionine, other amino acids, crude fat, crude fiber, and acid detergent fiber shall be in terms of percentage.

B. Mineral guarantees

(1) When the calcium, salt, and sodium guarantees are given in the guaranteed analysis, such shall be stated and conform to the following:

(a) When the minimum is below 2.5%, the maximum shall not exceed the minimum by more than 0.5 percentage point.

(b) When the minimum is 2.5% but less than 5.0%, the maximum shall not exceed the minimum by more than one percentage point.

(c) When the minimum is above 5.0% or greater, the maximum shall not exceed the minimum by more than 20% of the minimum and in no case shall the maximum exceed the minimum by more than five percentage points.

(2) When stated, guarantees for minimum and maximum total sodium and salt: minimum potassium, magnesium, sulfur, phosphorus, and maximum fluorine shall be in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) when the concentration is less than 10,000 ppm and in percentage when the concentration is 10,000 ppm (1%) or greater.

(3) Products labeled with a quantity statement (e.g., tablets, capsules, granules, or liquid) may state mineral guarantees in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with the quantity statement and directions for use.

C. Guarantees for minimum vitamin content of commercial feeds shall be listed in the order specified and are stated in mg/lb or in units consistent with those employed for the quantity statement unless otherwise specified:

(1) vitamin A, other than precursors of vitamin A, in international units per pound.

(2) vitamin D-3 in products offered for poultry feeding, in international chick units per pound.

(3) vitamin D for other uses, international units per pound.

(4) vitamin E, in international units per pound.

(5) concentrated oils and feed additive premixes containing vitamins A, D or E may, at the option of the distributor, be stated in units per gram instead of units per pound.

(6) vitamin B-12, in milligrams or micrograms per pound.

(7) all other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione; riboflavin; d-pantothenic acid; thiamine; niacin; vitamin B-6; folic acid; choline; biotin; inositol; p-amino benzoic acid; ascorbic acid; and carotene.

D. Guarantees for drugs shall be stated in terms of percent by weight, except:

(1) antibiotics, present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed;

(2) antibiotics present at 2,000 or more grams per ton (total) of commercial

feed, shall be stated in grams per pound of commercial feed;

(3) the term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

E. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

(1) For ruminants

(a) Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows:

crude protein, minimum, _____ %

(This includes not more than _____ % equivalent crude protein from non-protein nitrogen).

(b) Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows:

equivalent crude protein from non-protein nitrogen, minimum, _____ %

(c) Ingredient sources of non-protein nitrogen such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or other basic non-protein nitrogen ingredients defined by the association of American feed control officials shall be guaranteed as follows:

nitrogen, minimum, _____ %

equivalent crude protein from non-protein nitrogen, minimum, _____ %

(2) For non-ruminants

(a) Complete feeds, supplements, and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

crude protein, minimum _____ %

(this includes not more than _____ % equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).

(b) Premixes, concentrates, or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement: "**WARNING: This feed must be used only in accordance with directions furnished on the label.**"

F. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

G. Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

H. Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as: protease (bacillus subtilis) 5.5 mg amino acids liberated/min./milligram. If two or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

[21.18.3.10 NMAC - Rp, 21.18.3.11 NMAC, 09/30/2013]

21.18.3.11 SUBSTANTIATION OF NUTRITIONAL SUITABILITY:

A. A commercial feed, other than a customer-formula feed, shall be nutritionally suitable for its intended purpose as represented by its labeling.

B. If the department has reasonable cause to believe a commercial feed is not nutritionally suitable, the department may request the feed manufacturer to either submit an "Affidavit of Suitability" or an alternative procedure acceptable to the department, certifying the nutritional adequacy of the feed. The affidavit of suitability or alternate procedure of suitability shall serve as substantiation of the suitability of the feed.

C. If an affidavit of suitability or alternative procedure acceptable to the department is not submitted by the feed manufacturer within 30 days of written notification, the department may deem the feed adulterated in accordance with 76-19A-8M NMSA 1978 and order the feed removed from the marketplace.

D. The affidavit of suitability shall contain the following information:

(1) the feed company's name;

(2) the feed's product name;

(3) the name and title of the affiant submitting the document;

(4) a statement that the affiant has knowledge of the nutritional content of the feed and based on valid scientific evidence the feed is nutritionally adequate for its intended purpose;

(5) the date of submission; and,

(6) the signature of the affiant notarized by a certified notary public.

[21.18.3.11 NMAC - N, 09/30/2013]

21.18.3.12 INGREDIENTS:

A. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the official definitions of feed ingredients as published in the official publication of the association of American feed control officials, the common or usual name, or one approved by the department.

B. The name of each ingredient must be shown in letters or type of the same size.

C. No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

D. The term "dehydrated" may precede the name of any product that has been artificially dried.

E. A single ingredient product defined by the association of American feed control officials is not required to have an ingredient statement.

F. Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar) unless approved by the department.

G. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007% iodine, uniformly distributed.

[21.18.3.12 NMAC - Rp, 21.18.3.12 NMAC, 09/30/2013]

21.18.3.13 DIRECTIONS FOR USE AND PRECAUTIONARY STATEMENTS:

A. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:

(1) be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and

(2) include, but not be limited to, all information described by all applicable regulations under the Federal Food, Drug and Cosmetic Act.

B. Adequate directions for use and precautionary statements are required for feeds containing non-protein nitrogen as specified in 21.18.3.14 NMAC.

C. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

[21.18.3.13 NMAC - Rp, 21.18.3.13 NMAC, 09/30/2013]

21.18.3.14 NON-PROTEIN NITROGEN:

A. Urea and other non-protein nitrogen products defined in the official publication of the association of American feed control officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, or the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "**CAUTION: USE AS DIRECTED.**" The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

B. Non-protein nitrogen defined in the official publication of the association of American feed control officials, when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.

C. On labels such as those for medicated feeds, which bear adequate feeding directions and warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.

[21.18.3.14 NMAC - Rp, 21.18.3.14 NMAC, 09/30/2013]

21.18.3.15 DRUG AND FEED ADDITIVES:

A. Prior to approval of a registration application or approval of a label for commercial feed which contain additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

B. Satisfactory evidence of safety and efficacy of a commercial feed may be:

(1) when the commercial feed contains such additives, the use of which conforms to the requirements of the

applicable regulation in the "Code of Federal Regulations, Title 21", or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use; or

(2) when the commercial feed is itself a drug as defined in 76-19A-21, NMSA 1978 and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the food and drug administration under Title 21 U.S.C. 360 b; or

(3) when one of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913, as amended; or

(4) when the commercial feed is a direct fed microbial product and:

(a) the product meets the particular fermentation product definition; and

(b) the microbial content statement, as expressed in the labeling, is limited to the following: "contains a source of live (viable) naturally occurring microorganisms;" this statement shall appear on the label; and

(c) the source is stated with a corresponding guarantee expressed in accordance with Subsection G of 21.18.3.10 NMAC;

(5) when the commercial feed is an enzyme product and:

(a) the product meets the particular enzyme definition defined by the association of American feed control officials; and

(b) the enzyme is stated with a corresponding guarantee expressed in accordance with Subsection H of 21.18.3.10 NMAC.

[21.18.3.15 NMAC - Rp, 21.18.3.15 NMAC, 09/30/2013]

21.18.3.16 ADULTERANTS:

A. For the purpose of 76-19A-8A NMSA 1978, a commercial feed shall be deemed adulterated if:

(1) it bears or contains any added poisonous, deleterious, or non-nutritive substance that is unsafe within the meaning of Section 406 of the federal Food, Drug and Cosmetic Act, other than one that is a pesticide chemical in or on a raw agricultural commodity or a food additive;

(2) it is or it bears or contains any food additive that is unsafe pursuant to Section 409 of the federal Food, Drug and Cosmetic Act;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of Section 408 (a) of the federal Food, Drug and Cosmetic Act; provided that where a pesticide chemical has been

used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of that act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue of the pesticide chemical remaining in or on such processed commercial feed shall not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal that is unsafe within the meaning of Section 408 (a) of the federal Food, Drug and Cosmetic Act;

(4) it is or it bears or contains any color additive that is unsafe within the meaning of Section 721 of the federal Food, Drug and Cosmetic Act;

(5) it is or it bears or contains any new animal drug that is unsafe within the meaning of Section 512 of the federal Food, Drug and Cosmetic Act;

(6) it is, in whole or in part, the product of a diseased animal or of an animal that has died otherwise than by slaughter that is unsafe within the meaning of Section 402 (a)(1) or (2) of the federal Food, Drug and Cosmetic Act;

(7) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the federal Food, Drug and Cosmetic Act;

B. For the purpose of 76-19A-8A NMSA 1978, the terms "poisonous or deleterious substances" include, but are not limited to, the following:

(1) Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine; and 0.60% for poultry.

(2) Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: 0.004% for breeding and dairy cattle; 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine, and 0.03% for poultry.

(3) Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage with or without limited amounts of grain that results in a daily fluorine intake in excess of 50 milligrams of fluorine per 100 pounds of

body weight.

(4) Soybean meal, flakes, or pellets or other vegetable meals, flakes, or pellets which have been extracted with trichloroethylene or other chlorinated solvents.

(5) Sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B1 (Thiamine).

C. All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds so that the finished product complies with 21.18.4.8 NMAC concerning prohibited weed seeds per pound and 21.18.4.9 NMAC concerning viable restricted weed seeds per pound.

[21.18.3.16 NMAC - Rp, 21.18.3.16 NMAC, 09/30/2013]

21.18.3.17 G O O D MANUFACTURING PRACTICES: For the purposes of enforcement of 76-19A-8N NMSA 1978 the board adopts the following as current good manufacturing practices:

A. The regulations prescribing good manufacturing practices for type B and type C medicated feeds as published in the "Code of Federal Regulations, Title 21", Part 225, Sections 225.1 through 225.202.

B. The regulations prescribing good manufacturing practices for type A Medicated Articles as published in the "Code of Federal Regulations, Title 21," Part 226, Sections 226.1 through 226.115.

[21.18.3.17 NMAC - Rp, 21.18.3.17 NMAC, 09/30/2013]

21.18.3.18 C E R T A I N MAMMALIAN PROTEINS PROHIBITED IN RUMINANT FEED:

A. Pursuant to 76-19A-8A or 76-19A-8C, NMSA 1978, the board adopts the requirements of "Code of Federal Regulations, Title 21", 589.2000.

B. Pursuant to 76-19A-8A or 76-19A-8C, NMSA 1978, the board adopts the requirements of "Code of Federal Regulations, Title 21", 589.2001.

[21.18.3.18 NMAC - N, 09/30/2013]

21.18.3.19 PET FOOD AND SPECIALTY PET FOOD LABEL FORMAT AND LABELING:

A. Pet food and specialty pet food shall be labeled with the following information:

(1) product name and brand name, if any, on the principal display panel as stipulated in 21.18.3.20 NMAC;

(2) a statement specifying the

species name of pet or specialty pet for which the food is intended, conspicuously designated on the principal display panel;

(3) quantity statement, as defined in Section 76-19A-9A(1) NMSA 1978 and Subsection H of 21.18.3.9 NMAC, by weight (pounds and ounces and metric), liquid measure (quarts, pints, and fluid ounces and metric), or by count on the principal display panel;

(4) guaranteed analysis as stipulated in 21.18.3.21 NMAC;

(5) ingredient statement as stipulated in 21.18.3.22 NMAC;

(6) a statement of nutritional adequacy or purpose, if required, under 21.18.3.24 NMAC;

(7) feeding directions if required under 21.18.3.25 NMAC; and

(8) name and address of the manufacturer or distributor as stipulated in 21.18.3.28 NMAC.

B. When a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper.

C. A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package.

D. The use of the word "proven" in connection with a label claim for a pet food or specialty pet food is not permitted unless the claim is substantiated by scientific or other empirical evidence.

E. No statement shall appear upon the label or labeling of a pet food or specialty pet food which makes false or misleading comparisons between that product and any other product.

F. A personal or commercial endorsement is permitted on a pet food or specialty pet food label provided the endorsement is not false or misleading.

G. A statement on a pet food or specialty pet food label stating "improved," "new," or similar designation shall be substantiated and limited to 6 months production.

H. A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to 1 year production, after which the claim shall be removed or re-substantiated.

[21.18.3.19 NMAC - N, 09/30/2013]

21.18.3.20 PET FOOD AND SPECIALTY PET FOOD BRAND AND PRODUCT NAMES:

A. The words "100%" or "All" or words of similar designation shall not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one ingredient, not including water sufficient for processing,

decharacterizing agents, or trace amounts of preservatives and condiments.

B. An ingredient or a combination of ingredients may form a part of the product name of a pet food or specialty pet food:

(1) When the ingredient(s) constitutes at least 95% of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredient(s) shall constitute at least 70% of the total product weight.

(2) When any ingredient(s) constitutes at least 25% of the weight of the product, provided that:

(a) water sufficient for processing may be excluded when calculating the percentage; however, the ingredients(s) shall constitute at least 10% of the total product weight; and

(b) a descriptor is used with the ingredient name(s); this descriptor shall imply other ingredients are included in the product formula; examples of descriptors include “dinner,” “platter,” “entrée,” “formula,” and “recipe”; and

(c) the descriptor shall be in the same size, style, and color print as the ingredient name(s).

(3) When a combination of ingredients, which are included in the product name in accordance with Subsection B of 21.18.3.20 NMAC, meets all of the following:

(a) Each ingredient constitutes at least 3% of the product weight, excluding water sufficient for processing; and,

(b) The names of the ingredients appear in the order of their respective predominance by weight in the product; and,

(c) All such ingredient names appear on the label in the same size, style, and color print.

C. When the name of any ingredient appears in the product name of a pet food, specialty pet food, or elsewhere on the product label and includes a descriptor such as “with” or similar designation, the named ingredient(s) must each constitute at least 3% of the product weight exclusive of water for processing. If the names of more than one ingredient are shown, they shall appear in their respective order of predominance by weight in the product. The 3% minimum level shall not apply to claims for nutrients such as, but not limited to, vitamins, minerals, and fatty acids as well as condiments. The word “with,” or similar designation and named ingredients shall be in the same size, style, color, and case print and be of no greater size than:

Panel Size	x "with claim" Type Size
< 5 sq. in.	1/8"
5-25 sq. in.	1/4"
25-100 sq. in	3/8"
100-400 sq. in	1/2"
400 sq. in +	1"

D. A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food when the flavor designation meets all of the following:

(1) the flavor designation:

(a) conforms to the name of the ingredient as listed in the ingredient statement; or

(b) is identified by the source of the flavor in the ingredient statement; and

(2) the word “flavor” is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and

(3) substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request.

E. The product name of the pet food or specialty pet food shall not be derived from one or more ingredients unless all ingredients are included in the name, except as specified by Subsections B or C of 21.18.3.20 NMAC; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

(1) the ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

(2) it does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients.

F. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with Subsections B, C, or D of 21.18.3.20 NMAC.

G. When pet food or specialty pet food consists of raw milk, the words “Raw (blank) Milk” shall appear conspicuously on the principal display panel. (Blank is to be completed by using the species of animal from which the raw milk is collected.)

[21.18.3.20 NMAC - N, 09/30/2013]

21.18.3.21 PET FOOD AND SPECIALTY PET FOOD EXPRESSION OF GUARANTEES:

A. The “Guaranteed Analysis” shall be listed in the following order and format unless otherwise specified in these regulations:

(1) A pet food or specialty pet food label shall list the following required guarantees;

(a) minimum percentage of crude protein;

(b) minimum percentage of crude fat;

(c) maximum percentage of crude fat, if required by 21.18.3.27 NMAC;

(d) maximum percentage of crude fiber;

(e) maximum percentage of moisture; and

(f) additional guarantees shall follow moisture.

(2) When ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it shall be guaranteed as a maximum percentage and shall immediately follow moisture.

(3) A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the association of American feed control officials dog (or cat) food nutrient profiles. Guarantees for substances not listed in the association of American feed control officials dog (or cat) food nutrient profiles or not otherwise provided for in these regulations, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer “not recognized as an essential nutrient by the association of American feed control officials dog (or cat) food nutrient profiles.” The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees.

(4) A specialty pet food label shall list other required or voluntary guarantees in the same order and units of the nutrients in an association of American feed control officials recognized nutrient profile for the specific species; however, if no species-specific association of American feed control officials recognized nutrient profile is available, the order and units shall follow the same order and units of nutrients in the association of American feed control officials cat food nutrient profile. Guarantees for substances not listed in an association of American feed control officials recognized nutrient profile for the specific species of animal shall immediately follow the listing of recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer “not recognized as an essential nutrient by the _____.” (Blank is

to be completed by listing the specific association of American feed control officials recognized nutrient profile.) This disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees. No such disclaimer shall be required unless an association of American feed control officials recognized nutrient profile is available for the specific species of specialty pet.

B. The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example, "Minimum crude protein 15-18%") is prohibited.

C. The label of a pet food or a specialty pet food which is formulated as and represented to be a mineral supplement shall include:

(1) minimum guarantees for all minerals from sources declared in the ingredient statement and established by an association of American feed control officials recognized nutrient profile, expressed as the element in units specified in the nutrient profile; or

(2) minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in units specified in the association of American feed control officials cat food nutrient profiles when no species-specific nutrient profile has been recognized by the association of American feed control officials; and

(3) mineral guarantees required by Paragraphs (1) and (2) of Subsection C of 21.18.3.21 NMAC may be expressed in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(4) a weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

D. The label of a pet food or a specialty pet food which is formulated as and represented to be a vitamin supplement shall include:

(1) minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an association of American feed control officials recognized nutrient profile, expressed in units specified in the nutrient profile; or

(2) minimum guarantees for all vitamins from sources declared in the ingredient statement expressed in units specified in the association of American feed control officials cat food nutrient profiles when no species-specific nutrient profile has been recognized by the association of American feed control officials; and provided that

(3) vitamin guarantees required by Paragraphs (1) and (2) of Subsection D of 21.18.3.21 NMAC may be expressed in approved units (e.g., IU, mg, g) per unit

(e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(4) a weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

E. When the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an association of American feed control officials recognized nutrient profile (such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels) the following apply:

(1) the product shall meet the association of American feed control officials recognized nutrient profile; and

(2) the statement of comparison shall be preceded by a statement that the product meets the association of American feed control officials recognized profile: however, the statement that the product meets the association of American feed control officials recognized nutrient profile is not required provided that the nutritional adequacy statement as per Paragraph (1) of Subsection A of 21.18.3.24 NMAC or Subparagraph (a) of Paragraph (2) of Subsection B of 21.18.3.24 NMAC appears elsewhere on the product label; and

(3) the statement of comparison of the nutrient content shall constitute a guarantee but need not be repeated in the guaranteed analysis; and

(4) the statement of comparison may appear on the label separate and apart from the guaranteed analysis.

F. The maximum moisture declared on a pet food or specialty pet food label shall not exceed 78.00% or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as, but not limited to, those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer and which are so labeled, may contain moisture in excess of 78.00%.

G. Guarantees for crude protein, crude fat, and crude fiber are not required when the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product such as a mineral or vitamin supplement.

H. Guarantees for microorganisms and enzymes shall be stated in the format as stipulated in Subsections G and H of 21.18.3.10 NMAC.

[21.18.3.21 NMAC - N, 09/30/2013]

21.18.3.22 PET FOOD AND SPECIALTY PET FOOD INGREDIENTS:

A. Each ingredient of a pet

food or specialty pet food shall be listed in the ingredient statement as follows:

(1) the names of all ingredients in the ingredient statement shall be shown in letters or type of the same size, style, and color;

(2) the ingredients shall be listed in descending order by their predominance by weight in non-quantitative terms;

(3) ingredients shall be listed and identified by the name and definition established by the association of American feed control officials; and

(4) any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient.

B. The ingredients "meat" or "meat by-products" shall be qualified to designate the animal from which the meat or meat by-products are derived unless the meat or meat by-products are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses shall be listed as "horsemeat" or "horsemeat by-products."

C. Brand or trade names shall not be used in the ingredient statement.

D. A reference to the quality, nature, form, or other attribute of an ingredient shall be allowed when the reference meets all of the following:

(1) the designation is not false or misleading;

(2) the ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and

(3) a reference to quality or grade of the ingredient does not appear in the ingredient statement.

[21.18.3.22 NMAC - N, 09/30/2013]

21.18.3.23 PET FOOD AND SPECIALTY PET FOOD DRUGS AND PET FOOD ADDITIVES:

A. An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in the United States food and drug regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets or specialty pets.

B. Evidence may be required to prove the safety and efficacy or utility of a pet food or specialty pet food, which contains additives or drugs, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food may be established:

(1) When the pet food or specialty pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in the "Code of Federal Regulations, Title 21," or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use; or

(2) When the pet food or specialty pet food itself is a drug or contains a drug as defined in 76-19A-2I, NMSA 1978 and is "generally recognized as safe and effective" for the labeled use or is marketed subject to an application approved by the food and drug administration under Title 21, U.S.C. 360(b).

C. When a drug is included in a pet food or specialty pet food, the format required by Subsection B of 21.18.3.9 NMAC for labeling medicated feeds shall be used.

[21.18.3.23 NMAC - N, 09/30/2013]

21.18.3.24 PET FOOD AND SPECIALTY PET FOOD NUTRITIONAL ADEQUACY:

A. The label of a pet food or specialty pet food which is intended for all life stages of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as "complete and balanced," "perfect," "scientific," or "100% nutritious" if at least one of the following apply:

(1) the product meets the nutrient requirements for all life stages established by an association of American feed control officials recognized nutrient profile; or,

(2) the product meets the criteria for all life stages as substantiated by completion of the appropriate association of American feed control officials recognized animal feeding protocol(s); or

(3) the product is a member of a product family which is nutritionally similar to a lead product, which contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by the association of American feed control officials for all life stages, provided that:

(a) the nutritional similarity of the family product can be substantiated according to the procedures for establishing pet food product families developed by the association of American feed control officials; and,

(b) the family product meets the criteria for all life stages; and

(c) under circumstances of reasonable doubt, the department may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy.

B. The label of a pet food or specialty pet food which is intended for

a limited purpose or a specific life stage, but not for all life stages, may include a qualified claim such as "complete and balanced," "perfect," "scientific," or "100% nutritious" when the product and claim meets all of the following:

(1) The claim is qualified with a statement of the limited purpose or specific life stage for which the product is intended or suitable, for example, "complete and balanced for puppies (or kittens)." The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style, and color print; and

(2) The product meets at least one of the following:

(a) the nutrient requirements for the limited purpose or specific life stage established by an association of American feed control officials recognized nutrient profile; or,

(b) the criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate association of American feed control officials recognized animal feeding protocol(s); or,

(c) the requirements of a product family which is nutritionally similar to a lead product which contains a combination of ingredients which, when fed for such limited purpose, will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing, and provided that:

(i) the nutritional similarity of the family product can be substantiated according to the procedures for establishing pet food product families developed by the association of American feed control officials; and,

(ii) the family product meets the criteria for such limited purpose; and,

(iii) under circumstances of reasonable doubt, the department may require the manufacturer to perform additional testing for the family product to substantiate the claim of nutritional adequacy.

C. Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product except when the dog or cat food is clearly and conspicuously identified on the principal display panel as a "snack," "treat," or "supplement." The statement shall consist of one of the following:

(1) a claim that the dog or cat food meets the requirements of one or more of the recognized categories of nutritional adequacy: gestation/lactation, growth, maintenance, and all life stages. The claim shall be stated verbatim as one of the following:

(a) "(name of product) is formulated to meet the nutritional levels

established by the association of American feed control officials dog (or cat) food nutrient profiles for _____ ." (blank is to be completed by using the stage or stages of the pet's life, such as gestation/lactation, growth, maintenance, or the words "All Life Stages"); or

(b) "animal feeding tests using association of American feed control officials procedures substantiate that (name of product) provides complete and balanced nutrition for _____ ." (blank is to be completed by using the stage or stages of the pet's life tested, such as gestation/lactation, growth, maintenance, or the words "All Life Stages"); or

(c) "(name of product) provides complete and balanced nutrition for _____ (blank is to be completed by using the stage or stages of the pet's life, such as gestation, lactation, growth, maintenance or the words "All Life Stages") and is comparable in nutritional adequacy to a product which has been substantiated using association of American feed control officials feeding tests;"

(2) a nutritional or dietary claim for purposes other than those listed in Subsection A or B of 21.18.3.24 NMAC if the claim is scientifically substantiated; or

(3) the statement: "this product is intended for intermittent or supplemental feeding only," if a product does not meet the requirements of Subsection A or B of 21.18.3.24 NMAC or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding.

D. A product intended for use by or under the supervision or direction of a veterinarian shall make a statement in accordance with Paragraphs (1) or (3) of Subsection C of 21.18.3.24 NMAC.

E. A signed affidavit attesting that the product meets the requirements of Subsection A or Paragraph (2) of Subsection B of 21.18.3.24 NMAC shall be submitted to the department upon request.

F. If the nutrient content of a product does not meet those nutrient requirements established by an association of American feed control officials recognized nutrient profile or if no requirement has been established by an association of American feed control officials recognized nutritional authority for the life stage(s) of the intended species, the claimed nutritional adequacy or purpose of the product shall be scientifically substantiated.

G. The following association of American feed control officials recognized nutritional authority, nutrient profile, or animal feeding protocol shall be acceptable as the basis for a claim of nutritional adequacy:

(1) As an association of American

feed control officials recognized nutrient profile or nutritional authority:

(a) for dogs, the association of American feed control officials dog food nutrient profiles;

(b) for cats, the association of American feed control officials cat food nutrient profiles;

(c) for specialty pets, the nutrient recommendations approved by the committee on animal nutrition of the national research council of the national academy of sciences, provided that this nutrient recommendation is recognized only for the specific specialty pet for which the profile is intended.

(2) As an association of American feed control officials recognized animal feeding protocol(s), the association of American feed control officials dog and cat food feeding protocols.

[21.18.3.24 NMAC - N, 09/30/2013]

21.18.3.25 PET FOOD AND SPECIALTY PET FOOD FEEDING DIRECTIONS:

A. Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Paragraph (1) of Subsection C of 21.18.3.24 NMAC, except those pet foods labeled in accordance with Subsection D of 21.18.3.24 NMAC, shall list feeding directions on the product label. These directions shall be consistent with the intended use(s) indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere (e.g., "adult formula"). These directions shall be expressed in common terms and shall appear prominently on the label. Feeding directions shall, at a minimum, state, "Feed (weight/unit of product) per (weight only) of dog (or cat)." The frequency of feeding shall also be specified.

B. When a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement: "Use only as directed by your veterinarian" may be used in lieu of feeding directions.

C. Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Subsection A of 21.18.3.24 NMAC, shall list feeding directions on the product label. These feeding directions shall be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the association of American feed control officials recognized nutritional authority. These directions shall be expressed in common terms and shall appear prominently on the label. The frequency of feeding shall also be specified.

[21.18.3.25 NMAC - N, 09/30/2013]

21.18.3.26 PET FOOD AND SPECIALTY PET FOOD STATEMENTS OF CALORIE CONTENT:

A. Except as required in 21.18.3.27 NMAC, the label of a dog or cat food may bear a statement of calorie content when the label meets all of the following:

(1) The statement shall be separate and distinct from the "Guaranteed Analysis" and shall appear under the heading "Calorie Content";

(2) The statement shall be measured in terms of metabolizable energy (ME) on an "as fed" basis and must be expressed as "kilocalories per kilogram" ("kcal/kg") of product and may also be expressed as kilocalories per familiar household measure (e.g., cans, cups, pounds); and,

(3) The calorie content is determined by one of the following methods:

(a) by calculation using the following "modified atwater" formula:

$$ME(kcal/kg) = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$$

where: ME = metabolizable energy

CP = % crude protein "as fed"

CF = % crude fat "as fed"

NFE = % nitrogen-free extract (carbohydrate) "as fed"

and the percentages of CP and CF are the arithmetic averages from proximate analyses of at least four production batches of the product; and the NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the same manner as CP and CF); or,

(b) in accordance with a testing procedure established by the association of American feed control officials.

(4) An affidavit shall be provided upon request to the department substantiating that the calorie content was determined by:

(a) Subparagraph (a) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC in which case the results of all the analyses used in the calculation shall accompany the affidavit; or

(b) Subparagraph (b) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC in which case the summary data used in the determination of calorie content shall accompany the affidavit.

(5) The calorie content statement shall appear as one of the following:

(a) The claim on the label or other labeling shall be followed parenthetically by the word "calculated" when the calorie content is determined in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC; or

(b) The value of calorie content stated on the label which is determined in accordance with Subparagraph (b) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC shall not exceed or understate the value determined in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC by more than 15%.

B. Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared.

[21.18.3.26 NMAC - N, 09/30/2013]

21.18.3.27 PET FOOD AND SPECIALTY PET FOOD DESCRIPTIVE TERMS:

A. Calorie terms

(1) "Light"

(a) A dog food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

(i) contain no more than 3100 kcal ME/kg for products containing less than 20% moisture, no more than 2500 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 900 kcal ME/kg for products containing 65% or more moisture; and

(ii) include on the label a calorie content statement: 1) in accordance with the format provided in 21.18.3.26 NMAC; and 2) which states no more than 3100 kcal ME/kg for products containing less than 20% moisture, no more than 2500 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 900 kcal ME/kg for products containing 65% or more moisture; and

(iii) include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

(b) A cat food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

(i) contain no more than 3250 kcal ME/kg for products containing less than 20% moisture, no more than 2650 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 950 kcal ME/kg for products containing 65% or more moisture; and

(ii) include on the label a calorie content statement: 1) in accordance with the format provided in 21.18.3.26 NMAC; and 2) which states no more than 3250 kcal ME/kg for products containing less than 20% moisture, no more than 2650 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 950 kcal ME/kg for products containing 65% or more moisture; and

(iii) include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

(2) "Less" or "reduced calories"

(a) A dog or cat food product which bears on its label a claim of "less calories," "reduced calories," or words of similar designation shall include on the label:

(i) the name of the product of comparison and the percentage of calorie reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and

(ii) the comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

(iii) a calorie content statement in accordance with the format provided in 21.18.3.26 NMAC; and

(iv) feeding directions which reflect a reduction in calories compared to feeding directions for the product of comparison.

(b) A comparison between products in different categories of moisture content (i.e., less than 20%, 20% or more but less than 65%, 65% or more) is misleading.

B. Fat terms

(1) "Lean"

(a) A dog food product which bears on its label the terms "lean," "low fat," or words of similar designation shall:

(i) contain no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture;

(ii) include on the product label in the guaranteed analysis: 1) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Paragraph (1) of Subsection A of 21.18.3.21; and 2) A maximum crude fat guarantee which is no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for

products containing 65% or more moisture.

(b) A cat food product which bears on its label the terms "lean," "low fat," or words of similar designation shall:

(i) contain a maximum percentage of crude fat which is no more than 10% crude fat for products containing less than 20% moisture, no more than 8% crude fat for products containing 20% or more but less than 65% moisture, and no more than 5% crude fat for products containing 65% or more moisture; and

(ii) include on the product label in the guaranteed analysis: 1) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Paragraph (1) of Subsection A of 21.18.3.21; and 2) A maximum crude fat guarantee which is no more than 10% crude fat for products containing less than 20% moisture, no more than 8% crude fat for products containing 20% or more but less than 65% moisture, and no more than 5% crude fat for products containing 65% or more moisture.

(4) "Less" or "reduced fat"

(a) A dog or cat food product which bears on its label a claim of "less fat," "reduced fat," or words of similar designation, shall include on the label:

(i) the name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and

(ii) the comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

(iii) a maximum crude fat guarantee in the guaranteed analysis immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Paragraph (1) of Subsection A of 21.18.3.21 NMAC.

(b) A comparison on the label between products in different categories of moisture content (i.e., less than 20%, 20% or more but less than 65%, 65% or more) is misleading.

[21.18.3.27 NMAC - N, 09/30/2013]

21.18.3.28 PET FOOD AND SPECIALTY PET FOOD MANUFACTURER OR DISTRIBUTOR; NAME AND ADDRESS:

A. The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if such street address is shown in a

current city directory or telephone directory for the city listed on the label.

B. When a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed.

[21.18.3.28 NMAC - N, 09/30/2013]

21.18.3.29 REGISTRATION

EXPIRATION DATE: For the purpose of 76-19A-4A, NMSA 1978, all registrations shall expire annually on December 31.

[21.18.3.29 NMAC - Rp, 21.18.3.18 NMAC, 09/30/2013]

21.18.3.30 INSPECTION FEES:

A. An inspection fee of fifteen cents (\$0.15) per ton is hereby established to be effective on all commercial feeds sold on and after September 30, 2013; except that feed for which the department has not developed an inspection service at this time.

B. An inspection fee of twenty-five dollars (\$25.00) is hereby established for each brand of commercial feed distributed in individual packages of ten (10) pounds or less sold after September 30, 2013, in New Mexico.

[21.18.3.30 NMAC - Rp, 21.18.3.19 NMAC, 09/30/2013]

HISTORY OF 21.18.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMDA Rule 73-2, Regulatory Order No. 4, Feed Regulations, filed 5/15/73.

NMDA Rule 73-3, Regulatory Order No. 5, Commercial Feed Regulations, filed 5/15/73.

NMDA Rule 73-3, Amendment No. 1, Regulatory Order No. 8, Commercial Feed Exemptions, filed 7/1/76.

NMDA Rule 73-10, Regulatory Order No. 6, filed 11/27/73.

NMDA Rule 76-5, Regulatory Order No. 7, Feed Inspection Fees, filed 9/28/76.

NMDA Rule 84-2, Additional Requirements for Liquid Feed Labeling, filed 10/23/84.

History of Repealed Material:

21.18.3 NMAC, Commercial Feeds, filed 05/12/2009 - Duration expired effective 09/30/2013

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

This is an amendment to 21.16.7 NMAC, Section 3 and Section 10, effective September 30, 2013.

21.16.7.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university, under the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through [5] 4, New Mexico Statutes Annotated 1978 Compilation. [21.16.7.3 NMAC - N, 01/17/2012; A, 09/30/2013]

21.16.7.10 VERIFICATION AND RECORD REQUIREMENTS:

A. Submission of verification form requirement for processed chile:

(1) Each chile vendor of products offered for sale containing New Mexico chile or product that reasonably implies that the chile peppers are, or the product contains, New Mexico chile, must fill out, sign, and submit a verification form to the department. Verification forms must be submitted within three months of institution of these rules for existing vendors and within one month for new vendors starting a business. The department will supply a verification form (available at the department and on the website) which includes:

(a) a guarantee by the submitter that record keeping requirements are being met for chile advertised as New Mexico chile;

(b) a guarantee by the submitter that chile sold as New Mexico chile was grown in New Mexico;

(c) a guarantee that the regulations are being followed by those selling chile as New Mexico chile.

(2) The department is empowered to audit the required purchasing and sales records of any vendor coming under the provisions of the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through [5] 4, NMSA 1978. These records shall be retained for a period of one year. A business receiving request for records shall permit the inspection immediately or as soon as is practicable under the circumstances not to exceed three business days. Failure to submit the records on request of the department or its authorized agents is a violation of the New Mexico Chile Advertising Act.

B. Submission of verification form requirement for fresh chile:

(1) Verification forms must be

submitted with each load and followed through to the point of sale. The department will supply a verification form (available at the department and on the website) and includes:

(a) a guarantee by the submitter that record keeping requirements are being met for chile advertised as New Mexico chile;

(b) a guarantee by the submitter that chile sold as New Mexico chile was grown in New Mexico.

(2) Copy of the verification form must accompany each load of fresh New Mexico chile wherever it is sold.

(3) The department is empowered to audit the required purchasing and sales records of any vendor coming under the provisions of the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through [5] 4, NMSA, 1978 Compilation. These records shall be retained for a period of one year. Failure to submit the records on request of the department or its authorized agents is a violation of the New Mexico Chile Advertising Act.

(4) Sales of twenty thousand pounds or less of chile peppers per calendar year by the person that grew the chile peppers are exempt from any record keeping requirement.

C. The department will maintain a public website that lists all chile product vendors that have submitted verification form(s).

[21.16.7.10 NMAC - N, 01/17/2012; A, 09/30/2013]

[Continued on page 667]

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.18.2 NMAC, Section 3 and Section 9, effective September 30, 2013.

21.18.2.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the New Mexico Fertilizer Act, Chapter 76, Article 11, Sections 1 through [49] 20, New Mexico Statutes Annotated 1978 Compilation. [7/1/97; 21.18.2.3 NMAC - Rn, 21 NMAC 18.2.3, 05/29/09; A, 09/30/13]

21.18.2.9 LABELING:

A. The minimum percentage of primary plant nutrients claimed by a fertilizer product shall appear on the product label in the following order and form.

[total nitrogen (N) percent

available phosphoric acid (P_2O_5) percent

soluble potash (K_2O) percent]

total nitrogen (N)..... %

_____ % ammoniacal nitrogen

_____ % nitrate nitrogen

_____ % water insoluble nitrogen

_____ % urea nitrogen

_____ % (other recognized and determinable forms of N)

available phosphate (P_2O_5)..... %

soluble potash (K_2O)..... %

(other nutrients, elemental basis as prescribed in Subsection B of 21.18.2.9 NMAC).. %

~~[B.]~~ For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphate materials, the total phosphoric acid and/or degree of fineness may also be guaranteed.]

~~[C.]~~ **B.** In addition to nitrogen, phosphorus, and potassium, other plant nutrients, when mentioned in any form or manner, shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed and proof of availability shall be provided to the department upon request. Guarantees or claims for the following plant nutrients are the only ones which will be accepted. Unless excluded, the minimum percentages which will be accepted for registration are as follows:

<u>element</u>	<u>percent</u>
calcium (Ca)	1.00
magnesium (Mg)	0.50
sulfur (S)	1.00
boron (B)	0.02
chlorine (Cl)	0.10
cobalt (Co)	0.0005
copper (Cu)	0.05
iron (Fe)	0.10
manganese (Mn)	0.05
molybdenum (Mo)	0.0005
<u>nickel (Ni)</u>	<u>0.0010</u>
sodium (Na)	0.10
zinc (Zn)	0.05

~~[D.]~~ **C.** Levels below the percentages in Subsection [E] B of 21.18.2.9 NMAC may be allowed provided that:

(1) justification is furnished by research data or other professional sources to satisfy the department that any of these minimum percentages would be detrimental to specific plants, or

(2) a commercial fertilizer is formulated according to specifications which are furnished by a consumer prior to mixing.

~~[E.]~~ **D.** Proposed labels and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the preceding listed elements which are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients of nitrogen, phosphorus, and potassium.

E. Sources of nutrients, when shown on the label, shall be listed below the completed guaranteed analysis statement.

F. The label shall display:

(1) directions for use which include both an amount to be applied per unit area and a frequency of use per year; or

(2) a statement which says in effect, "for the agronomic application rates suitable for your geographical area or the maximum allowable non-nutrient application rates per acre, consult a trained soil specialist or write to (name and address of manufacturer/guarantor)."

~~[F.]~~ **G.** A warning or caution statement is required on the label for any product which contains 0.03% or more of boron in water soluble form. This statement shall carry the word "warning" or "caution" conspicuously displayed, shall state the crop(s) for which the fertilizer is to be used, and state that the use of the fertilizer on any other than those recommended may result in serious injury to the crop(s).

~~[G.]~~ **H.** Products containing 0.001% or more of molybdenum also require a warning statement on the label. This shall include the word "warning" or "caution" and the statement that the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum which are toxic to ruminant animals.

~~[H.]~~ **I.** The names and definitions for [commercial] fertilizers shall be those adopted by the association of American plant food control officials.

~~[I.]~~ **J.** Animal manure materials are permitted to be labeled in cubic feet rather than net weight.

K. Beneficial substances or compounds guarantees shall appear under the heading "contains beneficial substances" or "contains beneficial compounds."

_____ contains beneficial substances
 _____ beneficial substance.% or acceptable units
 _____ purpose statement:
 _____ or
 _____ contains beneficial compounds
 _____ beneficial compound.....% or acceptable units
 _____ purpose statement:

L. Bulk soil conditioner labeling in addition to requirements of 76-11-5

NMSA 1978:

- _____ (1) Net weight or volume basis
- _____ (2) Product claim(s) allowable for use:
 - _____ (a) improves soil structure and porosity – creating a better plant root environment;
 - _____ (b) increases moisture infiltration and permeability and reduces bulk density of heavy soils - improving moisture infiltration rates and reducing erosion and runoff;
 - _____ (c) improves the moisture holding capacity of light soils - reducing water loss and nutrient leaching and improving moisture retention;
 - _____ (d) improves the cation exchange capacity (CEC) of soils;
 - _____ (e) supplies organic matter;
 - _____ (f) aids the proliferation of soil microorganisms;
 - _____ (g) supplies beneficial microorganisms to soils and growing media;
 - _____ (h) encourages vigorous root growth;
 - _____ (i) allows plants to more effectively utilize nutrients while reducing nutrient loss by leaching;
 - _____ (j) enables soils to retain nutrients longer;
 - _____ (k) contains humus - assisting in soil aggregation and making nutrients more available for plant uptake;
 - _____ (l) buffers soil pH.
- _____ (3) Feedstock statement: list of feedstocks from which the compost was derived. [7/1/97; 21.18.2.9 NMAC - Rn, 21 NMAC 18.2.9, 05/29/09; A, 09/30/13]

**NEW MEXICO DEPARTMENT OF FINANCE AND
 ADMINISTRATION
 BOARD OF FINANCE**

**TITLE 2 PUBLIC FINANCE
 CHAPTER 61 STATE INDEBTEDNESS AND SECURITIES
 PART 7 DISTRIBUTION OF QUALIFIED ENERGY CONSERVATION
 BOND ALLOCATIONS**

2.61.7.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, New Mexico.
 [2.61.7.1 NMAC – N, 9/30/13]

2.61.7.2 SCOPE: State agencies, counties, municipalities, and Indian tribal governments.
 [2.61.7.2 NMAC – N, 9/30/13]

2.61.7.3 STATUTORY AUTHORITY: Section 6-21E-1 NMSA 1978.
 [2.61.7.3 NMAC – N, 9/30/13]

2.61.7.4 DURATION: Permanent.
 [2.61.7.4 NMAC – N, 9/30/13]

2.61.7.5 EFFECTIVE DATE: September 30, 2013 unless a later date is cited at the end of a section.
 [2.61.7.5 NMAC – N, 9/30/13]

2.61.7.6 OBJECTIVE: To establish rules and regulations governing the distribution of allocations of qualified energy conservation bonds provided for in Section 6-21E-1 NMSA 1978.
 [2.61.7.6 NMAC – N, 9/30/13]

2.61.7.7 DEFINITIONS:

- A. “Board” means the state board of finance.
- B. “Bond counsel” means an attorney or a firm of attorneys listed in the most recently available “directory of municipal bond dealers of the United States”, published by

the bond buyer and commonly known as the “red book”, in the section listing municipal bond attorneys of the United States or the successor publication thereto.

C. “Federal act” means Section 54(d) of the federal internal revenue code and includes federal rules and guidelines adopted to carry out the provisions of that section.

D. “Large local government” means a municipality or county with a population greater than one hundred thousand, as determined pursuant to the provisions of the federal act, or an Indian tribal government.

E. “Qualified conservation purpose” means:

(1) capital expenditures incurred for the purposes of:

(a) reducing energy consumption in publicly owned buildings by at least twenty percent;

(b) implementing green community programs, including the use of loans, grants or other repayment mechanisms to implement the programs;

(c) rural development involving the production of electricity from renewable energy resources; or

(d) any qualified facility as determined under Section 45(d) of the federal internal revenue code without regard to Paragraphs (8) and (10) of that section and without regard to any placed in service date;

(2) expenditures with respect to research facilities and research grants to support research in:

(a) development of cellulosic ethanol or other nonfossil fuels;

(b) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuel;

(c) increasing the efficiency of existing technologies for producing nonfossil fuels;

(d) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation; or

(e) technologies to reduce energy use in buildings;

(3) mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting;

(4) demonstration projects designed to promote the commercialization of:

(a) green building technology;

(b) conversion of agricultural waste for use in the production of fuel or otherwise;

(c) advanced battery manufacturing technologies;

(d) technologies to reduce peak use of electricity; or

(e) technologies for the capture

and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity;

(5) public education campaigns to promote energy efficiency.

F. "Qualified energy conservation bond" means a bond of a qualified issuer, the net proceeds from the sale of which are used exclusively for qualified conservation purposes and that meets all of the other requirements of the federal act for a qualified energy conservation bond.

G. "Qualified issuer" means the state, a county, a municipality or an Indian tribal government.

H. "Remaining allocation" means the state allocation, less the amounts required by the federal act to be allocated to large local governments, and plus any amount not used by a large local government and reallocated by that large local government to the state pursuant to Subsection B of 2.61.7.8 NMAC.

I. "State allocation" means the maximum amount of qualified energy conservation bonds that may be issued by qualified issuers in New Mexico pursuant to the federal act.

[2.61.7.7 NMAC – N, 9/30/13]

2.61.7.8 STATE BOARD OF FINANCE DETERMINATIONS:

A. The board hereby determines that the following amounts of the state allocation totaling \$20,587,000 are allocated to each of the following large local governments, subject to these amounts being returned to the board pursuant to Subsection B of 2.61.7.8 NMAC:

(1) to Bernalillo county \$1,173,788, of which not more than \$352,136 may be used for private activity bonds;

(2) to Dona Ana county \$2,091,561, of which not more than \$627,468 may be used for private activity bonds;

(3) to Sandoval county \$1,268,799, of which not more than \$380,639 may be used for private activity bonds;

(4) to San Juan county \$1,270,895, of which not more than \$381,268 may be used for private activity bonds;

(5) to Santa Fe county \$1,493,296, of which not more than \$447,988 may be used for private activity bonds;

(6) to the City of Albuquerque \$5,415,557, of which not more than \$1,624,667 may be used for private activity bonds.

B. Unused large local government allocations may be reallocated by a large local government, and such unused large local government allocations shall revert to the board and shall become available to other qualified issuers. Large local governments are hereby directed to

advise the board in writing no later than September 30, 2014 of any portion of their large local government allocation that will not be used by December 31, 2014. After being advised of a return of large local government allocation, the board shall make an announcement of the amount of the return at its next board meeting. The board shall not consider any requests for reallocation of the returned large local government allocation until the meeting following the announcement of the return.

C. Up to thirty percent of the total state allocation totaling \$20,587,000, an amount equal to \$6,176,100, may be used for private activity bonds, the proceeds of which may be loaned or otherwise made available to private companies or for privately owned or operated projects.
[2.61.7.8 NMAC – N, 9/30/13]

2.61.7.9 DISTRIBUTION OF QUALIFIED ENERGY CONSERVATION BOND ALLOCATIONS:

A. Qualified issuers, including large local governments requesting allocations in excess of the amount determined pursuant to Subsection A of 2.61.7.8 NMAC, requesting distributions of allocations shall submit the following:

(1) For all requests:

(a) a letter from the qualified issuer setting forth the amount of the state allocation requested, the actual or expected date of adoption of the bond resolution or similar documentation by the qualified issuer, the expected date of the sale of the bonds, the expected date of closing of the bonds, and a statement of any significant conditions that need to be satisfied before the bonds can be issued;

(b) a letter from the qualified issuer stating why the purpose to be served by the issuance of the qualified energy conservation bonds could not be as economically or effectively served by a means not involving an allocation of the state allocation;

(c) a letter from the qualified issuer stating that the project and use of bond proceeds will comply with all federal restrictions, including but not limited to compliance with Davis-Bacon prevailing wage rules, restrictions on qualified energy conservation bonds contained in the American Recovery and Reinvestment Act of 2009, and restrictions imposed by the United States department of the treasury, and a statement from the qualified issuer that it will provide the board with evidence from an independent entity annually no later than January 1 that the project and use of bond proceeds continues to be in compliance therewith as long as the bonds are outstanding;

(d) a letter from the qualified issuer, with a statement that it has consulted

with its bond counsel, describing any private use, ownership or operation associated with the project, and the amount of the state allocation requested that will be used for private activity bonds;

(e) a letter from bond counsel for the qualified issuer, with supporting citations to state statutes, stating that the qualified energy conservation bonds can validly be issued under state law by the qualified issuer, which the board may refer to its bond counsel or to the state's attorney general for review and comment; if the board is advised by its bond counsel or the attorney general that the opinion of the issuing authority's bond counsel is incorrect, the board may refuse to approve the allocation requested;

(f) a letter from bond counsel for the qualified issuer, with supporting citations to the federal act and the regulations, stating that the bonds are qualified energy conservation bonds requiring an allocation of the state allocation and that all requirements of the federal act have been satisfied;

(g) a copy of the inducement resolution, certified by an official of the qualified issuer;

(h) a detailed description of the project, including the qualified conservation purpose to which the project relates, and the project's specific location;

(i) information on the economic development benefits the project will create in the state, including creation of jobs, contributions to energy security, reductions in consumer energy costs, environmental protection and resource conservation, or other benefits;

(j) the estimated number and types of jobs, both construction and permanent, indicating which are expected to be filled by persons who are residents of the state at the time of submission of the request for allocation and which are expected to be filled by persons who are non-residents at the time of submission of the request for allocation;

(k) information on how the project furthers the qualified issuer's successful implementation of its mission or master plan, or otherwise furthers the qualified issuer's ability to provide critical services or benefits to its constituents;

(l) the present use or conditions of the project site and evidence that the proposed user of the project has obtained a legally enforceable right to acquire the project site; evidence of approved zoning of the proposed site must be submitted; this requires that project types for which the cap is being requested are not prohibited by the existing zoning of the proposed site;

(m) the maximum amount of the qualified energy conservation bonds and other obligations to be issued;

(n) an estimated starting month and estimated completion month of the construction of the project, the date

anticipated for initial expenditure of bond proceeds, and the percent of bond proceeds likely to be expended within three years of the issuance of the bonds;

(o) a project budget, including all funding sources and an itemized list of all project costs including but not limited to personnel, equipment, materials, supplies, construction and any profits; assumptions underlying the project budget should be noted in detail;

(p) information relating to the feasibility of the proposed project showing that the project or the user will generate revenues and cash flow sufficient to make payments to pay debt service on the bonds, if applicable;

(q) the amount and source of private capital that will be used for the project in addition to proposed qualified energy conservation bond financing, as well as a table showing estimated sources and uses of funds;

(r) conceptual site plans for the project and a map locating the project area;

(s) detailed information relating to the feasibility of any technologies to be used in the project, including the maturity of the technology and whether such technologies have been implemented previously on the proposed scale;

(t) any other information regarding the economic benefits to the project's community and to the state or which the qualified issuer believes will aid the board in considering the request for allocation;

(u) résumés of the staff or development team that will oversee completion of the project;

(v) an explanation of how the qualified energy conservation bonds will be financed, including whether they will be sold at competitive or negotiated sale; whether they will be issued as private activity bonds, general obligation bonds requiring voter approval; or other types of bonds; the terms of any loan agreement that will be the source of bond debt service;

(w) if applicable, a commitment letter or letter of intent, which may be subject to common contingencies or closing conditions, from the proposed underwriter, placement agent or bond purchaser to underwrite, place or purchase the qualified energy conservation bonds; and

(x) an indication of whether an approval of a lesser amount of qualified energy conservation bond allocation than the amount requested would be beneficial.

(2) The board or its staff may ask for additional supplemental information from the qualified issuer to aid the board in considering the request.

B. Within seven business days after a qualified issuer issues any qualified energy conservation bonds, the qualified issuer or its bond counsel shall

advise the board by letter of the date the bonds were issued and the total aggregate amount of the issue.

C. Qualified issuers shall comply with the following restrictions.

(1) Any qualified issuer desiring to make a request to the board for an allocation must comply with established board rules for inclusion on the board's agenda. In order to be considered for inclusion on the agenda, all materials required to be submitted to the board must be submitted by the established time period prior to the meeting date, which may be found on the board's website. It is a qualified issuer's responsibility to ascertain that deadline and comply with it. All requests for allocations of the state allocation appearing on the board's agenda for a particular meeting will be deemed to have been received simultaneously.

(2) A qualified issuer, excluding large local governments with allocations determined pursuant to Subsection A of 2.61.7.8 NMAC, shall advise the board in writing of any unusable allocation of the state allocation promptly after it becomes aware the allocation will not be used in full prior to the allocation expiration date. After being advised of a return of an allocation of the state allocation, the board shall make an announcement of the amount of the return at its next board meeting. The board shall not consider any requests for allocation of the state allocation relating to the amount of any returned allocation until the meeting following the announcement of the return.

(3) The board will not consider a request for a new allocation of the state allocation for a project whose previous allocation has expired or was voluntarily returned until the qualified issuer has resubmitted all of the information required by Subsection A of 2.61.7.9 NMAC. Such request for a new allocation will not be given a priority over other requests for allocations.

D. In the event that the face amount of all proposed qualified energy conservation bonds in valid, timely submitted applications exceeds the remaining allocation, the board will decide how the remaining allocation will be distributed to applicants by considering:

(1) the dates anticipated for the initial expenditure of bond proceeds and for completion of the project;

(2) the percent of the bond proceeds that are likely to be expended within three years of the date of the issuance of the bonds;

(3) whether the bond proceeds, together with all other money available for the project, are sufficient to complete the project; and

(4) any additional information received by the board pursuant to Paragraph (1) of Subsection A of 2.61.7.9 NMAC in the discretion of the board.

E. The allocation expiration date for any allocation approved by the board in any calendar year shall be December 31 of that calendar year, subject to discretionary extension, which the board may condition on the completion of both a sale and issuance of the qualified energy conservation bonds within the extension period.

[2.61.7.9 NMAC – N, 9/30/13]

HISTORY OF 2.61.7 NMAC:
[RESERVED]

**NEW MEXICO
DEPARTMENT
OF FINANCE AND
ADMINISTRATION
BOARD OF FINANCE**

This is an amendment to 2.60.7 NMAC, Sections 8 and 9, effective 9-30-2013.
The part name is also amended.

**PART 7 PROCEDURES FOR
DESIGNATING A FISCAL AGENT AND
CUSTODY BANK OF NEW MEXICO**

2.60.7.8 DESIGNATION PROCEDURES: FISCAL AGENT: The state board of finance may accept and review proposals from banks and savings and loan associations to be fiscal agent for the state of New Mexico, submitted in response to a request for proposals issued in conformance with the state Procurement Code and the applicable regulations.

A. The board's request for proposals for designation of a fiscal agent shall include the following minimum qualifications and requirements.

(1) The bank or savings and loan association must have an unimpaired capital and surplus, tier 1 core capital as defined by federal regulations, of at least twenty million dollars (\$20,000,000) and must be doing business in New Mexico.

(2) The bank or savings and loan association must agree that it shall maintain and furnish at its expense throughout the term of the agreement a banker's blanket bond per occurrence coverage in a minimum amount of ten million dollars (\$10,000,000) containing terms and conditions acceptable to the state board of finance.

(3) The bank or saving and loan must agree that it will maintain at an approved custodial financial institution throughout the term of the agreement securities of the amount and kind specified by Sections 6-10-35, 6-10-16 and 6-10-17 NMSA 1978, and approved by the board as security for the safekeeping of money of the state of New Mexico and the faithful performance of its duties as the fiscal agent. The amount of securities shall be (a) twenty-

five million dollars (\$25,000,000), or (b) the amount of collateral as required by the state treasurer to comply with the state board of finance collateral policy, whichever is greater. The board may, by resolution, adjust these security requirements as it deems necessary to protect the interest of the state.

(4) The bank or savings and loan association must agree to wholly indemnify the state, for any and all loss, damage, cost, damages, expenses (including, without limitation, legal fees and expenses) and liability to the state (collectively hereinafter "loss") resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect (collectively hereinafter "actions or omissions") by the bank or savings and loan association, and its employees, officers, agents and directors in performing their duties hereunder or under agreement, as applicable. The bank or savings and loan association must also acknowledge and agree that any loss to the state shall, unless such loss can be demonstrated by the fiscal agent to have been due to a cause or causes beyond its reasonable control (such as acts of God, acts of the public enemy, insurrections, riots, fires, explosions, orders or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the fiscal agent could not have prevented the damage or loss resulting from any such event) be conclusively presumed to be the result of actions or omissions on the part of the fiscal agent. Limited exceptions to this indemnification requirement may be permitted in any agreement entered into by the board with the bank or savings and loan association as to information supplied to the fiscal agent by the state treasurer, pursuant to any funds transfer, ach, safekeeping or other collateral agreement, or any other state agency, or such other exception as may be required in order to enable the provision of a particular service by the bank or savings and loan association. Any such limited exception must be included in the fiscal agent agreement and be acceptable to and specifically approved by the board.

(5) The bank or savings and loan association must agree to comply with requirements of the financial institutions Reform, Recovery, and Enforcement Act and any other applicable law to avoid seizure by federal regulators of any assets the fiscal agent pledges to secure state deposits in accordance with Paragraph (3) of Subsection A of 2.60.7.8 NMAC.

B. Designation of the fiscal agent shall be in the form of an agreement with the state board of finance for a term not to exceed [four years] the term allowed under the Procurement Code as deemed appropriate by the board.
[2.60.7.8 NMAC - Rn, Directive 87-4 & A, 12-1-2009; A, 9-30-2013]

2.60.7.9 DESIGNATION PROCEDURES: CUSTODY BANK:

The state board of finance may accept and review proposals from banks to be custody bank for the state of New Mexico, submitted in response to request for proposals issued in conformance with the state procurement code and the applicable regulations.

A. The board's request for proposals for designation of a custody bank shall include the following minimum qualifications and requirements:

(1) The bank must have an unimpaired capital and surplus, tier 1 core capital as defined by federal regulations of at least twenty million dollars (\$20,000,000) and must be doing business in New Mexico.

(2) The bank must agree that it shall maintain and furnish at its expense throughout the term of the agreement a banker's blanket bond per occurrence coverage in a minimum amount of fifty million dollars (\$50,000,000) and additional coverage for electronic computer crime losses in the minimum amount of twenty-five million dollars (\$25,000,000) per occurrence. Each such coverage must contain terms and conditions acceptable to the state board of finance.

(3) The bank must agree to wholly indemnify the state for any and all loss, damage, cost, damages, expenss (including, without limitation, legal fees and expenses) and liability (collectively hereinafter "loss") resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect by the custody bank, its employees, officers, agents and directors in performing their duties under the custody bank agreement. The custody bank must also acknowledge and agree that any loss shall, unless such loss can be demonstrated by the custody bank to have been due to a cause or causes beyond the reasonable control of the custody bank (such as acts of God, acts of the public enemy, insurrections, riots, fires, explosions, orders or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the custody bank could not have prevented the damage or loss resulting from any such event) be conclusively presumed to be the result of errors, omissions, fraud, embezzlement, theft, negligence or neglect on the part of the custody bank. Limited exceptions to this indemnification requirement may be permitted in any agreement entered by the board with the custody bank as to information supplied by the state treasurer or any other investing agency (i.e. public employees retirement association, education retirement board, state investment council) pursuant to any safekeeping or other collateral agreement or such other limited exception as may be required in order to enable the provision of a particular service by the custody

bank. Any such limited exception must be included in the custody bank agreement and be acceptable to and specifically approved by the board.

B. Designation of the custody bank shall be in the form of an agreement with the state board of finance for a term not to exceed [four years] the term allowed under the Procurement Code as deemed appropriate by the board.

[2.60.7.9 NMAC - N, 12-1-2009; A, 9-30-2013]

[Continued on page 672]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 100 G E N E R A L
PROVISIONS FOR PUBLIC
ASSISTANCE PROGRAMS
PART 640 RESTORATION AND
CLAIMS**

8.100.640.1 ISSUING AGENCY:
New Mexico Human Services Department.-
[8.100.640.1 NMAC - N, 09/30/2013]

8.100.640.2 SCOPE: The rule
applies to the general public.
[8.100.640.2 NMAC - N, 09/30/2013]

**8.100.640.3 S T A T U T O R Y
AUTHORITY:**

A. Chapter 27 NMSA 1978
(1992 Repl.) provides for the department
to "...adopt, amend and repeal bylaws,
rules and regulations..." It also provides for
administration of public assistance programs.

B. The ISD of the HSD was
created by the HSD secretary under authority
granted by 9-8-6(B)(3) NMSA 1978.
[8.100.640.3 NMAC - N, 09/30/2013]

8.100.640.4 D U R A T I O N :
Permanent.
[8.100.640.4 NMAC - N, 09/30/2013]

8.100.640.5 EFFECTIVE DATE:
September 30, 2013, unless a later date is
cited at the end of a section.
[8.100.640.5 NMAC - N, 09/30/2013]

8.100.640.6 OBJECTIVE: The
objective of these regulations is to provide
regulations in accordance with federal
and state laws and regulations for the ISD
administered programs.
[8.100.640.6 NMAC - N, 09/30/2013]

8.100.640.7 D E F I N I T I O N S :
Unless otherwise apparent from the context,
the following definitions shall apply
throughout these regulations.

A. Claim: means
correcting the over-issuance of benefits an
eligibility determination group received, but
was not entitled to receive, subject to the
recovery of such overpayments.

**B. Administrative or
agency error (AE) claim:** means any claim
for an overpayment caused by an action or
failure to take action by the department.

**C. Eligibility
determination group:** means the basic
assistance unit for a category of assistance,
or a group of people, either mandatory or
optional, to be included in determining the
monthly benefit amount.

**D. Inadvertent household
error (IHE) claim:** means any claim
for an overpayment resulting from a
misunderstanding or unintended error on the
part of the eligibility determination group.

**E. Intentional program
violation (IPV) claim:** means any claim for
an overpayment or trafficking resulting from
an individual committing an IPV, as defined
in regulation in Subsection D of 8.139.647.8
NMAC.

F. Restoration: means
the issuance of benefits to an eligibility
determination group that it was entitled to
receive, but did not receive due to:

(1) an agency error or department
discovered error;

(2) judicial action; a favorable
fair hearing decision or an erroneous
administrative disqualification for an IPV
that is later reversed; or

(3) a regulation specifically
requiring issuance of lost benefits.

G. Sponsored aliens:
means an alien lawfully admitted for
permanent residence in the United States
as an immigrant, as defined in Subsection
101(a)(15) and Subsection 101(a)(2) of the
Immigration and Nationality Act.

H. Supplement: means
the amount of benefits issued in addition to
the monthly benefit amount the eligibility
determination group has already received
that equals the amount of benefits the group
was entitled to receive for that month.
[8.100.640.7 NMAC - N, 09/30/2013]

**8.100.640.8 E R R O N E O U S
PAYMENT PROVISIONS:** An erroneous
payment exists when an error is made by
the client or the department that resulted
in an underpayment or overpayment of
program benefits. The difference between
the amount issued and the corrected amount
is the amount of the payment error. The
department shall take action to correct errors
in the supplemental nutrition assistance
program (SNAP), state SNAP supplement,
New Mexico combined application project
(NMCAP), New Mexico works (NMW) cash
assistance, general assistance for disabled
adults and unrelated children (GA), adult
residential shelter care home (ARSCH),
education works (EWP), refugee cash
assistance, medical assistance, and LIHEAP
benefits issued to an eligibility determination
group regardless of the cause of the error.
NMW cash assistance, GA, ARSCH, EWP,
refugee cash assistance will be referenced
as cash assistance programs throughout the
regulations unless otherwise specified.

A. The department will
correct the error by restoring benefits for an
underpayment or establishing claims for an
overpayment.

B. SNAP: The amount of
the restoration or claim is determined by

using the maximum SNAP benefit amount
and applying the allowable deductions in
place for a particular month, including any
federal law placing a restriction on the use of
deductions.

**C. Cash assistance
programs:** The amount of the restoration
or claim is determined using the standard of
need the case was eligible for on the first day
of a month. If the standard of need increases
during the month, the higher amount shall be
allowed for the entire month.
[8.100.640.8 NMAC - N, 09/30/2013]

**8.100.640.9 E S T A B L I S H I N G
PERIOD OF ERROR:**

A. An erroneous payment
occurs when an error is made by the
client or the department that resulted in an
underpayment or overpayment of program
benefits or assistance.

**B. Restoration of
benefits:** If benefits must be restored to
an eligibility determination group, the
department shall determine each month for
which the eligibility determination group
was underpaid benefits. The month(s) may
or may not be consecutive. In some cases,
federal regulations mandate the restoration
of SNAP benefits to eligibility determination
groups for a specific time period.

**C. Overpayment of
benefits:**

(1) **Establishing period of
overpayment:** If benefits have been
overpaid to an eligibility determination
group, the department shall determine each
month in which the eligibility determination
group received benefits to which it was not
entitled. The months may or may not be
consecutive.

(a) The first month in which a
benefit is considered erroneous is the month
in which the eligibility determination group
received a benefit amount differing from the
amount that the eligibility determination
group was entitled to receive.

(b) The last month of an erroneous
payment ends on the last day of the last
month in which payment is discovered. In
the case of an overpayment, if the period
of overpayment has been extended while a
proposed reduction or termination is
the subject of an administrative hearing
decision, it is included in the overpayment
claim period.

(2) **Establishing a claim:** A claim
will be established against any eligibility
determination group for any month in which
the eligibility determination group received
an overpayment of benefits if it exceeds the
claims establishment threshold as defined in
Subsection G of 8.100.640.11 NMAC.

(a) At a minimum, the department
shall take action on claims for which twelve
(12) months or less have elapsed between
the month an overpayment occurred and the

month the overpayment was discovered.

(b) The department may choose to take action on claims for which more than twelve (12) months have elapsed.

(c) No action will be taken on claims for which more than six (6) years have elapsed between the month an overpayment occurred and the month an overpayment was discovered.

[8.100.640.9 NMAC - N, 09/30/2013]

8.100.640.10 RESTORATION OF BENEFITS:

A. Entitlement:

(1) Program benefits will be restored to an eligibility determination group when the loss was caused by:

(a) agency error;

(b) SNAP administrative disqualification for IPV that is later reversed; or

(c) a regulation specifically requiring restoration of lost benefits.

(2) Unless there is a specific regulation authorizing benefit restoration for a longer period, SNAP benefits will be restored for not more than the twelve (12) months prior to whichever of the following occurred first:

(a) date the department receives a request for restoration from an eligibility determination group; or

(b) date the department is notified or otherwise discovers that a loss to an eligibility determination group has occurred; or

(c) if the resolution of a request extends beyond the twelve (12) month limit, an eligibility determination group will be entitled to more than twelve (12) months of restored benefits.

B. Errors in benefits:

(1) ISD discovered errors:

(a) If the department determines that a loss of benefits has occurred, and that an eligibility determination group is entitled to a restoration of benefits, action will be taken automatically to restore lost benefits. No action by the eligibility determination group is necessary.

(b) Benefits will not be restored if benefits were lost more than twelve (12) months before the month the loss was discovered in the normal course of business, or loss occurred more than twelve (12) months before the month the department was notified, in writing or orally, of a possible loss to a specific eligibility determination group.

(c) The department shall notify the eligibility determination group of entitlement to lost benefits; amount of benefits to be restored; any offsetting that will be done; method of restoration, and right to appeal through the fair hearing process if the eligibility determination group disagrees with any aspect of the proposed restoration.

(2) Judicial action:

(a) The department shall restore benefits found by any judicial action to have been wrongfully withheld.

(b) If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits will be restored for a period of not more than twelve (12) months from the date the court action was initiated.

(c) If the judicial action is a review of the department's action, benefits will be restored for a period of not more than twelve (12) months from the first of the following dates:

(i) date the department receives a request for restoration;

(ii) if a request for restoration is not received, date the fair hearing action was initiated; but never more than one (1) year from the date the department is notified of, or discovers, the loss.

(3) Disqualification for SNAP IPV:

(a) For each month an eligibility determination group member is erroneously disqualified, not to exceed twelve (12) months, the amount to be restored is determined by comparing the SNAP benefit amount the eligibility determination group received with the amount the eligibility determination group would have received if the disqualified member had been allowed to participate.

(b) Participation in an administrative disqualification hearing in which the eligibility determination group is contesting the department's assertion of IPV is considered notification that the eligibility determination group is requesting restored SNAP benefits.

(4) Agency errors:

(a) If an eligible eligibility determination group's application has been erroneously denied, the month the loss initially occurred will be the month of application; or for an eligible eligibility determination group filing a timely reapplication, the month following the expiration of its certification period.

(b) If an eligible eligibility determination group's application was delayed, the months for which benefits were lost will be calculated in accordance with application processing guidelines for delayed eligibility determinations in Subsection D of 8.139.110.13 NMAC, Subsection D of 8.102.110.12 NMAC and Subsection C of 8.106.110.12 NMAC.

(c) If an eligibility determination group's benefits were erroneously terminated, the month the loss initially occurred will be the first month that benefits were not received as a result of the erroneous action.

C. Processing the

restoration:

(1) **SNAP:** Regardless of whether an eligibility determination group is currently eligible or ineligible, the department shall restore lost benefits to an eligibility determination group by issuing an amount equal to the amount of benefits that were lost. The amount restored is issued in addition to the benefit amount a currently eligible eligibility determination group is entitled to receive.

(a) For each month affected by the loss, the department shall determine if the eligibility determination group was actually eligible.

(b) In cases where there is no information in the eligibility determination group's case record to document that the eligibility determination group was actually eligible, the department shall notify the eligibility determination group in writing of what information is necessary to determine eligibility for these months. For each month the eligibility determination group cannot provide the necessary information to demonstrate its eligibility, the eligibility determination group will be determined ineligible.

(2) Cash assistance programs:

The department shall restore lost cash assistance benefits for eligibility determination groups who are currently eligible under the cash assistance program that the error occurred or would be eligible except for the error causing the underpayment.

(a) A restoration to a denied applicant or to a former participant who is not eligible at the time the error is discovered shall be corrected if the applicant is, or participant becomes, eligible at a later date.

(b) Before issuing a benefit correcting an underpayment, the department subtracts from the amount owed to the participant any outstanding claim against the participant in the cash assistance program that the error is being corrected.

(3) Medical assistance programs:

The department shall restore months of eligibility for individuals who are currently eligible under the medical assistance program that the error occurred or would be eligible except for the error causing the ineligibility.

[8.100.640.10 NMAC - N, 09/30/2013]

8.100.640.11 OVERPAYMENTS (CLAIMS AGAINST ELIGIBILITY DETERMINATION GROUPS):

The department shall take action to establish a claim against any eligibility determination group that received more benefits than it was entitled to receive, including LIHEAP benefits paid to a vendor on behalf of the eligibility determination group, whether or not the overpayment occurred because of an IHE, an AE, or an IPV.

A. Claim recovery:

(1) All adult eligibility determination group members will be jointly liable for any overpayment of benefits to the eligibility determination group.

(2) A claim will be established against any or all of the adult members of an eligibility determination group at the time an overpayment occurred.

(3) A claim will be established against any eligibility determination group that contains an adult member who was an adult member of another eligibility determination group that received more benefits than it was entitled to receive.

(4) The earned income deduction of twenty percent (20%) is not allowed when determining an overpayment due to the failure of an eligibility determination group to report earned income in a timely manner.

B. Types of claims for all programs:**(1) IHE claims:**

(a) A claim will be handled as an IHE claim if the overpayment was caused by:

(i) the misunderstanding or unintended error on the part of the eligibility determination group; or

(ii) the misunderstanding or unintended error on the part of a categorically eligible eligibility determination group, provided that a claim can be calculated based on a change in the eligibility determination group's net income, eligibility determination group size, or both; or

(iii) a social security administration action, or failure to take action, resulting in an eligibility determination group becoming or continuing categorical eligibility, provided that a claim can be calculated based on a change in net income, eligibility determination group size, or both.

(b) Instances of IHE's that may result in a claim include, but are not limited to, the following:

(i) eligibility determination group unintentionally failed to provide the department with correct or complete information; or

(ii) eligibility determination group unintentionally failed to report changes in its circumstances; or

(iii) eligibility determination group unintentionally received benefits or received more benefits than it was entitled to receive pending a fair hearing decision because the eligibility determination group requested a continuation of benefits based on the mistaken belief it was entitled to them; or

(iv) eligibility determination group received benefits solely because of categorical eligibility, but was later determined ineligible for cash

assistance; or

(v) social security administration took action or failed to take appropriate action, resulting in the eligibility determination group improperly receiving supplemental security income (SSI).

(2) Administrative or agency errors:

(a) A claim will be handled as an AE claim if the overpayment was caused by the department's action or failure to take action.

(b) In the case of a SNAP categorical eligibility, a claim will be handled as an AE if action by an agency of the state or local government resulted in the eligibility determination group's improper eligibility for cash assistance.

C. IPV claims established for SNAP:

(1) A claim will be handled as an IPV claim only if:

(a) an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that an eligibility determination group member committed an IPV; or

(b) an individual is disqualified as a result of signing a waiver of disqualification hearing in a case referred for prosecution; or

(c) an individual has signed a disqualification consent agreement in a case of deferred adjudication; or

(d) an individual has signed a waiver of an administrative disqualification hearing in a case referred for disqualification.

(2) Before the determination of an IPV or the signing of either the waiver of right to a disqualification hearing or a disqualification consent agreement, the claim against an eligibility determination group is handled as an IHE claim.

D. Claims for medical assistance benefits: Upon a determination that the individual is not eligible for the category of assistance in which they were enrolled, the department shall determine if the individual is eligible for any category of assistance. If the individual is ineligible for any category, the department shall determine which months the individual was not eligible and forward the documentation to the medical assistance division for the determination of repayment of fee for service payments or the capitation payments made to the health maintenance organization on behalf of the individual for months the individual was not eligible for the category of assistance. The department will pursue the repayment of capitation amounts paid to the health maintenance organization for the months the individual was ineligible for any medical assistance programs and received medical services.

E. Development of information: When quality control review findings, or information reported or received

indicate, that benefits may have been issued incorrectly; the department shall attempt to obtain and verify whether benefits were provided in error.

F. When claims are not established: Overpayment claims shall not be established for administrative or IHE's, if an over-issuance occurred because the department did not ensure that the following procedural requirements were fulfilled:

(1) an application form was signed; or

(2) appropriate work registration code was entered.

G. Claim establishment threshold: Claims for SNAP, cash assistance and LIHEAP will not be established when the cumulative amount of the claim is less than the establishment thresholds.

(1) Claims for all programs resulting from an administrative error will not be established if the cumulative claim is less than five hundred dollars (\$500).

(2) Claims resulting from an IHE will not be established if the cumulative error is less than two hundred fifty dollars (\$250).

(3) Claims resulting from fraud or an IPV will always be established for the full amount of the overpayment.

[8.100.640.11 NMAC - N, 09/30/2013]

8.100.640.12 CALCULATING THE AMOUNT OF THE ERROR (CALCULATING CLAIMS)**A. SNAP:**

(1) Calculating the claim for an IHE and AE: For each month that benefits have been over-issued to an eligibility determination group because of an IHE or AE, the department shall determine the correct benefit amount the eligibility determination group was entitled to receive.

(a) The total amount of the claim is calculated, based at a minimum, on the monthly overpayment amount which occurred during the twelve (12) months preceding the date the overpayment was discovered.

(b) The department shall calculate the amount of the claim back to the month the error occurred regardless of the length of time that elapsed until the error was discovered.

(c) The department shall not include in the calculation any overpayment amount that occurred in a month more than six (6) years before the date the overpayment was discovered.

(2) Calculating the claim for an IPV:

(a) For each month that benefits have been over-issued to an eligibility determination group because of an IPV, the department shall determine the correct amount of benefits the eligibility determination group was entitled to receive.

(b) The amount of the IPV claim will be calculated back to the month the IPV occurred, regardless of the length of time that elapsed until the determination of an IPV was made.

(c) The department may not include in the calculation any amount of the overpayment that occurred in a month more than six (6) years prior to the date the overpayment was discovered.

(d) If an eligibility determination group member is determined to have committed an IPV by intentionally failing to report a change in eligibility determination group circumstances, the first month affected by the failure to report will be the first month in which the change would have been effective if it had been timely reported.

(e) In no event shall the department determine as the first month that the change would have been effective any month later than two (2) months after the month that the change in eligibility determination group circumstances occurred.

(f) If an eligibility determination group received a larger benefit amount than it was entitled to receive, a claim will be established against the eligibility determination group equal to the difference between the benefit amount the eligibility determination group received and the amount the eligibility determination group should have received.

(g) Earned income deduction penalty: When determining the amount of benefits the eligibility determination group should have received, the twenty percent (20%) earned income deduction is not applied to that portion of earned income that the eligibility determination group intentionally failed to report. A claim must be recomputed if it was initially handled as an IHE claim.

(3) Offsetting the claim: Once the amount of the claim for IPV, IHE, and AE is established, the department may offset the amount of the claim against any benefit amount not yet restored to the eligibility determination group. Action must be taken to initiate collection of the remaining balance, if any.

B. Cash assistance programs:

(1) Claims for administrative and client caused errors: Claims are established when the department issues more than the eligibility determination group was eligible to receive due to an AE or if the eligibility determination group fails, either intentionally or unintentionally, to report correct information at application or while receiving benefits.

(a) For each month of eligibility, the grant determinations are made using the standard of need, case information and policy in effect for that month.

(b) The department shall recover

all cash assistance overpayments, including overpayments resulting from an AE, and any assistance paid while pending a fair hearing decision.

(c) An historical change that results in a lower payment than was originally issued, results in an overpayment and the establishment of a claim if it exceeds the claims establishment thresholds listed in Subsection G of 8.100.640.11 NMAC.

(d) If a change occurs that makes the eligibility determination group eligible for a lower benefit payment for a month, the adult member(s) of the eligibility benefit group is responsible for paying the difference back to the department.

(e) If a change occurs that lowers the standard of need for which the eligibility determination group is eligible, the eligibility determination group shall be allowed the amount that they were eligible on the first day of the month.

(2) Overpayments to sponsored aliens:

(a) Aliens and sponsors are jointly liable for overpayments caused by failure of the sponsor to provide correct information, unless the sponsor is without fault or has good cause. "Without fault" or "good cause" exists when:

(i) the agency failed to request information from the sponsor; or

(ii) the sponsor can show that the sponsor provided all information available to the sponsor at the time the information was provided;

(iii) the alien provided incorrect information without the knowledge of the sponsor; or

(iv) the sponsor can show that the giving of incorrect information was not intentional on the part of the sponsor.

(b) If good cause is found to exist, the alien has sole responsibility for repayment.

(3) Developing substantiating information:

(a) Upon receiving indication that a possible error exists, the department shall investigate whether an erroneous payment has occurred. Pertinent information shall be requested from the participant. Because this information may be used to prosecute the participant for fraud, the participant shall not be required to provide such information; however, if the participant declines to provide information crucial to the determination of overpayment, the participant shall be ineligible for the period in question because of failure or refusal to provide information.

(b) The same standards shall be used in determining erroneous payments as are used to determine initial and ongoing eligibility and payment.

(c) The participant must be periodically reminded of the reporting responsibilities and must indicate, no less

frequently than at every certification, that the participant understands these requirements. This requirement is met by the use of a department form that reminds participants at each certification of their reporting responsibilities. This form also serves as the participant's statement that the participant understands the reporting responsibilities. If it is determined that a participant may have difficulty understanding the reporting responsibilities because of language, literacy, or mental or emotional problems, the department shall supplement the written notice with an oral explanation. All such oral explanations must be documented in the case record.

(d) The participant shall become ineligible on a continuing basis if there is a continuing failure to provide information affecting the participant's current eligibility.

(4) Offsetting the claim: Once the amount of the claim for IPV, IHE and AE is established, any restoration the eligibility determination group is eligible to receive is reduced or offset by the amount of the claim. Action must be taken to initiate collection of the remaining balance, if any.

C. LIHEAP:

(1) A claim shall be established for LIHEAP benefits that have been overpaid regardless of the reason of the overpayment.

(2) The department may establish a claim that exceeds the claim establishment threshold, as identified in Subsection G of 8.100.640.11 NMAC, for LIHEAP benefits overpaid up to six (6) years prior to the date the overpayment occurred.

(3) Offsetting the claim: A benefit amount may be offset during the issuance process in order to recover a LIHEAP overpayment. The amount that is offset shall be conveyed to the restitutions bureau to be applied to the eligibility determination group's overpayment.

D. Claims involving reported changes: In cases involving reported changes, the department shall determine the first month the overpayment occurred.

(1) Inadvertent household error: If caused by an inadvertent error on the part of the eligibility determination group (failure to report a change in circumstances within the required time frames), the first month affected by the eligibility determination group's failure to report is the first month in which the change would have been effective if it had been reported timely. In no event will the department determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in eligibility determination group's circumstances occurred.

(2) Agency error: If an eligibility determination group reported a change timely but the department did not act on

the change within the required time frame, the change should have taken effect the first month following the reported change, if it had been acted upon within the time frame. In no event shall the department determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in eligibility determination group circumstances occurred. If an adverse action notice was required but was not provided, the department shall assume for the purpose of calculating the claim that the maximum advance notice period would have expired without the eligibility determination group requesting a fair hearing.

[8.100.640.12 NMAC - N, 09/30/2013]

8.100.640.13 RECOVERY (COLLECTION ACTION): The department shall initiate collection action by sending the eligibility determination group an overpayment notice.

A. Adverse action notice: If the amount of the claim was not established by a fair hearing decision, the eligibility determination group will be provided with an adverse action notice. The adverse action notice is sent on all claims established after March 26, 1990 and on any preexisting claims if at any time after March 26, 1990 a follow-up demand letter is sent on the claim. A one-time adverse action notice that informs the eligibility determination group that it has ninety (90) days to appeal the amount of the claim will satisfy notice requirements.

B. Demand letter: Collection action is initiated by sending the eligibility determination group a demand letter. The demand letter informs the eligibility determination group of the claim amount, the reason for the claim, time period for which there is a claim, any offset that reduces the claim and how the eligibility determination group may pay the claim. The first demand letter to a participating eligibility determination group shall inform the eligibility determination group:

(1) that unless the eligibility determination group selects an acceptable method of payment and informs the department within the specified time limit, or timely requests a fair hearing and continued benefits, their SNAP benefit amount will be reduced;

(2) that benefit reduction will affect the eligibility determination group's monthly benefits, only if the department has not otherwise informed the eligibility determination group;

(3) that if the eligibility determination group timely selects an acceptable benefit reduction amount, the reduction will begin with the first benefit month that is issued after the selection;

(4) that if the eligibility

determination group fails to make a timely selection or fails to request a fair hearing and continued benefits, the benefit reduction will be effective with the first benefit issued after timely notice of such selection or request for hearing is due to the department; and

(5) advise the eligibility determination group of any individual or organization that provides free legal representation.

C. Collection action:

(1) **Initiating action:** The department shall initiate collection action on all claims unless the claim is collected through an offset or one of the following conditions applies:

(a) the total amount of the claim is less than the established claims threshold outlined in Subsection G of 8.100.640.11 NMAC, and the claim cannot be recovered by reducing the eligibility determination group's SNAP benefit amount; or

(b) the department has documentation that establishes the eligibility determination group cannot be located.

(2) **Postponing action:** Collection action will be postponed on claims where an eligibility determination group is being referred for possible prosecution or for administrative disqualification, and the determination is made that collection action will prejudice the case.

(3) **Collection action:** Restitution bureau shall pursue collection as specified in 8.100.640.13 NMAC.

D. SNAP Intentional program violation (IPV):

(1) **Initiating collection:** If an eligibility determination group member is found to have committed an IPV or has signed either a waiver or a disqualification consent agreement, the department shall initiate collection action against the individual's eligibility determination group. Personal contact with the eligibility determination group is made, if possible. The department is required to initiate such collection unless:

(a) the eligibility determination group has repaid the overpayment already; or

(b) the department has documentation establishing that the eligibility determination group cannot be located; or

(c) the department determines that collection action will prejudice the case against an eligibility determination group member referred for prosecution.

(2) **Partially paid claim:** The department shall initiate collection action for an unpaid or partially paid claim, even if collection action was previously initiated while the claim was being handled as an IHE claim.

(3) In cases where an eligibility determination group member has been found guilty of misrepresentation or fraud by a

court or has signed a disqualification consent agreement in a case referred for prosecution, the department shall request that the matter of restitution be brought before the court or be addressed in the agreement reached between the prosecutor and the accused individual.

(4) Changes in eligibility determination group composition:

(a) Collection action will be initiated by the restitution bureau against the eligibility determination group containing the member found to have committed an IPV.

(b) If a change in eligibility determination group composition occurs, collection action is pursued against any or all of the adult members of an eligibility determination group at the time an overpayment occurred.

(c) Collection action is pursued against any eligibility determination group which has a member who was an adult member of the eligibility determination group that received the overpayment.

E. Fraud exception: Notice of overpayment and administrative hearings rights shall not be given if the department has decided to pursue criminal prosecution for fraud. In such cases, the participant's notice of rights are limited to those afforded by state criminal statutes. No attempt shall be made by department staff to recover overpayments in such cases, nor shall any offers to refund the overpayment be accepted by the county office.

F. Recovery action:

(1) **Overpayments of less than \$1,000:** Overpayments of less than one thousand dollars (\$1,000) to currently eligible cases shall be immediately processed by the department for recoupment.

(2) **Overpayments over \$1,000:** Overpayments of more than one thousand dollars (\$1,000) to currently eligible cases shall be referred to the office of inspector general (OIG) for a fraud action decision.

(3) Response to referral:

(a) The department shall be notified by the OIG within thirty (30) days whether fraud action has or will be taken on an open case. If no fraud action is contemplated, the case shall be immediately processed for either recoupment or cash recovery.

(b) If a response is not received from the OIG within thirty (30) days of referral, the county will initiate recoupment from currently eligible cases.

G. Fraud referral:

(1) Fraud elements:

(a) By state statute, Section 30-16-6, NMSA 1978, fraud is the intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices or representations.

(b) Fraud exists when:

(i) a person, by words or conduct, misrepresents facts to the department with the intention to deceive the department; and

(ii) because of the misrepresentation and the department's reliance upon it, the eligibility benefit group has obtained benefits from the department to which they were not entitled.

(2) Referral for investigation: If the department decides that fraud may exist, the case is referred to the OIG for further investigation or possible prosecution. [8.100.640.13 NMAC - N, 09/30/2013]

8.100.640.14 METHODS FOR COLLECTING OVERPAYMENTS:

A. Recoupment: The department shall retain the value of benefits collected to repay a claim against a participating eligibility determination group, whether or not the claim occurred because of an IHE, an AE, or an IPV. The eligibility determination group's monthly SNAP or cash assistance benefit amount will be reduced to recover any amount of a claim that was not repaid through a lump sum cash or SNAP benefit payment, unless a payment schedule has been negotiated with the eligibility determination group. Collection of a claim by the department may also be obtained through recoupment of unemployment compensation benefits, federal pay, income tax intercepts, or any other method established by the department.

(1) Recoupment from monthly benefit allotments: A claim may be recovered from an eligibility determination group currently participating in SNAP or cash assistance programs by reducing the eligibility determination group's monthly benefit allotment.

(2) Recoupment amount: The amount of benefits that will be recovered each month through benefit reduction will be determined by one the following methods.

(a) SNAP IHE and AE: The amount of reduction will be ten percent (10%) of the eligibility determination group's monthly SNAP benefit amount, or ten dollars (\$10) per month, or the agreed amount, whichever is greater.

(b) SNAP IPV: The SNAP benefit amount to be recovered will be twenty percent (20%) of the eligibility determination group's monthly SNAP benefit amount, or twenty dollars (\$20) per month, or the agreed amount, whichever is greater.

(c) Cash assistance errors: The cash assistance benefit amount to be recouped is equal to fifteen percent (15%) of the eligibility determination group's payment standard.

(d) Recoupment is the last step in the calculation prior to determining the monthly benefit amount.

B. Cash payment methods:

(1) Lump sum cash:

(a) If the eligibility determination group asks to make a lump sum cash payment or is financially able to repay the claim at one time, the restitution bureau shall collect a lump sum cash payment.

(b) An eligibility determination group will not be required to liquidate all of its resources to make a lump sum payment.

(c) If an eligibility determination group is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, the department shall accept this method of payment.

(d) If an eligibility determination group chooses to make a lump sum payment of benefits from their EBT account as full or partial payment of the claim, the department shall accept this method of repayment, to include:

(i) SNAP benefits to repay a SNAP claim; or

(ii) cash benefits to repay a cash assistance claim or medical assistance claim; or

(iii) cash benefits to repay a SNAP claim.

(2) Installment payment schedules:

(a) The department shall negotiate a payment schedule with the eligibility determination group for repayment of any amounts of the claim not repaid through a lump sum payment.

(b) Payments will be accepted in regular installments.

(c) An eligibility determination group may use its SNAP or cash assistance benefits as full or partial payment of any installment repayment to include:

(i) SNAP benefits to repay a SNAP claim; or

(ii) cash benefits to repay a cash assistance claim or medical assistance claim; or

(iii) cash benefits to repay a SNAP claim.

(3) Repayment of SNAP overpayments:

(a) If an eligibility determination group is currently receiving benefits, and a payment schedule is negotiated for repayment of a claim, the negotiated amount to be repaid each month in installment payments may not be less than the amount that could be recovered through benefit reduction.

(b) The amount to be repaid each month through installment payments will remain unchanged regardless of subsequent changes in the eligibility determination group's monthly SNAP benefit amount.

(4) Repayment of cash assistance overpayments:

(a) Repayments are used to recover cash assistance overpayments from cases no longer receiving cash assistance or where recovery of an overpayment from an active cash assistance case cannot be liquidated within twenty (20) months by recoupment.

(b) The amount the department tries to recover monthly through repayment is based on the following schedule, or, if a court order for repayment exists, in accordance with the court order. If the level of payment sought would cause an extreme hardship on the participant, the restitution bureau may agree to accept a lesser amount. Arrangements for repayments are made by the restitution bureau in all cases, except those where the participant is willing to repay the entire overpayment in a single payment.

(c) Repayment schedule:

Overpayment Amount	Monthly Repayment Payment
\$ 35 -\$100	\$ 5
\$101 - \$200	\$10
\$201 - \$300	\$15
\$301 - \$400	\$20
\$401 - \$500	\$25
\$501 - \$600	\$30
\$601 - \$700	\$35
\$701 - \$800	\$40
\$801 - \$900	\$45
\$901 or more	\$50

(5) Repayment of LIHEAP benefits:

(a) The eligibility determination group will have forty-five (45) days from the date of notification of the claim amount to repay the claim in full or make arrangements to make

regular installments to repay the claim.

(b) The department will initiate collection action to recover the claim amount on day forty-five (45) if the eligibility determination group does not repay or make arrangements to repay the amount owed.

(6) **Renegotiating payments:** The restitution bureau, the eligibility determination group, or both, have the option to initiate renegotiation of the payment schedule if either or both believes that the eligibility determination group's economic circumstances have changed enough to warrant such action.

(7) **Failure to pay:** If an eligibility determination group fails to make a payment in accordance with the established repayment schedule, (either a lesser amount is paid, or no payment is made), the restitution bureau shall send the eligibility determination group a notice explaining that no payment or insufficient payment was received.

(a) The notice informs an eligibility determination group that renegotiation of the payment schedule may be discussed with the restitution bureau.

(b) The notice also informs an eligibility determination group that unless the overdue payments are made or the restitution bureau is contacted to discuss renegotiation of the payment schedule, the SNAP benefit amount of a currently participating eligibility determination group against which a claim has been established will be reduced without an adverse action notice.

(c) If the eligibility determination group responds to the notice, one of the following actions will be taken by the restitution bureau.

(i) If the eligibility determination group makes the overdue payments and wishes to continue making payments based on the previous schedule, the eligibility determination group is permitted to do so.

(ii) If the eligibility determination group requests renegotiation, and if the restitution bureau concurs, a new payment schedule will be negotiated.

(iii) If the eligibility determination group requests renegotiation of the amount of its repayment schedule, but the restitution bureau believes that the eligibility determination group's economic circumstances have not changed enough to justify the requested settlement, renegotiation will continue until a settlement can be reached.

(d) The restitution bureau has the option to invoke SNAP benefit reduction against a currently participating eligibility determination group for repayment of a claim if a settlement cannot be reached.

(e) If a currently participating eligibility determination group against which a claim has been established fails to

respond to the notice, a benefit reduction will be initiated. If benefit reduction is initiated, no notice of adverse action will be required.

C. Other payment methods:

(1) **Federal tax intercept:** The department may offset an eligibility determination group's federal income tax return following notification to the eligibility determination group, and apply the offset to the oldest established SNAP claim.

(2) **Unemployment compensation benefit reduction:** The department may offset the unemployment compensation benefits of an adult eligibility determination group member, following notification to the eligibility determination group, and apply the offset to the oldest established active SNAP claim.

(3) **Federal pay:** The department may offset an eligibility determination group member's federal pay, following notification to the eligibility determination group, and apply the offset to the oldest established active SNAP claim.

(4) **Any other means:** The department may invoke collections by any other means available, including but not limited to, the use of private collection agencies, following notification to the eligibility determination group.

(5) **State tax intercept:** The department may offset a household's state income tax return following notification to the household, and apply the offset to the oldest established active cash claim.

[8.100.640.14 NMAC - N, 09/30/2013]

8.100.640.15 TERMINATING OVERPAYMENT CLAIMS: A terminated claim is a claim in which all collection action has ceased. The department may terminate a claim for any of the reasons described in Subsections A through E of this section. SNAP, LIHEAP, TANF, AFDC, GA and refugee cash assistance and support services for participation in the SNAP and TANF work programs can be terminated.

A. Invalid claims: The overpayment is determined to be invalid based on an administrative hearing decision, a court decision or a department determination that the claim was established in error.

B. Death: All adult members responsible for repayment of the claim are deceased.

C. Cost effectiveness: The department has determined that the cost of further collection action is likely to exceed the amount that can be recovered because:

(1) the cumulative amount of all existing claims against the eligibility determination group equals twenty-five dollars (\$25) or less; and

(2) a payment on the claim has not been received by the department in at least

ninety (90) days.

D. Failure to locate: There is documentation establishing that the eligibility determination group cannot be located and the existing claim has been delinquent for at least six (6) years.

E. Inability to pay: There is written documentation establishing the eligibility determination group has filed for bankruptcy and the department is named as a creditor.

F. Reinstating a terminated claim: A terminated claim may be reinstated when a new collection method or a specific event substantially increases the likelihood of further collections.

G. Uncollectible claims:
(1) A claim may be determined uncollectible after being held in suspense for three (3) years.

(2) A suspended or terminated claim may be offset against any SNAP benefit amount to be restored.

H. Overpaid claims:
(1) If a household has overpaid a claim, the department shall reimburse any overpaid amounts as soon as possible after the overpayment becomes known.

(2) The household may be reimbursed by whatever method the department deems appropriate after considering the household's circumstances.

I. Compromising the claim:

(1) If the full or remaining amount of a claim cannot be liquidated in three (3) years, the restitution bureau may compromise the claim by reducing it to an amount that will allow the household to make restitution within three (3) years.

(2) A compromised claim will be offset by any benefit that has not yet been restored to the household.

(3) Claims caused by a SNAP IPV will not be compromised.

[8.100.640.15 NMAC - N, 09/30/2013]

8.100.640.16 WRITING OFF A CLAIM: Writing off a claim means that the claim is no longer considered a receivable subject to any federal or state collection requirements such as the Treasury Offset Program at 31 CFR 285 or the Supplemental Nutrition Assistance Program at 7 CFR 273.18. A claim may be written off if the claim is at least six (6) years old and at least one of the provisions of Subsections A through E of 8.100.640.15 NMAC apply. Only SNAP, LIHEAP and NMW cash assistance claims may be written off.
[8.100.640.16 NMAC - N, 09/30/2013]

8.100.640.17 D O R M A N T BENEFIT ACCOUNTS: Stale benefit accounts are those SNAP and cash assistance accounts that have not been accessed for ninety (90) days from the most recent date of

withdrawal.

A. Offline accounts: If EBT accounts are not accessed for ninety (90) days, the department may store such benefits in an offline account.

(1) Notification: The department shall notify the eligibility determination group of this action before storing benefits in an offline account and how to reactivate the account.

(2) Reinstatement: An adult eligibility determination group member or authorized representative may contact the department or the EBT customer service help desk and request reinstatement of their EBT account.

(a) SNAP: SNAP benefits may be restored within three hundred sixty-four (364) days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

(b) Cash assistance: Cash assistance benefits may be restored within three hundred sixty-four (364) days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

B. Expungements: SNAP and cash assistance benefits that have not been accessed in excess of the threshold for each program will be expunged. All benefits will no longer be available to the eligibility determination group. The eligibility determination group loses all rights to expunged benefits.

(1) Stale benefit threshold:

(a) SNAP: SNAP benefits will be expunged after no activity within three hundred sixty-four (364) days of the initial date of benefit activity.

(b) Cash assistance: Cash assistance benefits which have had no activity within one hundred eighty (180) days of the initial date of benefit activity will be expunged.

(2) Notification: The contractor shall notify the department no less than five (5) days prior to expungement of the SNAP benefits. The department shall identify any SNAP claims against the eligibility determination group and shall apply upon expungement.

(a) SNAP: The department shall notify the eligibility determination group no less than thirty (30) days prior to the expungement of the SNAP benefits. Request from the participant to reinstate any benefit must be received prior to date of expungement.

(b) Cash assistance: The department shall attempt to notify the eligibility determination group no less than forty-five (45) days prior to the expungement of the cash assistance benefits. A request

from the participant to reinstate any benefit must be received prior to the date of expungement.

(3) Payments of claims against the eligibility determination group. The contractor shall notify the department no less than five (5) days prior to expungement of the SNAP or cash assistance benefits and any claims against the eligibility determination group shall be removed from the account and applied to the claims upon expungement. [8.100.640.17 NMAC - N, 09/30/2013]

History of 8.100.640 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.500 NMAC, Section 8, effective Oct. 1, 2013.

8.102.500.8 GENERAL REQUIREMENTS:

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

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

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

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

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

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

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

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

- | | |
|--------------------------|-------------------------------------|
| (a) one person | [\$791] <u>\$814</u> |
| (b) two persons | [\$1,072] <u>\$1,099</u> |
| (c) three persons | [\$1,352] <u>\$1,384</u> |
| (d) four persons | [\$1,633] <u>\$1,669</u> |
| (e) five persons | [\$1,913] <u>\$1,953</u> |
| (f) six persons | [\$2,194] <u>\$2,238</u> |
| (g) seven persons | [\$2,474] <u>\$2,523</u> |
| (h) eight persons | [\$2,755] <u>\$2,808</u> |

(i) add ~~[\$281]~~ \$285 for each additional person.

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

- | | |
|--------------------------|-------------------------------------|
| (1) one person | [\$931] <u>\$958</u> |
| (2) two persons | [\$1,261] <u>\$1,293</u> |
| (3) three persons | [\$1,591] <u>\$1,628</u> |
| (4) four persons | [\$1,921] <u>\$1,963</u> |
| (5) five persons | [\$2,251] <u>\$2,298</u> |
| (6) six persons | [\$2,581] <u>\$2,633</u> |
| (7) seven persons | [\$2,911] <u>\$2,968</u> |
| (8) eight persons | [\$3,241] <u>\$3,303</u> |
- (9)** add ~~[\$330]~~ \$335 for each additional person.

D. Standard of need:

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

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

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

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

- | | |
|--------------------------|--------|
| (a) one person | \$ 266 |
| (b) two persons | \$ 357 |
| (c) three persons | \$ 447 |
| (d) four persons | \$ 539 |

- (e) five persons \$ 630
- (f) six persons \$ 721
- (g) seven persons \$ 812
- (h) eight persons \$ 922
- (i) add \$91 for each additional person.

E. Special needs:

(1) **Special clothing allowance:** A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

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

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

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

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

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

F. Non-inclusion of legal guardian in benefit group: Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A/E 10/01/2013]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, Section 8, effective Oct. 1, 2013.

8.106.500.8 GA - GENERAL REQUIREMENTS:

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

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

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

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

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

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

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

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

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

- (a) one person [~~\$791~~] \$814
- (b) two persons [~~\$1,072~~] \$1,099
- (c) three persons [~~\$1,352~~] \$1,384
- (d) four persons [~~\$1,633~~] \$1,669
- (e) five persons [~~\$1,913~~] \$1,953
- (f) six persons [~~\$2,194~~] \$2,238
- (g) seven persons [~~\$2,474~~] \$2,523
- (h) eight persons [~~\$2,755~~] \$2,808

(i) add [~~\$281~~] \$285 for each additional person.

E. Standard of need:

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

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

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

F. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

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

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

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

H. Supplemental issuance: A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

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

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later

than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E 10/01/2013]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.139.500 NMAC, Section 8, effective Oct. 1, 2013.

8.139.500.8 BASIS OF ISSUANCE

A. Income standards: Determination of need in the food stamp program is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act [42 USC 9902(2)].

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands is 130 percent (130%) of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent (130%) of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by 130%, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 contiguous states and the District of Columbia.

E. Issuance table: The issuance table lists applicable income guidelines used to determine food stamp (FS) eligibility based on household size. Some amounts are increased to meet the needs of certain categorically eligible households. Some of the net income amounts listed are higher than the income limits for some household sizes. Households not categorically eligible for FS benefits must have income below the appropriate gross income limit for household size.

Household Size	Maximum Gross Monthly Income Categorical Eligibility at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum SNAP Monthly Allotment (benefit amount) 10/01/13 – 10/31/13	Maximum SNAP Monthly Allotment 11/01/13 – 09/30/14
1	[\$1,536] <u>\$1,580</u>	[\$1,211] <u>\$1,245</u>	[\$ 931] <u>\$958</u>	\$200	<u>\$189</u>
2	[\$2,081] <u>\$2,133</u>	[\$1,640] <u>\$1,681</u>	[\$1,261] <u>\$1,293</u>	\$367	<u>\$347</u>
3	[\$2,625] <u>\$2,686</u>	[\$2,069] <u>\$2,116</u>	[\$1,591] <u>\$1,628</u>	\$526	<u>\$497</u>
4	[\$3,170] <u>\$3,239</u>	[\$2,498] <u>\$2,552</u>	[\$1,921] <u>\$1,963</u>	\$668	<u>\$632</u>
5	[\$3,714] <u>\$3,791</u>	[\$2,927] <u>\$2,987</u>	[\$2,251] <u>\$2,298</u>	\$793	<u>\$750</u>
6	[\$4,259] <u>\$4,344</u>	[\$3,356] <u>\$3,423</u>	[\$2,581] <u>\$2,633</u>	\$952	<u>\$900</u>
7	[\$4,803] <u>\$4,897</u>	[\$3,785] <u>\$3,858</u>	[\$2,911] <u>\$2,968</u>	\$1,052	<u>\$995</u>
8	[\$5,348] <u>\$5,450</u>	[\$4,214] <u>\$4,294</u>	[\$3,241] <u>\$3,303</u>	\$1,202	<u>\$1,137</u>
\$ Each Additional Member	[+\$545] <u>+\$553</u>	[+\$429] <u>+\$436</u>	[+\$330] <u>+\$335</u>	+\$150	<u>+\$142</u>

F. Deductions and standards:

(1) Determination: Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) Yearly adjustment: The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st.

(3) Expense deductions and standards table:

Standard Deduction for Household Size of 1 through 3	[\$149.00] <u>\$ 152.00</u>
Standard Deduction for Household of 4	[\$160.00] <u>\$ 163.00</u>
Standard Deduction for Household Size of 5	[\$187.00] <u>\$ 191.00</u>
Standard Deduction for Household Size of 6 or more	[\$214.00] <u>\$ 219.00</u>
Earned Income Deduction (EID)	20%

Dependent Care Deduction	Actual Amount
Heating/Cooling Standard Utility Allowance (HCSUA)	[\$286.00] <u>\$ 314.00</u>
Limited Utility Allowance (LUA)	[\$106.00] <u>\$ 123.00</u>
Telephone Standard (TS)	[\$34.00-] <u>\$ 33.00</u>
Excess Shelter Cost Deduction Limit for Non-Elderly/Disabled Households	[\$469.00] <u>\$ 478.00</u>
Homeless Household Shelter Standard	\$143.00
Minimum Allotment for Eligible One and Two-Person Households	
<u>10/01/2013 – 10/31/2013</u>	\$16.00
<u>11/01/2013 – 09/30/2014</u>	<u>\$15.00</u>

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98, 11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A/E, 10/01/2006; A/E, 10/01/2007; A/E, 10/01/2008; A/E, 04/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 04/01/2010; A/E, 10/01/2010; A/E, 10/01/2011; A/E, 10/01/2012; A/E, 10/01/2013]

[Continued on page 683]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 291 M E D I C A I D
ELIGIBILITY - AFFORDABLE CARE
PART 400 E L I G I B I L I T Y
REQUIREMENTS**

8.291.400.1 ISSUING AGENCY:
New Mexico Human Services Department
(HSD).
[8.291.400.1 NMAC - N, 10-1-13]

8.291.400.2 SCOPE: The rule
applies to the general public.
[8.291.400.2 NMAC - N, 10-1-13]

**8.291.400.3 S T A T U T O R Y
AUTHORITY:** The New Mexico medicaid
program is administered pursuant to
regulations promulgated by the federal
department of health and human services
under Title XIX of the Social Security Act
as amended or by state statute. See NMSA
1978, Section 27-1-12 et seq.
[8.291.400.3 NMAC - N, 10-1-13]

8.291.400.4 D U R A T I O N :
December 31, 2013.
[8.291.400.4 NMAC - N, 10-1-13]

8.291.400.5 EFFECTIVE DATE:
October 1, 2013, unless a later date is cited
at the end of a section.
[8.291.400.5 NMAC - N, 10-1-13]

8.291.400.6 OBJECTIVE: The
objective of this rule is to provide eligibility
guidelines when determining eligibility
for the medical assistance division (MAD)
medicaid program and other health care
programs it administers. Processes for
establishing and maintaining this category
of eligibility are found in the affordable
care general provision chapter located
at 8.291.400 NMAC through 8.291.430
NMAC.
[8.291.400.6 NMAC - N, 10-1-13]

8.291.400.7 DEFINITIONS:

A. Action: an approval,
termination, suspension, or reduction of
medicaid eligibility or a reduction in the
level of benefits and services, including a
determination of income for the purposes of
imposing any premiums, enrollment fees, or
cost-sharing. It also means determinations
made by skilled nursing facilities and
nursing facilities to transfer or discharge
residents and adverse determination made
by a state with regard to the preadmission
screening and resident review requirements.
(431.201)

B. Advance payments of
the premium tax credit (APTC): payment of

the tax credits specified in Section 36B of the
Internal Revenue Code which are provided
on an advance basis to an eligible individual
enrolled in a qualified health plan through an
exchange.

C. Affordable Care
Act (ACA): the Patient Protection and
Affordable Care Act of 2010 (Public Law
111-148), as amended by the Health Care
and Education Reconciliation Act of 2010
(Public Law 111-152) and the Three Percent
Withholding Repeal and Job Creation Act
(Public Law 112-56.)

D. Affordable insurance
exchanges (exchanges): a governmental
agency or non-profit entity that meets the
applicable requirements and makes qualified
health plans available to qualified individuals
and qualified employers. Unless otherwise
identified, this term refers to state exchanges,
regional exchanges, subsidiary exchanges,
and a federally-facilitated exchange.

E. Agency: the single state
agency designated or established by a state
to administer or supervise the administration
of the medicaid state plan. This designation
includes a certification by the state attorney
general, citing the legal authority for the
single state agency to make rules and
regulations that it follows in administering
the plan or that are binding upon local
agencies that administer the plan.

F. Appeal record: the
appeal decision, all papers and requests
filed in the proceeding, and if a hearing was
held, the transcript or recording of hearing
testimony or an official report containing the
substance of what happened at the hearing,
and any exhibits introduced at the hearing.

G. Appeal request: a clear
expression, either verbally or in writing, by
an applicant, enrollee, employer, or small
business employer or employee to have any
eligibility determination or redetermination
contained in a notice issued, or pursuant to
future guidance on Section 1311(d)(4)(H) of
the ACA, reviewed by an appeals entity. (45
CFR 155.310 (g), 45 CFR 155.330 (1)(ii), 45
CFR 155.335 (h)(1)(ii), 45 CFR 155.715 (e)
or (f).

H. Appeals entity: a body
designated to hear appeals of eligibility
determinations or redeterminations contained
in notices, or notices issued in accordance
with future guidance on exemptions. (45
CFR 155.310(g), 45 CFR 155.330 (e)(1)(ii),
45 CFR 155.335 (h)(1)(ii), 45 CFR 155.715
(e) and (f), and Section 1311(d)(4)(H) of the
ACA).

I. Appeals decision:
a decision made by a hearing officer
adjudicating a fair hearing, including by a
hearing officer employed by an exchange
appeals entity to which the agency has
delegated authority to conduct such hearings.

J. Applicable modified
adjusted gross income (MAGI) standard:

the income standard for each category of
ACA eligibility. (42 CFR 435.911)

K. Application: the single
streamlined application required by ACA
and other medicaid applications used by the
agency. (42 CFR 435.4)

L. Authorized
representative: the agency must permit
applicants and beneficiaries to designate
an individual or organization to act
responsibly on their behalf in assisting
with the individual's application and
renewal of eligibility and other ongoing
communications with the agency.

(1) Such a designation must
be in writing including the applicant's
signature, and must be permitted at the time
of application and at other times. Legal
documentation of authority to act on behalf
of an applicant or beneficiary under state
law, such as a court order establishing legal
guardianship or a power of attorney, shall
serve in the place of written authorization by
the applicant or beneficiary.

(2) Representatives may be
authorized to:

(a) sign an application on the
applicant's behalf;

(b) complete and submit a renewal
form;

(c) receive copies of the
applicant or beneficiary's notices and other
communications from the agency; and

(d) act on behalf of the applicant
or beneficiary in all other matters with the
agency.

(3) The power to act as an
authorized representative is valid until
the applicant or beneficiary modifies the
authorization or notifies the agency that the
representative is no longer authorized to
act on his or her behalf, or the authorized
representative informs the agency that he or
she is no longer acting in such capacity, or
there is a change in the legal authority upon
which the individual's or organization's
authority was based. Such notice must be
in writing and should include the applicant
or authorized representative's signature as
appropriate.

(4) The authorized representative
is responsible for fulfilling all responsibilities
encompassed within the scope of the
authorized representation to the same extent
as the individual he or she represents,
and must agree to maintain, or be legally
bound to maintain, the confidentiality of
any information regarding the applicant or
beneficiary provided by the agency.

(5) As a condition of serving as an
authorized representative, a provider, staff
member or volunteer of an organization
must sign an agreement that he or she
will adhere to the regulations relating to
confidentiality (relating to the prohibition
against reassignment of provider claims
as appropriate for a health facility or an

organization acting on the facility's behalf), as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information. (42 CFR 435.923)

M. Beneficiary: an individual who has been determined eligible and is currently receiving medicaid. (42 CFR 435.4)

N. Citizenship: a national of the United States means a citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States. (8 USC 1101)

O. Code: the internal revenue code.

P. Coordinated content: information included in an eligibility notice regarding the transfer of the individual's or households electronic account to another insurance affordability program for a determination of eligibility.

Q. Current beneficiaries: individuals who have been determined financially eligible for medicaid using MAGI-based methods.

R. Dependent child: a child who is under the age of 19.

S. Documentary evidence: a photocopy facsimile, scanned or other copy of a document must be accepted to the same extent as an original document.

T. Electronic account: an electronic file that includes all information collected and generated by the state regarding each individual's medicaid eligibility and enrollment, including all documentation required to support the agency's decision on the case.

U. Exempt individuals: individuals within one (or more) of the following categories are exempt from mandatory enrollment in an alternative benefit plan:

(1) the individual is medically frail or otherwise an individual with special medical needs; for these purposes, the state's definition of individuals who are medically frail or otherwise have special needs must at least include those individuals with disabling mental disorders (including children with serious emotional disturbances and adults with serious mental illness);

(2) individuals with serious and complex medical conditions, individuals with a physical, intellectual or developmental disability that significantly impairs their ability to perform one or more activities of daily living;

(3) individuals with a disability determination based on social security criteria or, in states that apply more restrictive criteria than the supplemental security income program, the state plan criteria; or

(4) other exempt individuals

include individuals eligible and enrolled for medicaid as children with adoption assistance, foster care, or guardianship care under title IV-E, or as a medicaid recipient who is a former foster care child. (42 CFR 440.315)

V. Expedited appeals: the agency must establish and maintain an expedited review process for hearings when an individual requests or a provider requests, or supports the individual's request, that the time otherwise permitted for a hearing could jeopardize the individual's life or health or ability to attain, maintain, or regain maximum function. If the agency denies a request for an expedited appeal, it must use the standard appeal timeframe.

W. Family size: the number of persons counted as members of an individual's household. In the case of determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. In the case of determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

X. Families and children: individuals whose eligibility for medicaid is determined based on being a pregnant woman, a child younger than age 21, or a parent or other caretaker relative of a dependent child. It does not include individuals whose eligibility is based on other factors, such as blindness, disability, being age 65 years or older, or need for long-term care services.

Y. Flexibility in information and collection and verification: subject to approval by the secretary, the agency may request and use information from a source or sources alternative to those listed in 42 CFR 435.948(a).

Z. Insurance affordability program: a state medicaid program under Title XIX of the act, state children's health insurance program (CHIP) under Title XXI of the act, a state basic health program established under section 1331 of the Affordable Care Act and coverage in a qualified health plan through the exchange with cost-sharing reductions established under Section 1402 of the Affordable Care Act.

AA. MAGI-based income: (see 42 CFR 435.603) For the purposes of this section, MAGI-based income means income calculated using the same financial methodologies used to determine a modified adjusted gross income as defined in Section 36B(d)(2)(B) of the Internal Revenue Code, with the certain exceptions.

BB. Married couples: in the case of a married couple living together, each spouse will be included in the household of

the other spouse, regardless of whether they expect to file a joint tax return under section 6013 of the code or whether one spouse expects to be claimed as a tax dependent by the other spouse.

CC. Managed care organization (MCO): an organization licensed or authorized through an agreement among state entities to manage, coordinate and receive payment for the delivery of specified services to medicaid eligible members.

DD. Minimum essential coverage: the type of coverage an individual needs to have to meet the individual responsibility requirement under the Affordable Care Act. This includes individual market policies, job-based coverage, medicare, medicaid, CHIP, TRICARE and certain other coverage.

EE. Modified adjusted gross income (MAGI): has the meaning of 26 CFR 1.36B-1 Section (2).

FF. National of the United States: either a citizen of the United States, or a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

GG. Non-applicant: an individual who is not seeking an eligibility determination for himself or herself and is included in an applicant's or beneficiary's household to determine eligibility for such applicant or beneficiary.

HH. Non-citizen: has the same meaning as the term "alien" and includes any individual who is not a citizen or national of the United States (8 USC 1101(a)(22)).

II. Parent caretaker: a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care (as may, but is not required to, be indicated by claiming the child as a tax dependent for federal income tax purposes) and who is one of the following:

(1) the child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(2) the spouse of such parent or relative, even after the marriage is terminated by death or divorce; or

(3) other relatives within the fifth degree of relationship. (42 CFR 435.4)

JJ. Patient Protection and Affordable Care Act (PPACA): also known as the Affordable Care Act (ACA) and is the health reform legislation passed by the 111th congress and signed into law in March of 2010.

KK. Pregnant woman: a woman during pregnancy and the post-partum period, which begins on the date the pregnancy ends, extends 60 days, and then

ends on the last day of the month in which the 60-day period ends.

LL. Qualified non-citizen: Has the same meaning as the term "qualified alien" (8 USC Section 1641 (b) and (c)).

MM. Secure electronic interface: an interface which allows for the exchange of data between medicaid and other insurance affordability programs.

NN. Shared eligibility service: a common or shared eligibility system or service used by a state to determine individuals' eligibility for insurance affordability programs.

OO. Social security numbers: the agency must require as a condition of eligibility that each individual (including children) seeking medicaid furnish each of his or her social security numbers (SSN). The agency must verify the SSN furnished by an applicant or beneficiary to insure the SSN was issued to that individual, and to determine whether any other SSNs were issued to that individual.

PP. Timeliness standards: refer to the maximum period of time within which every applicant is entitled to a determination of eligibility.

QQ. Tax dependent: has the same meaning as the term "dependent" under Section 152 of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under Section 151 of the Internal Revenue Code for a taxable year. [8.291.400.7 NMAC - N, 10-1-13]

8.291.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance. [8.291.400.8 NMAC - N, 10-1-13]

8.291.400.9 LEGAL BASIS: HSD is the single state agency designated to administer the New Mexico Title XIX medicaid program in accordance with 42 CFR 431.10, single state agency. State authority is provided by Section 27-2-12 NMSA 1978 (Repl. 1984). Title XIX of the Social Security Act and United States department of health and human services rules establish the requirements for state plans for medical assistance. [8.291.400.9 NMAC - N, 10-1-13]

8.291.400.10 BASIS FOR DEFINING GROUP: Medicaid is a federally matched program that makes certain essential health care services available to eligible New Mexico residents who otherwise would not have the financial resources to obtain them. With certain exceptions, medicaid benefits are provided through the department's medicaid managed care program.

A. Requirements outlined in 8.291.400 through 8.298.600 NMAC provides eligibility requirements for the ACA related categories listed below.

B. ACA related categories include the following:

- (1) other adult;
- (2) parent caretaker;
- (3) pregnant women;
- (4) pregnancy-related services;
- (5) children under 19 years of age;
- (6) adult caretaker recipients who

are in transition to self-support due to the amount of spousal support; and

- (7) adult caretaker recipients who are in transition to self-support due to the amount of earned income.

[8.291.400.10 NMAC - N, 10-1-13]

8.291.400.11 CONTINUOUS

ELIGIBILITY: Recipients under 19 years of age will remain eligible for the 12 month certification period. The 12 months of continuous medicaid starts with the month of approval or re-determination and is separate from any months of presumptive or retroactive eligibility. This provision applies even if it is reported that income exceeds the applicable federal income poverty guidelines or there is a change in household composition. This provision does not apply when any of the following circumstances occur:

A. death of the eligible household member;

B. the eligible recipient or the family moves out of state;

C. the child turns 19 years of age;

D. failure to respond to an HSD request for information;

E. the individual or the individual's representative requests a voluntary termination of eligibility;

F. HSD determines that eligibility was erroneously granted at determination or renewal of eligibility because of agency error, fraud, abuse, or perjury attributed to the child or the child's representative; or

G. any factor of eligibility with the exception of increased income is not met.

[8.291.400.11 NMAC - N, 10-1-13]

8.291.400.12 REPORTING REQUIREMENTS:

A medicaid applicant or recipient is required to report any changes which might affect his or her eligibility. The following changes must be reported to a local income support division (ISD) office within 10 days from the date the change occurred:

A. living arrangements or change of address - any change in where an individual lives or receives mail must be reported;

B. household size - any change in the household size must be reported, this includes the death of an individual included in the assistance unit or budget group;

C. enumeration - any new social security number must be reported; or

D. income - any increase or decrease in the amount of income or change in the source of income must be reported.

[8.291.400.12 NMAC - N, 10-1-13]

8.291.400.13 PRESUMPTIVE ELIGIBILITY:

Presumptive eligibility provides medicaid benefits under one of the eligible groups outlined in section 10 of this part, starting with the date of the presumptive eligibility determination and ending with the last day of the following month.

A. Only one presumptive eligibility period is allowed per pregnancy or per 12 month period.

B. Presumptive eligibility determinations can be made only by individuals employed by eligible entities and certified as presumptive eligibility determiners by the medical assistance division. Determiners must notify the MAD claims processing contractor of the determination within 24 hours of the determination of presumptive eligibility.

(1) Processing presumptive eligibility information: MAD authorizes certain providers to make presumptive eligibility determinations based on the qualified entity. The provider must notify MAD through an established procedure of the determination within 24 hours of the determination of presumptive eligibility.

(2) Provider responsibility: The presumptive eligibility provider must process both presumptive eligibility as well as an application for medical assistance.

(3) Provider eligibility: Entities who may participate must be:

(a) a qualified hospital that participates as a provider under the medicaid state plan or a medicaid 1115 demonstration, notifies the medicaid agency of its election to make presumptive eligibility determinations and agrees to make presumptive eligibility determinations consistent with state policies and procedures; or

(b) a qualified hospital that has not been disqualified by the medicaid agency for failure to make presumptive eligibility determinations in accordance with applicable state policies and procedures or for failure to meet any standards that may have been established by the medicaid agency; or

(c) a federally qualified health center (FQHC), an Indian health service (IHS) facility, a department of health (DOH) clinic, a school, a children, youth and families department (CYFD) child care bureau staff member, a primary care provider who is contracted with at least one HSD contracted

MCO, or a head start agency; or

(d) other entities HSD has determined as an eligible presumptive participant.

C. Children's health insurance program (CHIP): to be eligible for CHIP, the child cannot have other health insurance coverage.

D. A presumptive eligibility provider must ensure that a signed application for medicaid coverage is submitted to the ISD office within 10 days.

E. For pregnant women, presumptive eligibility allows medicaid payment for ambulatory prenatal services furnished to a pregnant woman while her application for medicaid is being processed. Only one presumptive eligibility period is allowed per pregnancy. A pregnant woman can receive ambulatory prenatal care from the date of the presumptive eligibility determination until the end of the month following the month the determination was made.

(1) For presumptive eligibility, an approved presumptive eligibility provider must accept self attestation of pregnancy.

(2) The needs and income of the unborn child(ren) are considered when determining the woman's countable family size.

[8.291.400.13 NMAC - N, 10-1-13]

HISTORY OF 8.291.400 NMAC:
[RESERVED]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION
TITLE 8 SOCIAL SERVICES
CHAPTER 291 M E D I C A I D
ELIGIBILITY - AFFORDABLE CARE
PART 410 G E N E R A L
RECIPIENT REQUIREMENTS**

8.291.410.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD).
[8.291.410.1 NMAC - N, 10-1-13]

8.291.410.2 SCOPE: The rule applies to the general public.
[8.291.410.2 NMAC - N, 10-1-13]

8.291.410.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.291.410.3 NMAC - N, 10-1-13]

8.291.410.4 D U R A T I O N :
December 31, 2013.

[8.291.410.4 NMAC - N, 10-1-13]

8.291.410.5 EFFECTIVE DATE:
October 1, 2013, unless a later date is cited at the end of a section.

[8.291.410.5 NMAC - N, 10-1-13]

8.291.410.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.291.410.6 NMAC - N, 10-1-13]

8.291.410.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.

[8.291.410.7 NMAC - N, 10-1-13]

8.291.410.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.291.410.8 NMAC - N, 10-1-13]

8.291.410.9 G E N E R A L RECIPIENT REQUIREMENTS: To be eligible for medical assistance programs, applicants or recipients must meet specific requirements as outlined in this part.

[8.291.410.9 NMAC - N, 10-1-13]

8.291.410.10 ENUMERATION: The social security administration (SSA) is responsible for the assigning of social security numbers (SSN), a process called enumeration. HSD uses the SSN as a unique identifier for the individual and to verify income and resources where applicable.

A. Applicant or recipients: Except as noted in Subsection B below, it is mandatory for medicaid applicants or recipients to report their SSNs if they are requesting assistance. If an applicant or recipient does not have a valid SSN, he or she must apply for one. Applications for an SSN are available at any SSA or HSD income support division (ISD) office. Proof of the SSN application must be provided to ISD.

B. Non-applicants / recipients: Reporting an SSN is voluntary for individuals who are not seeking medicaid for themselves.

[8.291.410.10 NMAC - N, 10-1-13]

8.291.410.11 AGE: The age of the applicant is verified to determine if he or she is under or over the specified age limit.

A. Age of child: Verification of the age, including through

self-attestation, of children is mandatory for medical assistance for children programs.

B. Age of adults: Age of adult member(s) is verified if questionable.

C. Documents that can be used to verify age can be found in 8.100.130 NMAC.

[8.291.410.11 NMAC - N, 10-1-13]

8.291.410.12 RELATIONSHIP: Verification of relationship is mandatory if questionable. The relationship between the parent, caretaker relative, or other adult and others included in the benefit group must be verified if questionable.

A. Documents that can be used to verify relationship can be found at 8.100.130 NMAC.

B. The documentary evidence must contain the names of related individuals in question.

(1) If the relative is other than a parent, the relationship must be traced.

(2) In situations in which both parents are living in the home and the father's paternity has not been established by operation of law or determined through court order, it will be necessary to establish the relationship of the child to the father by completion of the child support enforcement division (CSED) acknowledgment of paternity packet.

(3) If the child is living with a relative, it will be necessary to establish the relationship of the absent parents. A CSED acknowledgement of paternity will be an acceptable means of establishing relationship.

C. The following relatives are within the fifth degree of relationship:

(1) father (biological or adoptive);
(2) mother (biological or adoptive);

(3) grandfather, great grandfather, great great grandfather, great great great grandfather;

(4) grandmother, great grandmother, great great grandmother, great great great grandmother;

(5) spouse of child's parent (stepparent);

(6) spouse of child's grandparent, great grandparent, great great grandparent, great great great grandparent (step grandparent);

(7) brother, half-brother, brother-in-law, step-brother;

(8) sister, half-sister, sister-in-law, step-sister;

(9) uncle of the whole or half blood, uncle-in-law, great uncle, great great uncle;

(10) aunt of the whole or half blood, aunt-in-law, great aunt, great great aunt;

(11) first cousin and spouse of first cousin;

(12) son or daughter of first cousin (first cousin once removed);

(13) son or daughter of great aunt or great uncle (first cousin once removed) and spouse; or

(14) nephew or niece and spouses.

D. Effect of divorce or death on relationship: A relationship based upon marriage, such as the "in-law" or "step" relationships, continues to exist following the dissolution of the marriage by divorce or death.

[8.291.410.12 NMAC - N, 10-1-13]

8.291.410.13 I D E N T I T Y : Verification of identity for the applicant is mandatory at application if questionable.

A. The following may be used as proof of identity, provided that such document has a photograph or identifying information including, but not limited to, name, age, gender, race, height, weight, eye color, or address:

(1) driver's license that includes a photograph and issued by a state or outlying possession of the U.S; if the driver's license does not contain a photograph, identifying information on the driver's license shall be included such as name, date of birth, sex, height, color of eyes, and address;

(2) voter's registration card;

(3) U.S. military card or draft record;

(4) identification card issued by the federal, state, or local government agencies or entities; if the identification card does not contain a photograph, identifying information on the identification card must be included such as name, date of birth, sex, height, color of eyes, and address;

(5) military dependent's identification card;

(6) native American tribal documents;

(7) US coast guard mariner card;

(8) for children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records;

(9) two documents containing consistent information that corroborates an applicant's identity; such documents include, but are not limited to, employer identification cards, high school and college diplomas (including high school equivalency diplomas), marriage certificates, divorce decrees, and property deeds or titles;

(10) finding of identity from a federal or state government agency; or

(11) a finding of identity from a federal agency or another state agency, including but not limited to a public assistance, law enforcement, internal revenue or tax bureau, or corrections agency, if the agency has verified and certified the identity.

B. For individuals under the age of 18 who are unable to produce a

document listed above, the following are acceptable to establish identity only:

(1) school record or report card;

(2) clinic, doctor or hospital record; or

(3) day care or nursery school record.

C. If an individual under the age of 18 is unable to produce one of the identity documents listed, then the individual must provide one of the following:

(1) the minor's parent or legal guardian completes on Form I-9 Section 1-"employee information and verification" and in the space for the minor's signature, the parent or legal guardian writes the words "minor under age 18.";

(2) the minor's parent or legal guardian completes on Form I-9 the "preparer/translator certification.";

(3) the employer or the recruiter or referrer for a fee writes in Section 2-"employer review and verification" under List B, in the space after the words "document identification#," the words "minor under the age 18."; or

(4) individuals with handicaps who are unable to produce one of the identity documents listed in the standalone or secondary tier documentation, and who are being placed into employment by a nonprofit organization, association or as part of a rehabilitation program, may follow the procedures for establishing identity provided in this section for minors under the age of 18, substituting where appropriate, the term "special placement" for "minor under age 18," and permitting in addition to a parent or legal guardian, a representative of the nonprofit organization, association or rehabilitation program placing the individual into a position of employment, to fill out and sign in the appropriate section on the Form I-9; for purposes of this section, the term "individual with handicaps" means any person who:

(a) has a physical or mental impairment which substantially limits one or more of a person's major life activities;

(b) has a record of such impairment; or

(c) is regarded as having such impairment.

[8.291.410.13 NMAC - N, 10-1-13]

8.291.410.14 C I T I Z E N S H I P / ALIEN STATUS: To be eligible for medicaid, an individual must be a citizen of the United States or meet the alien/immigrant eligibility criteria in 8.200.410 NMAC. Verification of citizenship and alien status is mandatory at initial determination of medicaid eligibility. The applicant or recipient is required to submit documentary evidence as verification. Documentation will be verified by using a two tiered process:

A. **Tier one:** Standalone

evidence of citizenship can be verified using the following:

(1) a US passport issued by the department of state (without regard to any expiration date as long as the passport or card was issued without limitation);

(2) a certificate of naturalization;

(3) a certificate of US citizenship;

(4) a valid state-issued driver's license if the state issuing the license requires proof of US citizenship, or obtains and verifies a social security number from the applicant who is a citizen before issuing such license;

(5) documentation issued by a federally recognized Indian tribe, as published in the federal register by the bureau of Indian affairs within the U.S. department of the interior and including tribes located in the state that has an international border, which:

(a) identifies the federally recognized tribe that issued the document;

(b) identifies the individual by name; and

(c) confirms the individual's membership, enrollment, or affiliation with the tribe;

(6) documents include, but are not limited to:

(a) a tribal enrollment card;

(b) a certificate of degree of Indian blood;

(c) a tribal census document; and

(d) documents on tribal letterhead, issued under the signature of the appropriate tribal official, that meet the requirements of documentary evidence issued by a federally recognized Indian tribe, as published by the bureau of Indian affairs within the U.S. department of the interior, and including tribes located in a state that has an international border, which identifies the federally recognized Indian tribe that issued the document, identifies the individual by name, and confirms the individual's membership, enrollment, or affiliation with the tribe.

B. **Tier two:** Documents must accompany an identity document that includes a photograph or other identifying information such as name, age, sex, face, height, color of eyes, date of birth and address.

(1) A driver's license or identification card containing a photograph, issued by a state or an outlying possession of the United States. If the driver's license or identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address.

(2) School identification card with a photograph.

(3) Voter's registration card.

(4) U.S. military card or draft record.

(5) Identification card issued by federal, state, or local government agencies or entities; if the identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address.

(6) Military dependent's identification card.

(7) Native American tribal documents.

(8) United States coast guard merchant mariner card.

C. Evidence of citizenship: If an applicant does not provide documentary evidence from the list of primary documents, the following must be accepted as satisfactory evidence to establish citizenship if also accompanied by a document list in 8.291.410 NMAC.

(1) A U.S. public birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam, the Virgin Islands of the U.S. (if born on or after January 13, 1941), American Samoa, Swain's Island, or the Commonwealth of the Northern Mariana Islands (CNMI) (after November 4, 1986 (CNMI local time.)) The birth record document may be issued by the state, commonwealth, territory, or local jurisdiction. If the document shows the individual was born in Puerto Rico, the Virgin Islands of the U.S., or the CNMI before these areas became part of the U.S., the individual may be a collectively naturalized citizen.

(2) A certification of report of birth, issued to U.S. citizens who were born outside the U.S.

(3) A report of birth abroad of a U.S. citizen.

(4) A certification of birth.

(5) A U.S. citizen I.D. card.

(6) A Northern Mariana's identification card, issued to a collectively naturalized citizen, who was born in the CNMI before November 4, 1986.

(7) A final adoption decree showing the child's name and U.S. place of birth, or if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth.

(8) Evidence of U.S. civil service employment before June 1, 1976.

(9) U.S. military record showing a U.S. place of birth.

(10) A data match with the systematic alien verification for entitlements (SAVE) or any other process established by the department of homeland security to verify that an individual is a citizen.

(11) Documentation that a child meets the requirements of section 101 of the Child Citizenship Act of 2000 (8 U.S.C. 1431).

(12) Medical records, including but not limited to hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.

(13) Life, health, or other insurance record that indicates a U.S. place of birth.

(14) Official religious record recorded in the U.S. showing that the birth occurred in the U.S.

(15) School records, including pre-school, head start, and daycare, showing the child's name and U.S. place of birth.

(16) Federal or state census record showing U.S. citizenship or a U.S. place of birth.

(17) If the applicant does not have one of the documents listed in the stand alone or second tier sections, he or she must submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, date of birth, and place of U.S. birth. The affidavit does not have to be notarized.

D. Exemptions: The following individuals are exempt from providing documentation of citizenship and identity:

(1) individuals receiving supplemental security income benefits under Title XVI of the Social Security Act;

(2) individuals entitled to or enrolled in any part of medicare;

(3) individuals receiving social security disability insurance benefits under Section 223 of the Social Security Act or monthly benefits under Section 202 of the act, based on the individual's disability, as defined in Section 223(d) of the act;

(4) individuals who are in foster care and who are assisted under Title IV-B of the Social Security Act; or

(5) individuals who are recipients of foster care maintenance or adoption assistance payment under Title IV-E of the act.

[8.291.410.14 NMAC - N, 10-1-13]

8.291.410.15 RESIDENCE: To be eligible for medicaid, applicants or recipients must be living in New Mexico on the date of application or final determination of eligibility and have demonstrated an intention to remain in the state.

A. Establishing residence: Residence in New Mexico is established by living in the state and carrying out the types of activities associated with day-to-day living, such as occupying a home, enrolling child(ren) in school, getting a state driver's license, or renting a post office box. An applicant or recipient who is homeless is considered to have met the residence requirements if he or she intends to remain in the state.

B. Recipients receiving benefits out-of-state: Applicants or recipients who receive financial or medical assistance in another state which makes residence in that state a condition of eligibility are considered residents of that state until the ISD office receives verification from the other state agency indicating that it has been notified by an applicant or recipient of the abandonment of residence in that state.

C. Individuals court ordered into full or partial responsibility of the state children youth and families department (CYFD): When CYFD places a child in a new state of residence, the new state of residence is responsible for the provision of medicaid; however, New Mexico must provide limited coverage for services that are part of the New Mexico medicaid benefit package and not available in the new state of residence.

D. A b a n d o n m e n t : Residence is not abandoned by temporary absences. Temporary absences occur when recipients leave New Mexico for specific purposes with time-limited goals. Residence is considered abandoned when the applicant or recipient leaves New Mexico for any of the following reasons:

(1) intends to establish residence in another state;

(2) for no specific purpose with no clear intention of returning;

(3) applies for financial, food or medical assistance in another state which makes residence in that state a condition of eligibility; or

(4) for more than 30 days, without notifying HSD of his or her departure or intention of returning.

E. Dispute in residency: If there is a dispute in state residency, the individual may be considered a resident in the state in which the individual is physically located.

[8.291.410.15 NMAC - N, 10-1-13]

8.291.410.16 NON-CONCURRENT

RECEIPT OF ASSISTANCE: A medicaid applicant or recipient receiving medicaid in another state is not eligible for medicaid in accordance with 8.200.410 NMAC.

[8.291.410.16 NMAC - N, 10-1-13]

8.291.410.17 APPLICATIONS FOR

OTHER BENEFITS: As a condition of eligibility, a medicaid applicant or recipient must take all necessary steps to obtain any benefits they are entitled to in accordance with 8.200.410 NMAC.

[8.291.410.17 NMAC - N, 10-1-13]

8.291.410.18 PROCESSING APPLICATIONS:

A. Applicants or recipients may submit applications to a county office in person, through an authorized representative,

by mail or electronically.

(1) Requesting application forms: Applicants or recipients may request an application form by mail or by telephone. In either case, the ISD staff must mail the requested form to the applicant within 24 hours.

(2) Application: An applicant has the right to file an application as long as the application contains the applicant's name, address and the signature of a responsible adult household member or an authorized representative if one is designated.

B. Interviews: In-person interviews are not required as part of the application or re-certification process for a determination of eligibility.

(1) Applications will be processed in accordance with time standards and procedures set forth in federal regulations governing the medical assistance programs.

(2) Single interview: If a face to face or a telephonic interview is requested, a single interview will be held with an applicant who applies jointly for all benefits HSD administers.

(3) Application processing: As a result of differences in all HSD's benefit application processing procedures and timeliness standards, eligibility for medical benefits may be determined prior to eligibility determination for other benefits that HSD administers.

(4) Application is denied: If a medicaid application is denied, a new application for other assistance programs is not required if other assistance programs were requested.

(5) Responsibility in application or recertification process: The burden of proving eligibility for medicaid is on the applicant or recipient if the department is unable to verify required information. An individual has the primary responsibility for providing required information and documents and for taking the action necessary to establish eligibility.

(a) An applicant or recipient's failure to provide documentation or to take required action results in a decision that eligibility does not exist.

(b) An applicant or recipient must give the department permission to contact other individuals, agencies, or sources of information which are necessary to establish eligibility.

C. Redetermination/recertification: A complete review of all conditions of eligibility which are subject to change will be conducted by ISD no later than 12 months from the month of approval or redetermination and is separate from any months of presumptive or retroactive eligibility.

(1) Administrative renewal: 90 days prior to expiration, HSD will utilize electronic verification sources to verify

financial eligibility and will proceed with the re-determination or re-certification process.

(2) If an administrative renewal cannot be completed for any reason, 45 days prior to redetermination or recertification HSD will mail a pre-populated application with the recipient's previously reported information.

(3) An eligible recipient's failure to provide necessary verification may result in medicaid ineligibility. The recertifying eligible recipient is responsible for providing verification of eligibility if administrative renewal cannot be completed.

D. An applicant or a recertifying eligible recipient must give HSD permission to contact other individuals, agencies, or electronic sources for information which is necessary to establish initial and continued eligibility.

[8.291.410.18 NMAC - N, 10-1-13]

8.291.410.19 VERIFICATION METHODS: Verification will be obtained through various methods. Not all methods will necessarily be used in each case. This section details the specific types of methods to be used in establishing the applicant or recipient's eligibility.

A. Prior case data not subject to change: Verification of an eligibility factor not subject to change, which previously has been verified and accepted, will not be subject to re-verification. The caseworker shall not ask an applicant or recipient for verification of any eligibility factors which have previously been established through documents in HSD's possession and are not subject to change. Such factors include U.S. citizenship, birth date, relationship and enumeration.

B. Electronic data: Every applicant or recipient shall be informed that the information provided is subject to verification through state, federal and contracted data systems. The caseworker shall not require further verification of such information unless it is disputed by the applicant or the information is otherwise questionable as defined in 8.100.130 NMAC.

C. Self attestation is the information that a client or recipient reports on an application and is certifying as true and correct to the best of their knowledge.

D. Documentary evidence is the primary source of verification for information not established in prior case information or electronic source data. Obtaining necessary verification through documentary evidence readily available to the applicant or recipient shall always be explored before collateral contacts or sworn statements are used. Documentary evidence consists of a written confirmation of a household's circumstances. Acceptable verification is not limited to any single type of document. The types of documents which

may be accepted as verification are specified under the sections pertaining to verification methods later in this chapter. The caseworker shall provide applicants or recipients with receipts for verification documents provided subsequent to the interview.

E. Collateral contact is defined at 8.100.130 NMAC.

F. Sworn statement is defined at 8.100.130 NMAC.

[8.291.410.19 NMAC - N, 10-1-13]

8.291.410.20 VERIFICATION STANDARDS: Below is a list of standards HSD will utilize to determine eligibility for medicaid categories defined at 8.291.400.10 NMAC. If verification cannot be confirmed utilizing the various methods described in each section, HSD may request additional information. If information is provided and becomes questionable as defined at 8.100.130 NMAC, then additional documentation must be provided as described by 8.100.130 NMAC.

A. Income: Verification of income is mandatory for ACA related medicaid programs and HSD will utilize electronic sources and documents provided by the applicant or recipient to verify an applicant or recipient's income. Examples of acceptable documentation can be found at 8.100.130 NMAC.

B. Residency: Self attestation is an acceptable form of verification of residency.

C. Age: Self attestation is an acceptable form of verification of age.

D. Enumeration: HSD will utilize electronic sources to verify an applicant or recipient's enumeration.

E. Citizenship: HSD will utilize electronic sources to verify an applicant or recipient's citizenship.

F. Immigration status: HSD will utilize electronic sources to verify an applicant or recipient's immigration status.

G. Relationship: Self attestation is an acceptable form of verification of relationship.

H. Receipt of other benefits: HSD will utilize electronic sources to verify an applicant or recipient's receipt of other benefits.

[8.291.410.20 NMAC - N, 10-1-13]

8.291.410.21 TIMEFRAME FOR DISPOSITION: An applicant or recipient is given a timeframe to provide necessary verification in order for ISD to process an application within the time frame set forth in this section. This requirement pertains to requests for verification for initial applications as well as for verification for ongoing eligibility. ISD shall make an eligibility decision within three work days of the receipt of all necessary verification.

A. The application disposition deadline for medical assistance programs is 45 days from the date of application.

(1) Day one: the date of application is the first day.

(2) No later than day 44, or by the preceding work day if day 44 falls on a weekend or holiday:

(a) if verification provided establishes eligibility or ineligibility; or

(b) if the day following day 44 is not a work day, then decision must be made earlier than day 44 to allow for mailing on or before the deadline.

(3) No later than day 45 by the next work day if day 45 falls on a weekend or holiday, if needed verification is not provided until day 42 - 44.

(4) Day 45 by the next work day if day 45 falls on a weekend or holiday, if needed verification is provided on day 45, or is not provided.

(5) After day 45:

(a) When an applicant or recipient requests one or more 10-day extensions of time to provide needed verification. An applicant or recipient is entitled to receive up to three 10-day extensions of time upon request.

(b) The eligibility decision must be made as soon as possible and within three work days of receipt of all necessary verification.

B. Tracking the application processing time limit: The application processing time limit begins on the day the signed application is received in the ISD county office.

C. Delayed determination: If an eligibility determination is not made within the required application processing time limit, the applicant or recipient shall be notified in writing of the reason for the delay and that the applicant or recipient has the right to request a fair hearing regarding ISD's failure to act within the time limit.

D. Extensions of time: Up to three ten-calendar day extensions for providing verification shall be granted at the applicant or recipient's request. The extension begins at the end of the application processing time period or at the end of the previous extension.

E. Lack of verification: If verification needed to determine eligibility is not provided and no extension of time is requested, the application will be denied on the 45th day after the application date or by the next work day if 45th day falls on weekend or holiday.

[8.291.410.21 NMAC - N, 10-1-13]

HISTORY OF 8.291.410 NMAC:
[RESERVED]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 291 M E D I C A I D
ELIGIBILITY - AFFORDABLE CARE
PART 420 RECIPIENT RIGHTS
AND RESPONSIBILITIES**

8.291.420.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD).
[8.291.420.1 NMAC - N, 10-1-13]

8.291.420.2 SCOPE: The rule applies to the general public.
[8.291.420.2 NMAC - N, 10-1-13]

8.291.420.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.291.420.3 NMAC - N, 10-1-13]

8.291.420.4 D U R A T I O N :
December 31, 2013.
[8.291.420.4 NMAC - N, 10-1-13]

8.291.420.5 EFFECTIVE DATE:
October 1, 2013, unless a later date is cited at the end of a section.
[8.291.420.5 NMAC - N, 10-1-13]

8.291.420.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.291.420.6 NMAC - N, 10-1-13]

8.291.420.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.291.420.7 NMAC - N, 10-1-13]

8.291.420.8 RIGHT TO APPLY:
A. An individual has the right to apply for medicaid and other health care programs MAD administers regardless of whether it appears he or she may be eligible.

(1) The income support division (ISD) determines eligibility for medicaid, unless otherwise determined by another entity as stated in another NMAC rule. A decision shall be made promptly on applications in accordance with the timeliness standards set

forth in 8.291.410 NMAC.

(2) Individuals who might be eligible for supplemental security income (SSI) are referred to the social security administration (SSA) office to apply.

B. **Application:** A signed electronic or paper application, as defined in 8.291.410 NMAC, is required from the applicant, an authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant may complete a joint application for all benefits that HSD administers. A recipient will not be required to submit an application if there is a need to switch from one medicaid benefit to another unless a redetermination is due in that month or the following month. Additional information may be requested if the new benefit requires additional information and verification of eligibility.
[8.291.420.8 NMAC - N, 10-1-13]

8.291.420.9 FREEDOM OF CHOICE OF PROVIDER: Refer to 8.200.430.10 NMAC.
[8.291.420.9 NMAC - N, 10-1-13]

8.291.420.10 RELEASE OF INFORMATION/CONFIDENTIALITY:
Refer to 8.200.430.11 NMAC.
[8.291.420.10 NMAC - N, 10-1-13]

8.291.420.11 RIGHT TO ADEQUATE NOTICE AND ADMINISTRATIVE HEARING: Refer to 8.200.430.12 NMAC.
[8.291.420.11 NMAC - N, 10-1-13]

8.291.420.12 ASSIGNMENT OF MEDICAL SUPPORT RIGHTS: Refer to 8.200.430.13 NMAC.
[8.291.420.12 NMAC - N, 10-1-13]

8.291.420.13 ELIGIBLE RECIPIENT RESPONSIBILITY TO COOPERATE WITH ASSIGNMENT OF SUPPORT RIGHTS: Refer to 8.200.430.14 NMAC.
[8.291.420.13 NMAC - N, 10-1-13]

8.291.420.14 ELIGIBLE RECIPIENT RESPONSIBILITY TO GIVE PROVIDER PROPER IDENTIFICATION AND NOTICE OF ELIGIBILITY CHANGES: Refer to 8.200.430.15 NMAC.
[8.291.420.14 NMAC - N, 10-1-13]

8.291.420.15 ELIGIBLE RECIPIENT FINANCIAL RESPONSIBILITIES: Refer to 8.200.430.16 NMAC.
[8.291.420.15 NMAC - N, 10-1-13]

8.291.420.16 RESTITUTION:
Refer to 8.200.430.17 NMAC.

[8.291.420.16 NMAC - N, 10-1-13]

8.291.420.17 THIRD PARTY LIABILITY: Refer to 8.200.420.12 NMAC.
[8.291.420.17 NMAC - N, 10-1-13]

8.291.420.18 MAD ESTATE RECOVERY: Refer to 8.200.420.13 NMAC.
[8.291.420.18 NMAC - N, 10-1-13]

HISTORY OF 8.291.420 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 291 MEDICAID ELIGIBILITY - AFFORDABLE CARE
PART 430 FINANCIAL RESPONSIBILITY REQUIREMENTS

8.291.430.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.291.430.1 NMAC - N, 10-1-13]

8.291.430.2 SCOPE: The rule applies to the general public.
[8.291.430.2 NMAC - N, 10-1-13]

8.291.430.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.291.430.3 NMAC - N, 10-1-13]

8.291.430.4 DURATION: December 31, 2013.
[8.291.430.4 NMAC - N, 10-1-13]

8.291.430.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.291.430.5 NMAC - N, 10-1-13]

8.291.430.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.291.430.6 NMAC - N, 10-1-13]

8.291.430.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.291.430.7 NMAC - N, 10-1-13]

8.291.430.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.291.430.8 NMAC - N, 10-1-13]

8.291.430.9 GENERAL NEED DETERMINATION: To be eligible for medicaid, an applicant/recipient must meet specific income standards.
[8.291.430.9 NMAC - N, 10-1-13]

8.291.430.10 FEDERAL POVERTY LEVEL (FPL): This part contains the monthly federal poverty level table for use in determining monthly income standards for categories of eligibility outlined in 8.291.400.10 NMAC:

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	\$958	\$1,274	\$1,322	\$1,820	\$2,298	\$2,394	\$2,873
2	\$1,293	\$1,720	\$1,784	\$2,456	\$3,102	\$3,232	\$3,878
3	\$1,628	\$2,165	\$2,246	\$3,093	\$3,906	\$4,069	\$4,883
4	\$1,969	\$2,611	\$2,709	\$3,729	\$4,710	\$4,907	\$5,888
5	\$2,298	\$3,056	\$3,171	\$4,366	\$5,514	\$5,744	\$6,893
6	\$2,633	\$3,502	\$3,633	\$5,002	\$6,318	\$6,582	\$7,898
7	\$2,968	\$3,947	\$4,096	\$5,639	\$7,122	\$7,419	\$8,903
8	\$3,303	\$4,393	\$4,558	\$6,275	\$7,926	\$8,257	\$9,908
+1	\$335	\$446	\$462	\$636	\$804	\$838	\$1,005

[8.291.430.10 NMAC - N, 10-1-13]

8.291.430.11 I N C O M E STANDARD FOR PARENT CARETAKER ELIGIBILITY: This part contains the fixed monthly standard for individuals eligible for parent caretaker medicaid:

HOUSEHOLD SIZE	MONTHLY INCOME LIMIT
1	\$451
2	\$608
3	\$765
4	\$923
5	\$1,080
6	\$1,238
7	\$1,395
8	\$1,553
+1	\$158

[8.291.430.11 NMAC - N, 10-1-13]

8.291.430.12 I N C O M E DISREGARD: A disregard of five percent of 100 percent of the current FPL, according to the individual's budget group size, will be given according to the ACA related category of eligibility. This income disregard will be subtracted from the countable income.

[8.291.430.12 NMAC - N, 10-1-13]

8.291.430.13 L I V I N G ARRANGEMENT: All individuals listed on the application must be evaluated according to their living arrangement to determine if they can be included in an assistance unit or budget group.

A. Extended living in the home: An individual may be physically absent from the home for longer or shorter periods of time and be a member of the assistance unit or budget group. Extended living in the home includes:

- (1) attending college or boarding school;
- (2) receiving treatment in a title XIX medicaid facility (including institutionalized when meeting a nursing facility (NF) level of care (LOC) and intermediate care facilities for the mentally retarded (ICF-MRs); when an individual is a member of an ACA related assistance unit, eligibility for a long-term care medicaid category must be evaluated; the individual will remain eligible for an ACA related category during the determination of eligibility for long-term care medicaid, and if found ineligible will remain in the ACA related category;

(3) emergency absences: an individual absent from the home due to an emergency, who is expected to return to the household, continues to be a member of the

household;

(4) foster care placements: a child removed from the home by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department) will be considered to be living in the home until an adjudicatory hearing takes place; if the adjudicatory hearing results in custody being granted to some other entity, the child will be removed from the assistance unit and budget group;

(5) a stay in a detention center:
 (a) regardless of adjudication status the individual continues to be a member of the household but will not be medicaid eligible;

(b) once an adjudicated individual leaves the detention center to receive inpatient services in a medical institution, the individual may be eligible during treatment if all other criteria are met; eligibility ceases to exist when the individual returns to the detention center.

B. Extended living in the home also includes:

- (a) residential treatment centers;
- (b) group homes; and
- (c) free-standing psychiatric hospitals.

C. Living in the home with a parent caretaker: To be included in the assistance unit, a child must be living, or considered to be living, in the home of:

(1) a natural or adoptive or step parent (there is a presumption that a child born to a married woman is the child of the husband); or

(2) a specified relative who:

(a) is related within the fifth degree of relationship by blood, marriage or adoption, as determined by New Mexico statute Chapter 45 - Uniform Probate Code; a relationship based upon marriage, such as "in-law" or "step" relationships, continues to exist following the dissolution of the marriage by divorce or death; and

(b) assumes responsibility for the day-to-day care and control of the child; the determination of whether an individual functions as the specified relative shall be made by the specified relative unless other information known to the worker clearly indicates otherwise.

(3) a child considered to be living in the home: a child is considered to be part of the assistance unit and budget group as evidenced by the child's customary physical presence in the home; if a child is living in more than one household, the following applies:

(a) the custodial parent is the parent with whom the child lives the greater number of nights; or

(b) if the child spends equal amounts of time with each household, the child shall be considered to be living in the household of the parent with the higher

MAGI.

[8.291.430.13 NMAC - N, 10-1-13]

8.291.430.14 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUPS:

At the time of application, an applicant or recipient and the department shall identify everyone who is to be considered for inclusion in an assistance unit and budget group. The composition of the assistance unit and budget group is based on the following factors:

A. Assistance group: the assistance unit includes an individual who applies and who is determined eligible under one of the categories of eligibility outlined in 8.291.400.10 NMAC.

B. Budget group: the budget group consists of the following types and will be established on an individual basis:

(1) Tax filer(s): households that submit an application where an individual has either filed for federal taxes or will be claimed as a dependent on federal income taxes for the current year.

(a) The budget group will consist of individuals who are listed on the application as the taxpayer and tax dependents.

(b) If there are multiple taxpayers listed on a single application, the budget group(s) will be established based on who the taxpayer claims as a dependent (including the taxpayer). Only the taxpayer and dependents listed on the application will be considered as part of the budget group.

(c) In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return, a separate tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse.

(d) Exceptions to tax filer rules: the following individuals will be treated as non-filers:

(i) individuals other than a spouse or a biological, adopted, or step child who expect to be claimed as a tax dependent by another taxpayer outside of the household;

(ii) individuals under 19 who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return; and

(iii) individuals under 19 who expect to be claimed as a tax dependent by a non-custodial parent.

(2) Non-Filer(s) are individuals applying for medicaid who have not filed for taxes, do not intend to file for federal taxes, have not been claimed as a dependent on taxes in the current year or who meet an exception to tax filer rules in Paragraph 1 above. The following individuals may be included in a budget group when evaluating

eligibility for an ACA related medicaid eligibility category, provided they live together:

- (a) the individual;
- (b) the individual's spouse;
- (c) parents/step-parents; or
- (d) the individual's natural, adopted and step children under the age of 19.

(3) Households may submit an application that includes both filer and non-filers as defined in Subsections A and B above. The budget group(s) will be organized using the filer and non-filer concepts, and eligibility will be established on an individual basis.
[8.291.430.14 NMAC - N, 10-1-13]

8.291.430.15 INCOME STANDARDS: Verification of income, both earned and unearned, is mandatory for all ACA-related medicaid programs. Verification methods can be found at 8.291.410 NMAC.

A. All income will be calculated as defined by Section 36B of the code to produce a modified adjusted gross income (MAGI). This amount is compared to the FPL for the appropriate medicaid category of eligibility and household size.

B. MAGI is calculated using the methodologies defined in section 36B(d)(2)(B) of the federal tax code, with the following exceptions:

- (1) an amount received as a lump sum is counted as income only in the month received.
- (2) scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.
- (3) American Indian/Alaska native exceptions. The following are excluded from income:
 - (a) distributions from Alaska native corporations and settlement trusts;
 - (b) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the secretary of the interior;
 - (c) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:
 - (i) rights of ownership or possession in any lands described in Subparagraph (b) above; or
 - (ii) federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
 - (d) distributions resulting from real property ownership interests related to natural resources and improvements;
 - (i) located on or near

a reservation or within the most recent boundaries of a prior federal reservation; or
(ii) resulting from the exercise of federally-protected rights relating to such real property ownership interests.

(e) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; and

(f) student financial assistance provided under the bureau of Indian affairs education programs.
[8.291.430.15 NMAC - N, 10-1-13]

8.291.430.16 RESOURCE STANDARDS: Resources as defined in 8.100.130 NMAC are not a factor of eligibility for ACA related medicaid categories.
[8.291.430.16 NMAC - N, 10-1-13]

HISTORY OF 8.291.430 NMAC:
[RESERVED]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION
TITLE 8 SOCIAL SERVICES
CHAPTER 292 MEDICAID ELIGIBILITY - PARENT CARETAKER PART 400 RECIPIENT REQUIREMENTS**

8.292.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.292.400.1 NMAC - N, 10-1-13]

8.292.400.2 SCOPE: The rule applies to the general public.
[8.292.400.2 NMAC - N, 10-1-13]

8.292.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.292.400.3 NMAC - N, 10-1-13]

8.292.400.4 DURATION: December 31, 2013.
[8.292.400.4 NMAC - N, 10-1-13]

8.292.400.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.292.400.5 NMAC - N, 10-1-13]

8.292.400.6 OBJECTIVE: The objective of this rule is to provide eligibility

guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.292.400.6 NMAC - N, 10-1-13]

8.292.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.292.400.7 NMAC - N, 10-1-13]

8.292.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.292.400.8 NMAC - N, 10-1-13]

8.292.400.9 WHO CAN BE A RECIPIENT: To be eligible, an individual must meet specific eligibility requirements:

A. The individual must be a natural, step or adoptive parent of a child, provided they live with the child. There is a presumption that a child born to a married woman is the child of the husband.

B. When the parent does not live with the child, specified relative(s) within the fifth degree of relationship by blood, marriage or adoption, as determined by New Mexico statute Chapter 45 - Uniform Probate Code, who live with the child may be evaluated as a specified relative caretaker(s). Refer to the relationship section in 8.291.410 NMAC.

C. A pregnant woman who has no dependent children living with her and is in her third trimester. The father of the unborn child is *not* eligible until after the child is born unless he meets the other ACA eligibility requirements.

D. A parent caretaker(s) whose only minor dependent child is an SSI recipient under age 18 may be an eligible recipient. If the parent does not live in the household, then the specified relative may be an eligible recipient.

E. An individual who meets the eligibility requirements pursuant to 8.291.400 through 8.291.430 NMAC.

F. Prior to the parent caretaker individual becoming an eligible recipient, all children listed on an application must meet the following:

- (1) be evaluated for eligibility for a medicaid program if not already eligible; or
- (2) if not medicaid eligible, have current health insurance coverage that meets criteria as a qualified health plan.
[8.292.400.9 NMAC - N, 10-1-13]

8.292.400.10 PARENT

CARETAKER ASSISTANCE UNIT AND BUDGET GROUP: To be considered in a parent caretaker assistance unit, an individual must apply and be determined eligible. Individuals may be included in the budget group, provided they live with the parent/caretaker and meet eligibility requirements. The budget group is established in accordance with 8.291.430 NMAC.

[8.292.400.10 NMAC - N, 10-1-13]

HISTORY OF 8.292.400 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION
TITLE 8 SOCIAL SERVICES
CHAPTER 292 M E D I C A I D
ELIGIBILITY - PARENT CARETAKER
PART 500 INCOME AND
RESOURCE STANDARDS

8.292.500.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD).
[8.292.500.1 NMAC - N, 10-1-13]

8.292.500.2 SCOPE: The rule applies to the general public.
[8.292.500.2 NMAC - N, 10-1-13]

8.292.500.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.292.500.3 NMAC - N, 10-1-13]

8.292.500.4 D U R A T I O N :
December 31, 2013.
[8.292.500.4 NMAC - N, 10-1-13]

8.292.500.5 EFFECTIVE DATE:
October 1, 2013, unless a later date is cited at the end of a section.
[8.292.500.5 NMAC - N, 10-1-13]

8.292.500.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.292.500.6 NMAC - N, 10-1-13]

8.292.500.7 DEFINITIONS: Refer

to 8.291.400.7 NMAC.
[8.292.500.7 NMAC - N, 10-1-13]

8.292.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.292.500.8 NMAC - N, 10-1-13]

8.292.500.9 R E S O U R C E STANDARDS: There are no resource standards for this category of eligibility.
[8.292.500.9 NMAC - N, 10-1-13]

8.292.500.10 I N C O M E STANDARD:
A. Financial eligibility: An individual's financial eligibility is based on the rules in this chapter and 8.291.430.11 NMAC.

B. Income test: In order to become eligible for parent caretaker medicaid, the total countable income of the budget group must be less than the income standard for parent caretaker eligibility found at 8.291.430 NMAC.
[8.292.500.10 NMAC - N, 10-1-13]

8.292.500.11 A V A I L A B L E INCOME: Determination of eligibility for the assistance unit is made by considering income that is available to the assistance unit and budget group. The amount of countable income is determined pursuant to 8.291.430 NMAC.
[8.292.500.11 NMAC - N, 10-1-13]

8.292.500.12 I N C O M E ELIGIBILITY: Income from a 30 day-period is used to determine eligibility. Income from a terminated source is not counted. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover to determine a modified adjusted gross income for financial eligibility. For the purposes of this calculation, a partial month is considered to be one full month. Income received more frequently than monthly will be converted using the following multipliers:
A. four (paid weekly);
B. two (paid biweekly/semi-monthly).
[8.292.500.12 NMAC - N, 10-1-13]

8.292.500.13 DISREGARDS: Once a MAGI is calculated, no disregard will be given unless the individual is in receipt of medicare or has reached the age of 65.
[8.292.500.13 NMAC - N, 10-1-13]

HISTORY OF 8.292.500 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION
TITLE 8 SOCIAL SERVICES
CHAPTER 292 M E D I C A I D
ELIGIBILITY - PARENT CARETAKER
PART 600 B E N E F I T
DESCRIPTION

8.292.600.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD).
[8.292.600.1 NMAC - N, 10-1-13]

8.292.600.2 SCOPE: The rule applies to the general public.
[8.292.600.2 NMAC - N, 10-1-13]

8.292.600.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.292.600.3 NMAC - N, 10-1-13]

8.292.600.4 D U R A T I O N :
December 31, 2013.
[8.292.600.4 NMAC - N, 10-1-13]

8.292.600.5 EFFECTIVE DATE:
October 1, 2013, unless a later date is cited at the end of a section.
[8.292.600.5 NMAC - N, 10-1-13]

8.292.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.292.600.6 NMAC - N, 10-1-13]

8.292.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.292.600.7 NMAC - N, 10-1-13]

8.292.600.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.292.600.8 NMAC - N, 10-1-13]

8.292.600.9 B E N E F I T DESCRIPTION: This medicaid category provides the full range of medicaid-covered services for individuals considered a parent caretaker.

[8.292.600.9 NMAC - N, 10-1-13]

8.292.600.10 B E N E F I T DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. Up to three months of retroactive medicaid coverage is provided to applicants who have received medicaid-covered services during the retroactive period and who would have met applicable eligibility criteria had they applied. Eligibility for each retroactive month is determined separately. Application for retroactive medicaid must be made within 180 days of the date of the medicaid application. Retroactive coverage is not available prior to January 1, 2014 for this category.

[8.292.600.10 NMAC - N, 10-1-13]

8.292.600.11 P E R I O D I C REDETERMINATIONS OF ELIGIBILITY:

A. A redetermination of eligibility is made every 12 months in accordance with 8.291.410 NMAC.

B. All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.

[8.292.600.11 NMAC - N, 10-1-13]

HISTORY OF 8.292.600 NMAC:
[RESERVED]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION
TITLE 8 SOCIAL SERVICES
CHAPTER 293 M E D I C A I D
ELIGIBILITY - PREGNANT WOMEN
PART 400 R E C I P I E N T
REQUIREMENTS**

8.293.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.293.400.1 NMAC - N, 10-1-13]

8.293.400.2 SCOPE: The rule applies to the general public.
[8.293.400.2 NMAC - N, 10-1-13]

8.293.400.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.293.400.3 NMAC - N, 10-1-13]

8.293.400.4 D U R A T I O N : December 31, 2013.

[8.293.400.4 NMAC - N, 10-1-13]

8.293.400.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.

[8.293.400.5 NMAC - N, 10-1-13]

8.293.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.293.400.6 NMAC - N, 10-1-13]

8.293.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.

[8.293.400.7 NMAC - N, 10-1-13]

8.293.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.293.400.8 NMAC - N, 10-1-13]

8.293.400.9 WHO CAN BE A RECIPIENT: To be eligible, a woman must meet the following eligibility requirements:

A. a woman who self attests to pregnancy;

B. a woman who meets all ACA eligibility requirements pursuant to 8.291.400 through 8.291.430 NMAC; and

C. the existence of creditable health insurance is not a disqualifying factor.

[8.293.400.9 NMAC - N, 10-1-13]

8.293.400.10 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUP: At the time of application, an applicant or recipient and the department shall identify everyone who is to be considered for inclusion in the assistance unit and budget group as defined in 8.291.430 NMAC. Each member of the assistance unit and budget group, including any unborn child(ren), is counted as one in the household size.

[8.293.400.10 NMAC - N, 10-1-13]

8.293.400.11 P R E G N A N C Y ASSISTANCE UNIT: The assistance unit is the pregnant woman who applies for medicaid and for whom an eligibility determination is made.

[8.293.400.11 NMAC - N, 10-1-13]

8.293.400.12 BUDGET GROUP:

The budget group is established in accordance with 8.291.430 NMAC.

[8.293.400.12 NMAC - N, 10-1-13]

HISTORY OF 8.293.400 NMAC:
[RESERVED]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION
TITLE 8 SOCIAL SERVICES
CHAPTER 293 M E D I C A I D
ELIGIBILITY - PREGNANT WOMEN
PART 500 INCOME AND
RESOURCE STANDARDS**

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

[8.293.500.1 NMAC - N, 10-1-13]

8.293.500.2 SCOPE: The rule applies to the general public.

[8.293.500.2 NMAC - N, 10-1-13]

8.293.500.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.

[8.293.500.3 NMAC - N, 10-1-13]

8.293.500.4 D U R A T I O N : December 31, 2013.

[8.293.500.4 NMAC - N, 10-1-13]

8.293.500.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.

[8.293.500.5 NMAC - N, 10-1-13]

8.293.500.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.293.500.6 NMAC - N, 10-1-13]

8.293.500.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.

[8.293.500.7 NMAC - N, 10-1-13]

8.293.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of

dependency on public assistance.
[8.293.500.8 NMAC - N, 10-1-13]

8.293.500.9 RESOURCE STANDARDS: Resources are not an eligibility factor for this category of eligibility.
[8.293.500.9 NMAC - N, 10-1-13]

8.293.500.10 INCOME STANDARD:
A. Financial eligibility: An individual's financial eligibility is based on the rules in this chapter and 8.291.430 NMAC.

B. Income test: In order to become eligible for pregnant women medicaid, the total countable income of the budget group must be less than 138 percent of the FPL found at 8.291.430 NMAC.
[8.293.500.10 NMAC - N, 10-1-13]

8.293.500.11 AVAILABLE INCOME: Determination of eligibility for the assistance unit is made by considering income that is available to the assistance unit and budget group. The amount of countable income is determined pursuant to 8.291.430 NMAC.
[8.293.500.11 NMAC - N, 10-1-13]

8.293.500.12 INCOME ELIGIBILITY: Income from a 30 day-period is used to determine eligibility. Income from a terminated source is not counted. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover to determine a modified adjusted gross income for financial eligibility. For the purposes of this calculation, a partial month is considered to be one full month. Income received more frequently than monthly will be converted using the following multipliers:
A. four (paid weekly);
B. two (paid biweekly/semi-monthly).
[8.293.500.12 NMAC - N, 10-1-13]

8.293.500.13 DISREGARDS: Disregards are not applicable for this eligibility group.
[8.293.500.13 NMAC - N, 10-1-13]

HISTORY OF 8.293.500 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 293 MEDICAID ELIGIBILITY - PREGNANT WOMEN PART 600 BENEFIT DESCRIPTION

8.293.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.293.600.1 NMAC - N, 10-1-13]

8.293.600.2 SCOPE: The rule applies to the general public.
[8.293.600.2 NMAC - N, 10-1-13]

8.293.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.293.600.3 NMAC - N, 10-1-13]

8.293.600.4 DURATION: December 31, 2013.
[8.293.600.4 NMAC - N, 10-1-13]

8.293.600.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.293.600.5 NMAC - N, 10-1-13]

8.293.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.293.600.6 NMAC - N, 10-1-13]

8.293.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.293.600.7 NMAC - N, 10-1-13]

8.293.600.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.293.600.8 NMAC - N, 10-1-13]

8.293.600.9 BENEFIT DESCRIPTION: This category provides the full range of medicaid coverage for pregnant women.
[8.293.600.9 NMAC - N, 10-1-13]

8.293.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. A woman eligible for pregnancy medicaid remains eligible throughout her pregnancy and for

two months after the month of delivery or after the month in which the pregnancy terminates. Up to three months of retroactive medicaid coverage is provided to applicants who have received medicaid-covered services during the retroactive period and who would have met applicable eligibility criteria had they applied. Eligibility for each retroactive month is determined separately. Application for retroactive medicaid must be made within 180 days of the date of the medicaid application. Retroactive coverage is not available prior to January 1, 2014.
[8.293.600.10 NMAC - N, 10-1-13]

8.293.600.11 REPORTING REQUIREMENTS: All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.293.600.11 NMAC - N, 10-1-13]

HISTORY OF 8.293.600 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 294 MEDICAID ELIGIBILITY - PREGNANCY - RELATED SERVICES PART 400 RECIPIENT REQUIREMENTS

8.294.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.294.400.1 NMAC - N, 10-1-13]

8.294.400.2 SCOPE: The rule applies to the general public.
[8.294.400.2 NMAC - N, 10-1-13]

8.294.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.294.400.3 NMAC - N, 10-1-13]

8.294.400.4 DURATION: December 31, 2013.
[8.294.400.4 NMAC - N, 10-1-13]

8.294.400.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.294.400.5 NMAC - N, 10-1-13]

8.294.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility

for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.294.400.6 NMAC - N, 10-1-13]

8.294.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.

[8.294.400.7 NMAC - N, 10-1-13]

8.294.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.294.400.8 NMAC - N, 10-1-13]

8.294.400.9 WHO CAN BE A RECIPIENT: To be eligible, a woman must meet the following eligibility requirements:

A. a woman who self attests to pregnancy;

B. a woman who meets all ACA eligibility requirements pursuant to 8.291.400 through 8.291.430 NMAC; and

C. the existence of creditable health insurance is not a disqualifying factor.

[8.294.400.9 NMAC - N, 10-1-13]

8.294.400.10 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUP:

At time of application, an applicant or recipient and the department shall identify everyone who is to be considered for inclusion in the assistance unit and budget group as defined in 8.291.430 NMAC. Each member of the assistance unit and budget group, including any unborn child(ren), is counted as one in the household size.

[8.294.400.10 NMAC - N, 10-1-13]

8.294.400.11 PREGNANCY ASSISTANCE UNIT: The assistance unit is the pregnant woman who applies for medicaid and for whom an eligibility determination is made.

[8.294.400.11 NMAC - N, 10-1-13]

8.294.400.12 BUDGET GROUP: The budget group is established in accordance with 8.291.430 NMAC.

[8.294.400.12 NMAC - N, 10-1-13]

HISTORY OF 8.294.400 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 294 M E D I C A I D ELIGIBILITY - PREGNANCY - RELATED SERVICES PART 500 INCOME AND RESOURCE STANDARDS

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

[8.294.500.1 NMAC - N, 10-1-13]

8.294.500.2 SCOPE: The rule applies to the general public.

[8.294.500.2 NMAC - N, 10-1-13]

8.294.500.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.

[8.294.500.3 NMAC - N, 10-1-13]

8.294.500.4 DURATION: December 31, 2013.

[8.294.500.4 NMAC - N, 10-1-13]

8.294.500.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.

[8.294.500.5 NMAC - N, 10-1-13]

8.294.500.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.294.500.6 NMAC - N, 10-1-13]

8.294.500.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.

[8.294.500.7 NMAC - N, 10-1-13]

8.294.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.294.500.8 NMAC - N, 10-1-13]

8.294.500.9 RESOURCE STANDARDS: Resources are not an eligibility factor for this category of

eligibility.

[8.294.500.9 NMAC - N, 10-1-13]

8.294.500.10 INCOME STANDARD:

A. Financial eligibility: An individual's financial eligibility is based on the rules in this chapter and 8.291.430 NMAC.

B. Income test: In order to become eligible for pregnancy medicaid, the total countable income of the budget group must be less than 250 percent of the federal poverty guidelines found at 8.291.430 NMAC.

[8.294.500.10 NMAC - N, 10-1-13]

8.294.500.11 AVAILABLE INCOME: Determination of eligibility for the assistance unit is made by considering income that is available to the assistance unit and budget group. The amount of countable income is determined pursuant to 8.291.430 NMAC.

[8.294.500.11 NMAC - N, 10-1-13]

8.294.500.12 INCOME ELIGIBILITY: Income from a 30 day-period is used to determine eligibility. Income from a terminated source is not counted. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover to determine a modified adjusted gross income for financial eligibility. For the purposes of this calculation, a partial month is considered to be one full month. Income received more frequently than monthly will be converted using the following multipliers:

A. four (paid weekly);

B. two (paid biweekly/semi-monthly).

[8.294.500.12 NMAC - N, 10-1-13]

8.294.500.13 DISREGARDS: An income disregard according to 8.291.430 NMAC will be given only to individuals whose countable MAGI income is at or above 250 percent of the federal poverty level for the size of the budget group.

[8.294.500.13 NMAC - N, 10-1-13]

HISTORY OF 8.294.500 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 294 M E D I C A I D ELIGIBILITY - PREGNANCY - RELATED SERVICES

PART 600 B E N E F I T DESCRIPTION

8.294.600.1 ISSUING AGENCY:

New Mexico Human Services Department (HSD).

[8.294.600.1 NMAC - N, 10-1-13]

8.294.600.2 SCOPE: The rule applies to the general public.

[8.294.600.2 NMAC - N, 10-1-13]

8.294.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.

[8.294.600.3 NMAC - N, 10-1-13]

8.294.600.4 DURATION: December 31, 2013.

[8.294.600.4 NMAC - N, 10-1-13]

8.294.600.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.

[8.294.600.5 NMAC - N, 10-1-13]

8.294.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.294.600.6 NMAC - N, 10-1-13]

8.294.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.

[8.294.600.7 NMAC - N, 10-1-13]

8.294.600.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.294.600.8 NMAC - N, 10-1-13]

8.294.600.9 BENEFIT DESCRIPTION: This category provides medicaid services restricted to and related to pregnancy only. These services do not cover procedures, services, pharmaceuticals, or miscellaneous items which are not related to pregnancy.

[8.294.600.9 NMAC - N, 10-1-13]

8.294.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. A woman eligible

for pregnancy-related services remains eligible throughout her pregnancy and for two months after the month of delivery or after the month in which the pregnancy terminates. Up to three months of retroactive medicaid coverage is provided to applicants who have received medicaid-covered services during the retroactive period and who would have met applicable eligibility criteria had they applied. Eligibility for each retroactive month is determined separately. Application for retroactive medicaid must be made within 180 days of the date of the medicaid application. Retroactive coverage is not available prior to January 1, 2014.

[8.294.600.10 NMAC - N, 10-1-13]

8.294.600.11 REPORTING REQUIREMENTS: All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.

[8.292.600.11 NMAC - N, 10-1-13]

HISTORY OF 8.294.600 NMAC: [RESERVED]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION
TITLE 8 SOCIAL SERVICES
CHAPTER 295 MEDICAID
ELIGIBILITY - CHILDREN UNDER 19
PART 400 RECIPIENT
REQUIREMENTS**

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

[8.295.400.1 NMAC - N, 10-1-13]

8.295.400.2 SCOPE: The rule applies to the general public.

[8.295.400.2 NMAC - N, 10-1-13]

8.295.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX and XXI of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.

[8.295.400.3 NMAC - N, 10-1-13]

8.295.400.4 DURATION: December 31, 2013.

[8.295.400.4 NMAC - N, 10-1-13]

8.295.400.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.

[8.295.400.5 NMAC - N, 10-1-13]

8.295.400.6 OBJECTIVE: The objective of this rule is to provide eligibility

guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.295.400.6 NMAC - N, 10-1-13]

8.295.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.

[8.295.400.7 NMAC - N, 10-1-13]

8.295.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.295.400.8 NMAC - N, 10-1-13]

8.295.400.9 WHO CAN BE A RECIPIENT: To be eligible, a child must meet specific eligibility requirements:

A. a child under 19 years of age; and

B. a child who meets ACA eligibility requirements pursuant to 8.291.400 through 2.291.430 NMAC.

[8.295.400.9 NMAC - N, 10-1-13]

8.295.400.10 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUP: To be considered in a child assistance unit, an individual must apply and be determined eligible. Individuals may be included in the budget group, provided they live with the child and meet eligibility requirements. The budget group is established in accordance with 8.291.430 NMAC.

[8.295.400.10 NMAC - N, 10-1-13]

8.295.400.11 CHILDRENS HEALTH INSURANCE PROGRAM (CHIP):

A. A budget group that includes a child and has countable income between the following federal income poverty limits (FPL) is considered to be eligible for the CHIP:

(1) if the child in the assistance unit is under the age of six and the assistance unit and budget group's countable income is between 240 and 300 percent of FPL for the countable household size; or

(2) if the assistance unit consists of a child age six or over and the assistance unit's and budget group's countable income is between 190 and 240 percent of FPL for the countable household size.

B. In order to be eligible for CHIP, the child in the assistance unit cannot have other qualified health plan (QHP) coverage. Individuals who have voluntarily dropped a QHP will immediately be eligible

for inclusion in the assistance unit.
[8.295.400.11 NMAC - N, 10-1-13]

HISTORY OF 8.295.400 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 295 M E D I C A I D
ELIGIBILITY - CHILDREN UNDER 19
PART 500 INCOME AND
RESOURCE STANDARDS

8.295.500.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD)
[8.295.500.1 NMAC - N, 10-1-13]

8.295.500.2 SCOPE: The rule applies to the general public.
[8.295.500.2 NMAC - N, 10-1-13]

8.295.500.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Titles XIX and XXI of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.295.500.3 NMAC - N, 10-1-13]

8.295.500.4 D U R A T I O N : December 31, 2013.
[8.295.500.4 NMAC - N, 10-1-13]

8.295.500.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.295.500.5 NMAC - N, 10-1-13]

8.295.500.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.295.500.6 NMAC - N, 10-1-13]

8.295.500.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.295.500.7 NMAC - N, 10-1-13]

8.295.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.295.500.8 NMAC - N, 10-1-13]

8.295.500.9 R E S O U R C E STANDARDS: Resources are not an eligibility factor for this category of eligibility.
[8.295.500.9 NMAC - N, 10-1-13]

8.295.500.10 I N C O M E STANDARD:
A. Financial eligibility:
An individual's financial eligibility is based on the rules in this chapter and 8.291.430 NMAC.

B. Income test: In order to become eligible for children's medicaid, the total countable income of the budget group must be less than the income standard for eligibility found at 8.291.430 NMAC.

(1) If the assistance unit consists of a child under the age of six, the assistance unit and budget group's countable income must be less than 300 percent of FPL for the countable household size.

(2) If the assistance unit consists of a child age six to age 19, the assistance unit and budget group's countable income must be less than 240 percent of FPL for the countable household size.
[8.295.500.10 NMAC; N, 10-1-13]

8.295.500.11 I N C O M E ELIGIBILITY: Income from a 30 day-period is used to determine eligibility. Income from a terminated source is not counted. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover to determine a modified adjusted gross income for financial eligibility. For the purposes of this calculation, a partial month is considered to be one full month. Income received more frequently than monthly will be converted using the following multipliers:
A. four (paid weekly);
B. two (paid biweekly/semi-monthly).
[8.295.500.11 NMAC - N, 10-1-13]

8.295.500.12 DISREGARDS: An income disregard according to 8.291.430 NMAC, will be given only to the following:

A. individuals whose budget group's countable MAGI income is at or above 190 percent of the FPL if the assistance unit consists of a child age six to age 19, or 240 percent of the FPL if the assistance unit consists of a child under the age of six; when a child has a QHP, an income disregard will be given when the existence of the QHP makes the individual ineligible due to CHIP requirements found at 8.295.400 NMAC; or

B. individuals whose budget group's countable MAGI income is at or above 240 percent of the FPL if the assistance unit consists of a child age six

to age 19, or 300 percent of the FPL if the assistance unit consists of a child under the age of six.
[8.295.500.12 NMAC - N, 10-1-13]

HISTORY OF 8.295.500 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 295 M E D I C A I D
ELIGIBILITY - CHILDREN UNDER 19
PART 600 B E N E F I T
DESCRIPTION

8.295.600.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD).
[8.295.600.1 NMAC - N, 10-1-13]

8.295.600.2 SCOPE: The rule applies to the general public.
[8.295.600.2 NMAC - N, 10-1-13]

8.295.600.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX and XXI of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.295.600.3 NMAC - N, 10-1-13]

8.295.600.4 D U R A T I O N : December 31, 2013.
[8.295.600.4 NMAC - N, 10-1-13]

8.295.600.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.295.600.5 NMAC - N, 10-1-13]

8.295.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.295.600.6 NMAC - N, 10-1-13]

8.295.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.295.600.7 NMAC - N, 10-1-13]

8.295.600.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of

dependency on public assistance.
[8.295.600.8 NMAC - N, 10-1-13]

8.295.600.9 B E N E F I T DESCRIPTION: This category provides full range of medicaid-covered services for eligible children.

A. An eligible child age five and under, whose budget group's countable income is less than 240 percent of the federal poverty level (FPL) guidelines, receives the full range of medicaid services. No copayments are required under this category of eligibility.

B. An eligible child age six to 18, whose budget group's countable income is less than 190 percent of the FPL guidelines, receives the full range of medicaid services. No copayments are required under this category of eligibility.

C. An eligible child age 5 and under, whose budget group's countable income is greater than 240 percent but less than 300 percent of the FPL guidelines receives the full range of medicaid services. Copayments are required for this category of eligibility pursuant to 8.200.430 NMAC.

D. An eligible recipient child age six to 18, whose budget group's countable income is greater than 190 percent but less than 240 percent of the FPL guidelines, receives the full range of medicaid services. Copayments are required for this category of eligibility pursuant to 8.200.430 NMAC.

E. During the initial eligibility determination and at each annual redetermination, the co-payment maximum amount is calculated. Maximum copayment amounts are calculated for every calendar quarter in a calendar year. The amount is prorated for the remainder of the calendar quarter if the first month of eligibility is not in the first month of a calendar quarter.
[8.295.600.9 NMAC - N, 10-1-13]

8.295.600.10 B E N E F I T DETERMINATION: The HSD income support division determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. Up to three months of retroactive medicaid coverage is provided to applicants who have received medicaid-covered services during the retroactive period and who would have met applicable eligibility criteria had they applied. Eligibility for each retroactive month is determined separately. Application for retroactive medicaid must be made within 180 days of the date of the medicaid application. Retroactive coverage is not available prior to January 1, 2014.
[8.295.600.10 NMAC - N, 10-1-13]

8.295.600.11 P E R I O D I C

REDETERMINATIONS OF ELIGIBILITY:

A. A redetermination of eligibility is made every 12 months in accordance with 8.291.410 NMAC.

B. Continuous eligibility is applicable for individuals eligible for children medicaid. Refer to 8.291.400 NMAC.

C. All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.295.600.11 NMAC - N, 10-1-13]

HISTORY OF 8.295.600 NMAC:
[RESERVED]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 296 M E D I C A I D
ELIGIBILITY - OTHER ADULTS
PART 400 R E C I P I E N T
REQUIREMENTS**

8.296.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.296.400.1 NMAC - N, 10-1-13]

8.296.400.2 SCOPE: The rule applies to the general public.
[8.296.400.2 NMAC - N, 10-1-13]

8.296.400.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.296.400.3 NMAC - N, 10-1-13]

8.296.400.4 D U R A T I O N : December 31, 2013.
[8.296.400.4 NMAC - N, 10-1-13]

8.296.400.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.296.400.5 NMAC - N, 10-1-13]

8.296.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.296.400.6 NMAC - N, 10-1-13]

8.296.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.296.400.7 NMAC - N, 10-1-13]

8.296.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.296.400.8 NMAC - N, 10-1-13]

8.296.400.9 WHO CAN BE A RECIPIENT: To be eligible, an individual must meet specific eligibility requirements:

A. an individual age 19 or older and under the age of 65 who is not entitled to or eligible for medicare Part A;

B. an individual who meets ACA eligibility requirements pursuant to 8.291.400 through 2.291.430 NMAC; and

C. individuals may have a qualified health plan.
[8.296.400.9 NMAC - N, 10-1-13]

8.296.400.10 OTHER ADULT ASSISTANCE UNIT AND BUDGET GROUP: To be considered in the other adult assistance unit, an individual must apply and be determined eligible. Individuals may be included in the budget group, provided they live with the other adult and meet eligibility requirements. The budget group is established in accordance with 8.291.430 NMAC.
[8.296.400.10 NMAC - N, 10-1-13]

HISTORY OF 8.296.400 NMAC:
[RESERVED]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 296 M E D I C A I D
ELIGIBILITY - OTHER ADULTS
PART 500 INCOME AND
RESOURCE STANDARDS**

8.296.500.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.296.500.1 NMAC - N, 10-1-13]

8.296.500.2 SCOPE: The rule applies to the general public.
[8.296.500.2 NMAC - N, 10-1-13]

8.296.500.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA

1978, Section 27-1-12 et seq.
[8.296.500.3 NMAC - N, 10-1-13]

8.296.500.4 DURATION: December 31, 2013.
[8.296.500.4 NMAC - N, 10-1-13]

8.296.500.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.296.500.5 NMAC - N, 10-1-13]

8.296.500.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.296.500.6 NMAC - N, 10-1-13]

8.296.500.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.296.500.7 NMAC - N, 10-1-13]

8.296.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.296.500.8 NMAC - N, 10-1-13]

8.296.500.9 RESOURCE STANDARDS: There are no resource standards for this category of eligibility.
[8.296.500.9 NMAC - N, 10-1-13]

8.296.500.10 INCOME STANDARD:
A. Financial eligibility: An individual's financial eligibility is based on the rules in this chapter and 8.291.430 NMAC.
B. Income test: In order to become eligible for other adult medicaid, the total countable income of the budget group must be less than 133 percent of the federal poverty guidelines found at 8.291.430 NMAC.
[8.296.500.10 NMAC - N, 10-1-13]

8.296.500.11 INCOME ELIGIBILITY: Income from a 30 day-period is used to determine eligibility. Income from a terminated source is not counted even in the month of application. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover to determine a modified adjusted gross income for financial eligibility. For the purposes of this calculation, a partial month

is considered to be one full month. Income received more frequently than monthly will be converted using the following multipliers:
A. four (paid weekly);
B. two (paid biweekly/semi-monthly).
[8.296.500.11 NMAC - N, 10-1-13]

8.296.500.12 DISREGARD: An income disregard according to 8.291.430 NMAC will be given only to individuals whose countable MAGI income is at or above 133 percent federal poverty level for the size of the budget group.
[8.296.500.12 NMAC - N, 10-1-13]

HISTORY OF 8.296.500 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION
TITLE 8 SOCIAL SERVICES
CHAPTER 296 MEDICAID ELIGIBILITY - OTHER ADULTS
PART 600 BENEFIT DESCRIPTION

8.296.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.296.600.1 NMAC - N, 10-1-13]

8.296.600.2 SCOPE: The rule applies to the general public.
[8.296.600.2 NMAC - N, 10-1-13]

8.296.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.296.600.3 NMAC - N, 10-1-13]

8.296.600.4 DURATION: December 31, 2013.
[8.296.600.4 NMAC - N, 10-1-13]

8.296.600.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.296.600.5 NMAC - N, 10-1-13]

8.296.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430

NMAC.
[8.296.600.6 NMAC - N, 10-1-13]

8.296.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.296.600.7 NMAC - N, 10-1-13]

8.296.600.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.296.600.8 NMAC - N, 10-1-13]

8.296.600.9 BENEFIT DESCRIPTION: This medicaid category provides alternative benefit plan services for individuals who meet other adult eligibility requirements. Refer to 8.309 NMAC.
[8.296.600.9 NMAC - N, 10-1-13]

8.296.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. Up to three months of retroactive medicaid coverage is provided to applicants who have received medicaid-covered services during the retroactive period and who would have met applicable eligibility criteria had they applied. Eligibility for each retroactive month is determined separately. Application for retroactive medicaid must be made within 180 days of the date of the medicaid application. Retroactive coverage is not available prior to January 1, 2014.
[8.296.600.10 NMAC - N, 10-1-13]

8.296.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:
A. A redetermination of eligibility is made every 12 months in accordance with 8.291.410 NMAC.
B. All changes that may affect eligibility must be reported within ten calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.292.600.11 NMAC - N, 10-1-13]

HISTORY OF 8.296.600 NMAC: [RESERVED]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 297 MEDICAID
ELIGIBILITY - LOSS OF PARENT
CARETAKER MEDICAID DUE TO
SPOUSAL SUPPORT
PART 400 R E C I P I E N T
REQUIREMENTS**

8.297.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.297.400.1 NMAC - N, 10-1-13]

8.297.400.2 SCOPE: The rule applies to the general public.
[8.297.400.2 NMAC - N, 10-1-13]

**8.297.400.3 S T A T U T O R Y
AUTHORITY:** The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.297.400.3 NMAC - N, 10-1-13]

8.297.400.4 D U R A T I O N : December 31, 2013.
[8.297.400.4 NMAC - N, 10-1-13]

8.297.400.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.297.400.5 NMAC - N, 10-1-13]

8.297.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.297.400.6 NMAC - N, 10-1-13]

8.297.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.297.400.7 NMAC - N, 10-1-13]

8.297.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.297.400.8 NMAC - N, 10-1-13]

**8.297.400.9 WHO CAN BE AN
ELIGIBLE RECIPIENT:** Eligibility begins the first month immediately following

parent caretaker medicaid ineligibility.

A. To be a medicaid eligible recipient, the assistance unit must have:

(1) received parent caretaker medicaid in at least one month of the six months prior to ineligibility for parent caretaker medicaid;

(2) lost parent caretaker medicaid wholly or in part due to new or increased spousal support;

(3) at least one medicaid eligible dependent child living in the home; and

(4) an individual who meets the medicaid eligibility requirements pursuant to 8.291.400 through 2.291.430 NMAC.

B. An applicant or an eligible recipient may have a qualified health plan.

[8.297.400.9 NMAC - N, 10-1-13]

HISTORY OF 8.297.400 NMAC:
[RESERVED]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 297 M E D I C A I D
ELIGIBILITY - LOSS OF PARENT
CARETAKER MEDICAID DUE TO
SPOUSAL SUPPORT**

**PART 500 INCOME AND
RESOURCE STANDARDS**

8.297.500.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.297.500.1 NMAC - N, 10-1-13]

8.297.500.2 SCOPE: The rule applies to the general public.
[8.297.500.2 NMAC - N, 10-1-13]

**8.297.500.3 S T A T U T O R Y
AUTHORITY:** The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.297.500.3 NMAC - N, 10-1-13]

8.297.500.4 D U R A T I O N : December 31, 2013.
[8.297.500.4 NMAC - N, 10-1-13]

8.297.500.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.297.500.5 NMAC - N, 10-1-13]

8.297.500.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD)

medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.297.500.6 NMAC - N, 10-1-13]

8.297.500.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.297.500.7 NMAC - N, 10-1-13]

8.297.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.297.500.8 NMAC - N, 10-1-13]

**8.297.500.9 R E S O U R C E
STANDARDS:** There are no resource standards for this category of eligibility.
[8.297.500.9 NMAC - N, 10-1-13]

**8.297.500.10 I N C O M E
STANDARDS:** There are no income standards for this category of eligibility.
[8.297.500.10 NMAC - N, 10-1-13]

HISTORY OF 8.297.500 NMAC:
[RESERVED]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 297 M E D I C A I D
ELIGIBILITY - LOSS OF PARENT
CARETAKER MEDICAID DUE TO
SPOUSAL SUPPORT
PART 600 B E N E F I T
DESCRIPTION**

8.297.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.297.600.1 NMAC - N, 10-1-13]

8.297.600.2 SCOPE: The rule applies to the general public.
[8.297.600.2 NMAC - N, 10-1-13]

**8.297.600.3 S T A T U T O R Y
AUTHORITY:** The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.297.600.3 NMAC - N, 10-1-13]

8.297.600.4 D U R A T I O N : December 31, 2013.
[8.297.600.4 NMAC - N, 10-1-13]

8.297.600.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.297.600.5 NMAC - N, 10-1-13]

8.297.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.297.600.6 NMAC - N, 10-1-13]

8.297.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.297.600.7 NMAC - N, 10-1-13]

8.297.600.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.297.600.8 NMAC - N, 10-1-13]

8.297.600.9 BENEFIT DESCRIPTION: A medicaid eligible recipient under this category is eligible to receive the full range of medicaid covered services.
[8.297.600.9 NMAC - N, 10-1-13]

8.297.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility.
[8.297.600.10 NMAC - N, 10-1-13]

8.297.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:

A. Redetermination of eligibility is not applicable. A four month period of eligibility following parent caretaker medicaid is established without a new application. To be considered for eligibility after the four months of transitional spousal medicaid, a new application must be submitted.

B. All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.297.600.11 NMAC - N, 10-1-13]

HISTORY OF 8.297.600 NMAC:
[RESERVED]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 298 M E D I C A I D
ELIGIBILITY - LOSS OF PARENT
CARETAKER MEDICAID DUE TO
EARNINGS FROM EMPLOYMENT
PART 400 R E C I P I E N T
REQUIREMENTS**

8.298.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.298.400.1 NMAC - N, 10-1-13]

8.298.400.2 SCOPE: The rule applies to the general public.
[8.298.400.2 NMAC - N, 10-1-13]

8.298.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.298.400.3 NMAC - N, 10-1-13]

8.298.400.4 DURATION: December 31, 2013.
[8.298.400.4 NMAC - N, 10-1-13]

8.298.400.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.298.400.5 NMAC - N, 10-1-13]

8.298.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.298.400.6 NMAC - N, 10-1-13]

8.298.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.298.400.7 NMAC - N, 10-1-13]

8.298.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.298.400.8 NMAC - N, 10-1-13]

8.298.400.9 WHO CAN BE AN ELIGIBLE RECIPIENT: Eligibility

begins the first month immediately following parent caretaker medicaid ineligibility.

A. To be a medicaid eligible recipient, the assistance unit must have:

(1) received parent caretaker medicaid in at least one month of the six months prior to ineligibility for parent caretaker medicaid;

(2) lost parent caretaker medicaid wholly or in part due to new or increased earnings;

(3) at least one medicaid eligible dependent child living in the home; and

(4) an individual who meets the medicaid eligibility requirements pursuant to 8.291.400 through 2.291.430 NMAC.

B. An applicant or an eligible recipient may have a qualified health plan.
[8.298.400.9 NMAC - N, 10-1-13]

HISTORY OF 8.298.400 NMAC:
[RESERVED]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 298 M E D I C A I D
ELIGIBILITY - LOSS OF PARENT
CARETAKER MEDICAID DUE TO
EARNINGS FROM EMPLOYMENT
PART 500 INCOME AND
RESOURCE STANDARDS**

8.298.500.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.298.500.1 NMAC - N, 10-1-13]

8.298.500.2 SCOPE: The rule applies to the general public.
[8.298.500.2 NMAC - N, 10-1-13]

8.298.500.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.298.500.3 NMAC - N, 10-1-13]

8.298.500.4 DURATION: December 31, 2013.
[8.298.500.4 NMAC - N, 10-1-13]

8.298.500.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.
[8.298.500.5 NMAC - N, 10-1-13]

8.298.500.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility

for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.298.500.6 NMAC - N, 10-1-13]

8.298.500.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.

[8.298.500.7 NMAC - N, 10-1-13]

8.298.500.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.298.500.8 NMAC - N, 10-1-13]

8.298.500.9 RESOURCE STANDARDS: There are no resource standards for this category of eligibility.

[8.298.500.9 NMAC - N, 10-1-13]

8.298.500.10 INCOME STANDARDS: There are no income standards for this category of eligibility.

[8.298.500.10 NMAC - N, 10-1-13]

HISTORY OF 8.298.500 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 298 MEDICAID ELIGIBILITY - LOSS OF PARENT CARETAKER MEDICAID DUE TO EARNINGS FROM EMPLOYMENT PART 600 BENEFIT DESCRIPTION

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

[8.298.600.1 NMAC - N, 10-1-13]

8.298.600.2 SCOPE: The rule applies to the general public.

[8.298.600.2 NMAC - N, 10-1-13]

8.298.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.

[8.298.600.3 NMAC - N, 10-1-13]

8.298.600.4 DURATION:

December 31, 2013.

[8.298.600.4 NMAC - N, 10-1-13]

8.298.600.5 EFFECTIVE DATE: October 1, 2013, unless a later date is cited at the end of a section.

[8.298.600.5 NMAC - N, 10-1-13]

8.298.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.298.600.6 NMAC - N, 10-1-13]

8.298.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.

[8.298.600.7 NMAC - N, 10-1-13]

8.298.600.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.298.600.8 NMAC - N, 10-1-13]

8.298.600.9 BENEFIT DESCRIPTION: A medicaid eligible recipient under this category is eligible to receive the full range of medicaid covered services.

[8.298.600.9 NMAC - N, 10-1-13]

8.298.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility.

[8.298.600.10 NMAC - N, 10-1-13]

8.298.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:

A. Redetermination of eligibility is not applicable. A 12-month period of eligibility following parent caretaker medicaid is established without a new application. To be considered for eligibility after the 12 months of transitional employment medicaid, a new application must be submitted.

B. All changes that may affect eligibility must be reported within 10 calendar days from the date of the change as detailed in 8.291.400 NMAC.

[8.298.600.11 NMAC - N, 10-1-13]

HISTORY OF 8.298.600 NMAC:
[RESERVED]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.6.1 NMAC, Section 7, effective October 11, 2013.

16.6.1.7 DEFINITIONS:

A. **"Applicant"** means a person who is applying to be licensed for the first time as a naprapath in New Mexico.

B. **"Naprath"** means a person who practices naprapathy licensed by the board and has met all requirements.

C. **"Naprathy"** means a branch of medicine that focuses on the evaluation and treatment of neuromusculoskeletal conditions. Doctors of naprapathy are connective tissue specialists.

D. **"Board"** means the medical board.

E. **"Fund"** means the New Mexico medical board fund.

F. **"License"** means an authorization by the board that permits a person to practice naprapathy in the state.

G. **"Licensee"** means a person licensed by the board to practice naprapathy.

H. **"Advertising"** means any communication whatsoever, disseminated by any means whatsoever, to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, educating the public, or including members of the public to enter into any obligation relating to such professional services.

I. **"Revocation"** means a permanent loss of licensure.

J. **"Suspension"** means a loss of licensure for a certain period, after which the person may be required to file for reinstatement.

K. **"Complaint"** means a sworn written complaint.

L. **"Complainant"** means the complaining party of the complaint filed against a licensee or applicant for licensure, who is regulated by the medical board.

M. **"Respondent"** means a licensee or applicant for licensure who is regulated by the board.

N. **"Notice of contemplated action"** means the administrative process used by the board for a licensee or applicant for licensure to be afforded notice and an opportunity to be heard in a formal hearing before the board has any authority to take any action which could result in denial, suspension, revocation, restricting, monitoring, censuring, etc., of a license or application or licensure.

O. **"Military service member"** means a person who is serving in the armed forces of the United States or

in a reserve component of the armed forces of the United States, including the national guard.

P. "Recent veteran"

means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a naprapathic license pursuant to section 16.10.2.17. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

[16.6.1.7 NMAC - N, 09-30-04; A, 9-22-11; A, 10-11-13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.6.7 NMAC, Sections 8, 9, 10 and Section 11 is new, effective October 11, 2013.

16.6.7.8 LICENSURE BY ENDORSEMENT OR EXAMINATION:

A license may be issued to practice naprapathy to individuals who satisfy the following criteria:

A. is at least twenty-one years of age;

B. has graduated from a two year college-level program or an equivalent program approved by the board after consultation with the naprapathic task force;

C. has completed, in not less than three years, a four year academic curriculum in naprapathy, that is approved by the board after consultation with the naprapathic task force, and the person has successfully completed one hundred thirty-two hours of academic credit, including sixty-six credit hours in basic science courses with emphasis on the study of connective tissue, and sixty-six credit hours in clinical naprapathic science, theory and application;

D. passed the national examination administered by the national board of naprapathic examiners and provides the board with evidence of successful completion or holds a current valid license in good standing as a naprapath in another state(s), jurisdiction, Sweden, Norway or Finland;

E. provide two [(2)] letters of recommendation from individuals licensed as a naprapath, in good standing, at the time the letters were written;

F. provide one [(1)] letter of personal reference from anyone with whom the applicant has worked [with] within the past three years;

G. verification of licensure, if licensed or previously licensed in another state or jurisdiction; verification must be sent directly to the board office from the issuing state(s) or jurisdiction; and;

H. has met all other

requirements of the Naprapathic Practice Act.

[16.6.7.8 NMAC - N, 10-1-04; A, 05-24-10; A, 9-22-11; A, 10-11-13]

16.6.7.9 LICENSURE BY EXAMINATION DOCUMENTATION REQUIREMENTS:

Each applicant for licensure by examination must submit the required fees and following documentation:

A. completed application signed and notarized with a nonrefundable processing and initial licensure fee;

B. official transcripts from the accredited programs as defined in Subsections B and C of 16.6.7.8 NMAC;

C. certified copy of national board of naprapathic examination certificate;

D. provide two [(2)] letters of recommendation from individuals licensed as naprapaths, in good standing at the time the letter is written;

E. provide one [(1)] letter of personal reference from anyone with whom the applicant has worked [with] within the past three years; and

F. submit verification of licensure, if currently or previously licensed in another state(s) or jurisdiction, verification must come directly from the issuing state(s) or jurisdiction; verification must include the state seal or international equivalent and must attest to the status, issue date and license number.

[16.6.7.9 NMAC - N, 05-24-10; A, 10-11-13]

16.6.7.10 LICENSURE BY ENDORSEMENT DOCUMENTATION REQUIREMENTS:

Each applicant for licensure by endorsement must submit the required fees and following documentation:

A. completed application signed and notarized with a nonrefundable processing and initial licensure fee;

B. official transcripts from the accredited programs as defined in Subsections B and C of 16.6.7.8 NMAC;

C. certified copy of national board of naprapathic examination certificate; or;

D. provide two [(2)] letters of recommendation from individuals licensed as naprapaths, in good standing at the time the letter is written;

E. provide one [(1)] letter of personal reference from anyone with whom the applicant has worked, [with] within the past three years;

F. submit verification of licensure where the applicant holds a license in good standing to practice naprapathy; verification must be sent directly from the issuing state(s), jurisdiction or international board; verification must include a board state seal or international equivalent and must attest to the status, issue date and license

number.

[16.6.7.10 NMAC - N, 05-24-10; A, 10-11-13]

16.6.7.11 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION.

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.6.7.11 NMAC - N, 10-11-13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.2 NMAC, Sections 7, 9, 10, 11, 12, 13, 14, 15, 17 and 18, effective October 11, 2013.

16.10.2.7 DEFINITIONS.

A. "Board approved school" means a medical school that has been approved by the liaison committee on medical education, composed of the American medical association and the association of American medical colleges, has a liaison council on medical education (LCME)-approved curriculum or equivalent for graduates of Canadian schools, is on the approved list of the California state medical board, or has been approved by the board.

B. "Board approved training program" means a program approved by the accrediting council on graduate medical education of the American medical association (ACGME), the royal [college] college of physicians and surgeons of Canada (RCPSC), or a residency program located within an ACGME approved institution that has been approved by the board.

C. "Board approved credential verification service" means a credential verification service certified by the national commission on quality assurance (NCQA) and approved by the board.

D. "HSC" means the hospital services corporation, a New Mexico corporation, and a credential verification organization certified by the national commission on quality assurance (NCQA).

E. "FCVS" means the federation credential verification service of the federation of state medical boards.

F. "Major disaster" means a declaration of a major disaster by the federal emergency management agency (FEMA).

G. "Military service

member” means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

G.H. “Nationwide criminal history record,” information concerning a person’s arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

H.I. “Nationwide criminal history screening,” a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

J. “Recent veteran” means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a medical license pursuant to section 16.10.2.17. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

K. “Telemedicine” means the practice of medicine across state lines as defined in the Medical Practice Act, Section 61-6-6, K NMSA 1978. [16.10.2.7 NMAC - Rp 16 NMAC 10.2.7, 4/18/02; A, 1/20/03; A, 10/7/05; A, 12/30/05; A, 7/1/06; A, 1/10/07; A, 10/11/13]

16.10.2.9 MEDICAL LICENSE BY EXAMINATION.

A. Prerequisites for licensure. Each applicant for a license to practice as a medical doctor in New Mexico must possess the following qualifications:

(1) graduated and received a diploma from a board approved school, completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on board review of an evaluation by a board approved credential evaluation service, [~~or is a graduate of a medical school located outside the United States who successfully completes two years or more of an approved postgraduate training program at an institution located in New Mexico prior to December 30, 2007;~~] or the board shall, in its sole discretion, determine if the applicant’s total educational and professional clinical experience is substantially equivalent to that which is

required for licensure in New Mexico; and

(2) successfully passed one of the examinations or combinations of examinations defined in 16.10.3 NMAC; and

(3) completed two years of postgraduate training or been approved by the board in accordance with the provisions of Subsection B of Section 61-6-11 [B] NMSA 1978;

(4) when the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and

(5) a qualified applicant who has not been actively and continuously in practice for more than [2] two years prior to application may be required to successfully complete a special examination or evaluation such as, but not limited to, the SPEX (special purpose examination), the PLAS (post-licensure assessment system of the federation of state medical boards), or specialty re-certification.

B. Required documentation for all applicants. Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application with a passport-quality photo taken within the previous[6] six months; applications are valid for[+] one year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must be received directly from the other state board(s), and must attest to the status, issue date, license number, and other information requested and contained on the form; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant’s character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant’s ability and performance; forms must be sent directly to the board from the recommending physician; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly

to the board;

(4) verification of all work experience and hospital affiliations in the last five years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(5) a copy of all American board of medical specialties (ABMS) specialty board certifications, if applicable; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board; and

(6) the board may request that applicants be investigated by the biographical section of the American medical association (AMA), the drug enforcement administration (DEA), the federation of state medical boards (FSMB), the national practitioner data bank, and other sources as may be deemed appropriate by the board;

(7) applicants who are not United States citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Additional documentation for applicants using the FCVS. Applicants are encouraged to use the FCVS as once a credential file is created future applications for medical licensure will be streamlined. However, application through FCVS is not required. Applicants using the FCVS must submit a completed application to the FCVS, who will provide primary source documentation to the board. Only the documents required in Subsection B of 16.10.2.9 are required in addition to the FCVS report.

D. Additional documentation for applicants using HSC or another board-approved credentials verification service.

(1) status report of educational commission for foreign medical graduates (ECFMG) certification sent directly to the board from ECFMG, if applicable;

(2) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(3) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency;

(4) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas.

E. Additional documentation for applicants applying

directly to New Mexico and not using FCVS or HSC or another board-approved credentials verification service.

(1) verification of medical education form with school seal or notarized, sent directly to the board from the school;

(2) transcripts sent directly to the board from the medical school;

(3) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(4) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(5) postgraduate training form sent to the board directly from the training program;

(6) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency; and

(7) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas;

(8) certified copies of source documents obtained directly from another state licensing jurisdiction who has the original document on file will be accepted in lieu of original documents when the originals cannot be obtained for a valid cause.

F. Licensure process.

Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, [~~and/or~~] or approval by a member or agent of the board.

G. Initial license expiration. Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month. If New Mexico is the first state of licensure, initial licenses are valid for a period of not less than twenty-four months or more than thirty-five months and shall be renewed on July 1.

[16.10.2.9 NMAC - N, 5/1/02; A, 1/20/03; A, 7/1/03; A, 4/3/05; A, 10/7/05; A, 7/1/06; A, 1/10/07; A, 1/3/08; A, 10/11/13]

16.10.2.10 MEDICAL LICENSE BY ENDORSEMENT.

A. Prerequisites for licensure. Each applicant for a license to practice as a medical doctor in New Mexico by endorsement must be of good moral character, hold a full and unrestricted license to practice medicine in another state, and

possess the following qualifications:

(1) have practiced medicine in the United States or Canada immediately preceding the application for at least three years;

(2) be free of disciplinary history, license restrictions, or pending investigations in all jurisdictions where a medical license is or has been held;

(3) graduated from a board approved school or hold current [~~educational commission for foreign medical graduates~~] ECFMG certification; and

(4) current certification from a medical specialty board recognized by the [~~American board of medical specialties~~] ABMS.

B. Required documentation for all applicants. Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application with a passport-quality photo taken within the previous [~~6~~] six months; applications are valid for [~~+~~] one year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must be received directly from the other state board(s), and must attest to the status, issue date, license number, and other information requested and contained on the form;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physician; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board;

(4) verification of all work experience and hospital affiliations in the last five years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board;

(5) a copy of all ABMS specialty board certifications, if applicable; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board; and

(6) the board may request

that applicants be investigated by the biographical section of the [~~American medical association~~] AMA, the [~~drug enforcement administration~~] DEA, the [~~federation of state medical boards~~] FSMB, the national practitioner data bank, and other sources as may be deemed appropriate by the board;

(7) applicants who are not U.S. citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Licensure process.

Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, [~~and/or~~] or approval by a member or agent of the board.

D. Initial license expiration. Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month.

[16.10.2.10 NMAC - N, 1/20/03; A, 7/1/03; A, 4/3/05; A, 10/7/05; A, 7/1/06; A, 1/10/07; A, 10/11/13]

16.10.2.11 TELEMEDICINE LICENSE.

A. Prerequisites for licensure. Each applicant for a telemedicine license must be of good moral character and hold a full and unrestricted license to practice medicine in another state or territory of the United States.

B. Required documentation. Each applicant for a telemedicine license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) A completed signed application, with a passport quality photo taken within [~~6~~] six months. Applications are valid for [~~+~~] one year from the date of receipt.

(2) Verification of licensure in all states where the applicant holds or has held a license to practice medicine, or other health care profession. Verification must be received directly from the other state(s) board, and must attest to the status, issue date, license number, and other information requested and contained on the form.

(3) Applicants who have had previous disciplinary or other action against them may be required to meet with the entire board. The board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the

physician is a potential threat to the public.

C. Licensure process. Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an [~~American Medical Association~~] AMA physician profile and [~~federation of state medical boards~~] FSMB board action databank search. When the application is complete a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved.

D. Initial license expiration. Telemedicine licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month.

E. Exemption from licensure requirements are defined in Section 61-6-17 of the Medical Practice Act and include a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico licensed physician on an irregular or infrequent basis not to exceed ten patients per year. [16.10.2.11 NMAC - Rp 16 NMAC 10.2.13, 4/18/02; 16.10.2.11 NMAC - Rn & A, 16.10.2.10 NMAC; 1/20/03; A, 4/3/05; A, 7/1/06; A, 1/3/08; A, 10/11/13]

16.10.2.12 POSTGRADUATE TRAINING LICENSE. A postgraduate training license is required for all interns, residents, and fellows enrolled in board approved training programs within the state. Individuals enrolled in board approved training programs outside of New Mexico may apply for a postgraduate training license as a pre-requisite to obtaining a New Mexico public service license.

A. Prerequisites for licensure. Each applicant for a postgraduate training license must possess the following qualifications:

(1) graduated from a board approved school or completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on board review of an evaluation by a board approved credential evaluation service;

(2) passed part I of the United States medical licensing examination (USMLE); and

(3) be of good moral character.

B. Required documentation. Each applicant shall submit the required fee as specified in 16.10.9.8 NMAC and complete the board-approved application.

(1) Applicants enrolled at the university of New Mexico health science center must submit an application through the office of graduate medical education for review before it is forwarded to the board for

review and approval.

(2) Applicants enrolled at a board approved training program outside New Mexico must submit the postgraduate training license application directly to the board.

(3) A copy of the official examination results must be attached to each application.

C. Licensure process. Upon receipt of a completed signed application and fee, a member or agent of the board will review the application and may approve the license. The applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board.

D. License expiration. Postgraduate training licenses are valid for no longer than one year, but may be renewed for a period not to exceed eight years or completion of the residency, whichever is shorter, and as long as the license holder is enrolled in a board approved training program. Postgraduate training licenses may be renewed prior to expiration.

[16.10.2.12 NMAC - Rp, 16 NMAC 10.2.14, 4/18/02; 16.10.2.12 NMAC - Rn, 16.10.2.11 NMAC, 1/20/03; A, 10/7/05; A, 7/1/06; A, 1/3/08; A, 10/11/13]

16.10.2.13 PUBLIC SERVICE LICENSE. A resident physician may apply for a public service license, which enables him to practice medicine outside the training program. The resident physician must be continuing in the board approved training program.

A. Prerequisites for licensure. Each applicant for a public service license shall have graduated from an approved medical school, passed all required examinations as defined in 16.10.3 NMAC, and completed one year of postgraduate training. In addition, the applicant shall have completed an application for licensure including all required documentation required in 16.10.2.9.B through 16.10.2.9.E as applicable. Other requirements include:

(1) written approval from his training program director;

(2) a postgraduate training license issued by the New Mexico medical board;

(3) a resident physician with one year postdoctoral training may only apply for a public service license when he is under the direct supervision of a New Mexico physician or when employed in a medically underserved area;

(4) if a physician is not being supervised directly, there must be procedures in place for a licensed New Mexico physician to review, on at least a quarterly basis, prescriptions written and dispensed for controlled substances and operative procedures performed.

B. Required

documentation. Each applicant for a public service license shall submit the required fee as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application, with a passport quality photo taken within the previous[6] six months; applications are valid for [†] one year from the date of receipt;

(2) letter of approval from the training program director.

C. Licensure process. Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

D. License expiration. Public service licenses shall be renewed annually on September 1 as long as the applicant remains eligible.

[16.10.2.13 NMAC - Rp, 16 NMAC 10.3.9, 4/18/02; 16.10.2.13 NMAC - Rn & A, 16.10.2.12 NMAC, 1/20/03; A, 7/1/03; A, 4/3/05; A, 7/1/06; A, 10/11/13]

16.10.2.14 TEMPORARY TEACHING, RESEARCH, AND SPECIALIZED DIAGNOSTIC AND TREATMENT LICENSES. The secretary-treasurer or board designee may issue a temporary license to physicians licensed in other states or jurisdictions for the purpose of teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology, or for physician educational purposes in New Mexico on a temporary basis under the supervision of a New Mexico licensed physician. The following provisions apply:

A. Prerequisites for licensure. The applicant must:

(1) be otherwise qualified to practice medicine in New Mexico;

(2) hold an unrestricted license in another state or country;

(3) submit the name of the sponsoring or associating physician(s), who must be actively licensed in New Mexico.

B. Required documentation:

(1) specific program or protocol of work planned;

(2) address of sponsoring institution or organization where the work will be performed;

(3) an affidavit from the sponsoring physician attesting to the qualifications of the applicant and the purpose of the functions or medical procedures the applicant will perform;

(4) verification of licensure in state

or jurisdiction where physician is practicing; and

(5) a license fee as set forth in 16.10.9 NMAC.

C. Licensure process.

Upon receipt of a completed signed application, including all required documentation and fees, board staff will request and review an AMA physician profile and [~~federation of state medical boards~~] FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

D. The applicant may perform only those functions listed in the application. The supervising physician must notify the board and obtain approval prior to any change in the activities of the temporary license holder.

E. The duration of a temporary teaching, research, or specialized diagnostic and treatment license shall not exceed three months, provided however that the license may be renewed up to three times upon payment of appropriate fees and written justification for the plan remaining in effect. After the third renewal of a temporary license the physician shall re-apply under the provisions of this rule.

[16.10.2.14 NMAC - Rp, 16 NMAC 10.3.8, 4/18/02; 16.10.2.14 NMAC - Rn, 16.10.2.13 NMAC, 1/20/03; A, 10/7/05; A, 7/1/06; A, 1/3/08; A, 10/11/13]

16.10.2.15 YOUTH CAMP OR SCHOOL LICENSES.

The secretary-treasurer or board designee may approve a temporary license for physicians to provide temporary medical services to organized youth camps or schools. Youth camp or school licenses are issued for a period not to exceed three months. Practice under the temporary license shall be limited to enrollees, leaders and employees of the camp or school. Applicants must be qualified for licensure in New Mexico and shall submit the following documentation:

A. completed signed application with a passport-quality photograph, taken within the previous [6] six months, attached;

B. verification of current unrestricted license from state or jurisdiction where applicant is currently practicing or licensed;

C. verification of DEA permit; and,

D. a temporary license fee as set forth in 16.10.9.8 NMAC.

E. Licensure process.

Upon receipt of a completed application,

including all required documentation and fees, board staff will request and review an AMA physician profile and [~~federation of state medical boards~~] FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

[16.10.2.15 NMAC - Rn, 16.10.2.14 NMAC, 1/20/03; A, 10/7/05; A, 7/1/06; A, 1/3/08; A, 10/11/13]

16.10.2.17 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION.

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.2.17 NMAC - N, 7/1/06; A, 1/10/07; A, 9/27/07; 16.10.2.17 NMAC - N, 10/11/13]

~~[16.10.2.17]~~ **16.10.2.18 NATIONWIDE CRIMINAL HISTORY SCREENING.**

All applicants for initial licensure in any category in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two [(2)] full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

A. Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

B. Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

C. If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.2.18 NMAC - Rn & A, 16.10.2.17 NMAC, 10/11/13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.15 NMAC, Sections 7, 8, 9 and Section 20 is new, effective October 11, 2013.

16.10.15.7 DEFINITIONS:

A. "AAPA" means American academy of physician assistants.

B. "Alternate supervising physician" means a physician who holds a current unrestricted New Mexico medical license, is a cosignatory on the notification of supervision, agrees to act as the supervising physician in the supervising physician's absence and is approved by the board.

C. "Interim permit" means a document issued by the board that allows a physician assistant to practice pending completion of all licensing requirements.

D. "Effective supervision" means the exercise of physician oversight, control, and direction of services rendered by a physician assistant. Elements of effective supervision include:

(1) on-going availability of direct communication, either face-to-face or by electronic means;

(2) active, ongoing review of the physician assistants services, as appropriate, for quality assurance and professional support;

(3) delineation of a predetermined plan for emergency situations, including unplanned absence of the primary supervising physician; and

(4) identification and registration of alternate supervising physicians, as appropriate to the practice setting.

E. "Lapsed" means a license that has not been renewed by March 1 of the expiration year and has been suspended for non-renewal. A license that has lapsed is not valid for practice in New Mexico.

F. "Nationwide criminal history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

G. "Nationwide criminal history screening" means a criminal history background investigation of an applicant for licensure by examination or endorsement, or a licensee applying for licensure renewal, through the use of fingerprints reviewed by

the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

H. "NCCPA" means national commission on certification of physician assistants.

I. "Direct communication" means communication between the supervising physician and physician assistant, in person, telephonically, by two-way radio, by email or other electronic means.

J. "Scope of practice" means duties and limitations of duties placed upon a physician assistant by their supervising physician and the board; includes the limitations implied by the field of practice of the supervising physician.

K. "Statewide criminal history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized database of the department of public safety or the repositories of criminal history information in municipal jurisdictions.

L. "Statewide criminal history screening" means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints submitted to the department of public safety and resulting in the generation of a statewide criminal history record for that licensee.

M. "Supervising physician" means a physician who holds a current unrestricted license, provides a notification of supervision, assumes legal responsibility for health care tasks performed by the physician assistant and is approved by the board.

N. "Suspended for non-renewal" means a license that has not been renewed by May 31 of the expiration year, and has at the discretion of the board, been lapsed.

O. "Emergency supervising physician" means a physician who is responsible for the operations of a team or group of health professionals, including physician assistants, who are responding to a major disaster.

P. "Major disaster" means a declaration of a major disaster by the federal emergency management agency (FEMA).

Q. "Military service member" means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

R. "Recent veteran" means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a physician assistant license pursuant to section 16.10.15.20. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process. [16.10.15.7 NMAC - Rp 16 NMAC 10.15.7, 7/15/01; A, 10/7/05; A, 12/30/05; A, 7/1/06; A, 9/27/07; A, 9/21/09; A, 10/11/13]

16.10.15.8 QUALIFICATIONS FOR LICENSURE AS A PHYSICIAN ASSISTANT:

A. graduation from a program for physician assistants accredited by the committee on allied health education and accreditation (CAHEA) of the American medical association, the accreditation review committee on education for the physician assistant (ARC-PA) or its successor agency, or passed the physician assistant national certifying examination administered by NCCPA prior to 1986 and has proof of continuous practice with an unrestricted license as a physician assistant in another state for four [(4)] years prior to application;

B. current NCCPA certification;

C. good moral and professional character; and

D. any other proof of competency as may be requested by the board.

[16.10.15.8 NMAC - Rp 16 NMAC 10.15.8, 7/15/01; A, 10/5/03; A, 1/1/09; A, 10/11/13]

16.10.15.9 LICENSURE PROCESS: Each applicant for a license as a physician assistant shall submit the required fees and following documentation.

A. A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for [+]one year from the date of receipt.

B. Two letters of recommendation from physicians licensed to practice medicine in the United States or physician assistant program directors, or the director's designee, who have personal knowledge of the applicant's moral character and competence to practice. Letters of recommendation must be sent directly to the board from the individual recommending the applicant.

C. Verification of licensure in all states where the applicant holds or has held a license to practice as a physician assistant, or other health care profession. Verification must be sent directly to the board from the other state board(s). Verification must include a raised seal; attest to current

status, issue date, license number, and all other related information.

D. Verification of all work experience in the last five years, if applicable, provided directly to the board.

E. All applicants may be required to personally appear before the board or the board's designee for an interview and must present original documents, as the board requires. The initial license will be issued following completion of any required interview, [and/or] or approval by a member or agent of the board.

F. The initial license is valid until March 1 of the year following NCCPA expiration.

G. License by endorsement from New Mexico board of osteopathic examiners. Applicants who are currently licensed in good standing by the New Mexico board of osteopathic examiners may be licensed by endorsement upon receipt of a verification of licensure directly from the New Mexico board of osteopathic examiners, a supervising physician form signed by the M.D. who will serve as supervising or alternate supervising physician, and a fee of \$25.00.

H. All applicants for initial licensure as a physician assistant are subject to a state and national criminal history screening at their expense. All applicants must submit two [(2)] full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

(1) Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.15.9 NMAC - N, 7/15/01; A, 10/5/03; A, 8/6/04; A, 10/7/05; A, 7/1/06; A, 9/27/07; A, 10/11/13]

16.10.15.20 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION. If a military service member, the spouse of a military service member, or a recent veteran submits an application for a physician assistant license and is a qualified applicant

pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.15.20 NMAC - N, 10/11/13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.19 NMAC, Sections 7, 9, 10, 11, 12, 13, 14, 15, 16 and 17, effective October 16, 2013.

16.10.19.7 DEFINITIONS:

A. "Lapsed" means a license that has not been renewed by September 30 of the expiration year and has been suspended for non-renewal. A license that has lapsed is not valid for practice in New Mexico.

B. "Military service member" means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

C. "Recent veteran" means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for an anesthesiologist assistant license pursuant to section 16.10.19.10. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

D. "Supervising anesthesiologist" means an anesthesiologist currently and actively licensed in the state of New Mexico who meets the requirements of the act, who will function as the supervisor of the anesthesiologist assistant, and whose application to do so is accepted by the board.

E. "Suspended for non-renewal" means a license that has not been renewed by September 30 of the expiration year, and has at the discretion of the board, been lapsed.

[16.10.19.7 NMAC - N, 8/11/01; A, 9/21/09; A, 10/16/13]

16.10.19.9 LICENSURE PROCESS: Each applicant for licensure as an anesthesiologist assistant shall submit the required fees as defined in Subsection A of 16.10.9.10 NMAC and following documentation.

A. A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for [±] one year from the date of receipt.

B. Two letters of recommendation from board certified anesthesiologists licensed to practice medicine in the United States who have served as a supervisor of the applicant or anesthesiologist assistant program directors who have personal knowledge of the applicant's moral character and competence to practice. Letters of recommendation must be sent directly to the board from the individual recommending the applicant.

C. Verification of licensure in all states where the applicant holds or has held a license to practice as an anesthesiologist assistant, or other health care profession. Verification must be sent directly to the board from the other state board(s). Verification must include an original seal; attest to current status, issue date, license number, and all other related information.

D. Applicants may be required to personally appear before the board or the board's designee for an interview and may present original documents, as the board requires.

E. The initial license is valid until July 1 of the next odd-numbered year.

[16.10.19.9 NMAC - N, 8/11/01, A, 10/16/13]

16.10.19.10 EXPEDITE D MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION.

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.19.10 NMAC - N, 8/11/01; A, 1/20/03; A, 10/5/03; A, 9/21/09; 16.10.19.10 NMAC - N, 10/16/13]

[16.10.19.10] 16.10.19.11 SUPERVISION REQUIREMENTS:

A. Pursuant to Session Laws of 2001, Ch. 311, Section 9, an anesthesiologist may not supervise more than three (3) anesthesiologist assistants, except in emergency cases. An anesthesiologist shall not supervise, except in emergency cases, more than four anesthesia providers if at least one is an anesthesiologist assistant.

B. The supervising anesthesiologist shall submit written notice of intent to supervise an anesthesiologist assistant on forms prescribed by the board. These forms must be submitted and approved before the anesthesiologist assistant begins work. Supervising anesthesiologists who

are notifying the board of their intent to supervise an anesthesiologist assistant with less than one year of experience will include a plan for providing enhanced supervision during the first year of practice.

C. An anesthesiologist assistant shall only work under the supervision of an anesthesiologist approved by the board.

D. Failure of the supervising anesthesiologist to comply with the Medical Practice Act and the rules may result in denial of approval for current or future anesthesiologist assistant supervision.

E. Except in cases of emergency, the supervising anesthesiologist must be present in the operating room during induction of a general or regional anesthetic and during emergence from a general anesthetic, and the presence of the supervising anesthesiologist must be documented in the patient record.

F. The supervising anesthesiologist must be present within the operating suite and immediately available to the operating room when an anesthesiologist assistant is performing anesthesia procedures.

G. The supervising anesthesiologist shall ensure that all activities, functions, services and treatment measures are properly documented in writing and that all anesthesia records are reviewed, countersigned and dated.

[16.10.19.11 NMAC - Rn, & A, 16.10.19.10 NMAC, 10/16/13]

[16.10.19.11] 16.10.19.12 TEMPORARY DELEGATION OF SUPERVISION:

For periods of time not to exceed fourteen days a supervising anesthesiologist may delegate supervisory responsibilities to another anesthesiologist who meets the same requirements specified under "definitions" in the act and who is familiar with the rules governing the supervision of an anesthesiologist assistant.

[16.10.19.12 NMAC - Rn, 16.10.19.11 NMAC, 10/16/13]

[16.10.19.12] 16.10.19.13 RESPONSIBILITY OF ANESTHESIOLOGIST ASSISTANT:

A. To identify themselves to patients and others as an anesthesiologist assistant, and to wear a nametag or other identification when on duty clearly stating that they are an anesthesiologist assistant.

B. Register annually with the board on or before July 1.

C. Work only when under the supervision of a board approved anesthesiologist, or as delegated under the provisions of 16.10.19.11 NMAC.

D. Immediately report to the supervising anesthesiologist any unexpected or adverse peri-operative events,

or incidents when the prescribed anesthetic deviates from its expected course.

E. Assure that except in cases of emergency, the supervising anesthesiologist is present in the operating room during induction of a general or regional anesthetic and during emergence from a general anesthetic, and the presence of the supervising anesthesiologist is documented in the patient record.

F. Practice within the defined scope of authority and all provisions of Session Laws of 2001, Ch. 311, Sections 1 through 11.

[16.10.19.13 NMAC - Rn, 16.10.19.12 NMAC, 10/16/13]

[16.10.19.13] 16.10.19.14 LICENSE EXPIRATION AND RENEWAL:

A. Anesthesiologist assistant licenses expire on July 1 of each odd-numbered year. A New Mexico anesthesiologist assistant license that has not been renewed by July 1 of the renewal year will remain temporarily active with respect to medical practice until September 30 of the renewal year at which time, at the discretion of the board, the license may be suspended for non-renewal and the status changed to lapsed. Primary supervising anesthesiologist will be notified.

B. A completed renewal application, post-marked on or before July 1 of the renewal year, shall include the required fees as defined in Subsection B of 16.10.9.10 NMAC and certification of required continuing education.

C. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal application if one has not been received.

D. Renewal applications postmarked or hand-delivered after July 1 will be subject to late penalties as defined in Subsection D of 16.10.9.10 NMAC.

E. The board may suspend for non-renewal and change the status to lapsed, on October 1 of the renewal year, the license of any anesthesiologist assistant who has failed within ninety days after the license renewal date either to renew their license, or to change the license status, or to pay all required fees, or to comply with NCCAA certification requirements, or to provide required documentation.

[16.10.19.14 NMAC - Rn, 16.10.19.13 NMAC, 10/16/13]

[16.10.19.14] 16.10.19.15 INACTIVE STATUS AND REINSTATEMENT:

A. Upon request an anesthesiologist assistant may place the license on inactive status. Licensing or renewal fees already paid to the board will not be refunded, regardless of the date of the

status change. A license placed in inactive status does not require payment of renewal fees.

B. An anesthesiologist assistant with a license in inactive status may not practice as an anesthesiologist assistant.

C. Re-instatement within two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current competence.

D. Re-instatement after two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a re-instatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the board's designee for an interview.

[16.10.19.15 NMAC - Rn, 16.10.19.14 NMAC, 10/16/13]

[16.10.19.15] 16.10.19.16 CONTINUING EDUCATION:

A. Proof of forty hours of continuing education is required for each bi-annual renewal.

B. Current certification in advanced cardiac life support is also required for license renewal and the hours spent in refresher courses count as part of the required education hours.

C. Required continuing education will be prorated during the initial licensing period. Individuals licensed less than one year will require no continuing education for the initial renewal. Individuals licensed more than one year, but less than two years must submit proof of twenty hours of continuing education, including ACLS certification.

[16.10.19.16 NMAC - Rn, 16.10.19.15 NMAC, 10/16/13]

[16.10.19.16] 16.10.19.17

SEVERABILITY: If any provision of this rule is determined to be void or illegal by a court of law or other authority, the remainder of the rule shall remain in full force and effect notwithstanding.

[16.10.19.17 NMAC - Rn, 16.10.19.16 NMAC, 10/16/13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.20 NMAC, Section 7, 8, 9, 10, 13, 14, 15, 16, 17, 18 and 19, and Section 12 is new, effective October 11, 2013.

16.10.20.7 DEFINITIONS:

A. "AASM" means the American academy of sleep medicine, a national organization that establishes accreditation standards for sleep centers and sleep labs.

B. "AASST" means the American association of sleep technologists, a national organization that provides continued development of educational, technical and clinical assistance related to the sleep technology profession.

C. "ABSM" means the American board of sleep medicine, a national organization developed for the purpose of establishing and maintaining standards of board certification for physicians practicing sleep disorders medicine.

D. "Act" means the Polysomnography Practice Act.

E. "Board" means the New Mexico medical board.

F. "BRPT" means the board of registered polysomnographic technologists, a national agency for credentialing polysomnographic technologists.

G. "CAAHEP" means the commission on accreditation of allied health education programs, a national agency for accrediting polysomnographic educational programs.

H. "Committee" means the polysomnography practice advisory committee.

I. "Contact hour" means sixty (60) minutes of actual instructional time. Breaks, meals, evaluations, wrap-up or registration are not included when calculating hours.

J. "Direct supervision" means that the polysomnographic technologist providing supervision shall be present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.

K. "Expired" means a license was not renewed by the biennial renewal date of March 1 or at the end of the grace period of May 1, and the licensee is **not** eligible to practice within the state of New Mexico.

L. "General supervision" means that the polysomnographic procedure is provided under a physician's direction and control, but the physician's presence is not required during the performance of the

procedure.

M. “Grace period” means the sixty (60) day period following the renewal date when a polysomnographic technologist may renew a license that was not renewed by the renewal date, by paying the required renewal fee, the late fee and meeting the renewal requirements. A licensee may continue to practice during the grace period.

N. “Grace period status” means the license has not been renewed by the renewal date and has not expired.

O. “License” means an authorization issued by the board that permits a person to engage in the practice of polysomnography in the state.

P. “Licensed provider” means a licensed physician, licensed physician assistant, licensed certified nurse practitioner or licensed psychologist.

Q. “Licensee” means a person licensed by the board to engage in the practice of polysomnography.

R. “Military service member” means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

[R.] S. “NBRC” means the national board for respiratory care, a national organization that credentials respiratory therapists, and provides an examination to further certify respiratory therapists as sleep disorders specialists.

[S.] T. “Physician” means an individual licensed by the New Mexico medical board and an individual licensed by the New Mexico board of osteopathic medical examiners.

[F.] U. “Polysomnographic student” means a person who is enrolled in an educational program that is accredited by the commission on accreditation of allied health education programs, as provided in Section 5 [61-6B-5 NMSA 1978] of the Polysomnography Practice Act and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person’s educational program.

[F.] V. “Polysomnographic technician” means a person who has graduated from an accredited educational program described in Section 5 of the Polysomnography Practice Act but has not yet passed the national certifying examination given by the board of registered polysomnographic technologists, who has obtained a temporary permit from the board and who may provide sleep-related services under the general supervision of a licensed physician.

[F.] W. “Polysomnographic technologist” means a person who is credentialed by the board of registered

polysomnographic technologists and is licensed by the board to engage in the practice of polysomnography under the general supervision of a licensed physician.

[W.] X. “Polysomnographic trainee” means a person who is enrolled in an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine and who may provide sleep-related services under the direct supervision of a polysomnographic technologist or licensed physician as a part of the person’s educational program.

[X.] Y. “Practice of polysomnography” means the performance of diagnostic and therapeutic tasks, under the general supervision of a licensed physician, including:

(1) monitoring and recording physiologic activity and data during the evaluation or treatment of sleep-related disorders, including sleep-related respiratory disturbances, by applying appropriate techniques, equipment and procedures, including:

(a) continuous or bi-level positive airway pressure titration on patients using a nasal or oral or a nasal and oral mask or appliance that does not extend into the trachea or attach to an artificial airway, including the fitting and selection of a mask or appliance and the selection and implementation of treatment settings;

(b) supplemental low-flow oxygen therapy that is less than ten liters per minute using nasal cannula or continuous or bi-level positive airway pressure during a polysomnogram;

(c) capnography during a polysomnogram;

(d) cardiopulmonary resuscitation;

(e) pulse oximetry;

(f) gastroesophageal pH monitoring;

(g) esophageal pressure monitoring;

(h) sleep staging, including surface electroencephalography, surface electrooculography and surface submental electromyography;

(i) surface electromyography;

(j) electrocardiography;

(k) respiratory effort monitoring, including thoracic and abdominal movement;

(l) respiratory plethysmography;

(m) arterial tonometry and additional measures of autonomic nervous system tone;

(n) snore monitoring;

(o) audio or video monitoring;

(p) body movement monitoring;

(q) nocturnal penile tumescence monitoring;

(r) nasal and oral airflow monitoring;

(s) body temperature monitoring;

and

(t) use of additional sleep-related diagnostic technologies;

(2) observing and monitoring physical signs and symptoms, general behavior and general physical response to polysomnographic evaluation or treatment and determining whether initiation, modification or discontinuation of a treatment regimen is warranted;

(3) analyzing and scoring data collected during the monitoring described in Paragraphs (1) and (2) of this subsection for the purpose of assisting a licensed provider in the diagnosis and treatment of sleep and wake disorders that result from developmental defects, the aging process, physical injury, disease or actual or anticipated somatic dysfunction;

(4) implementing a written or verbal order from a licensed provider that requires the practice of polysomnography;

(5) educating a patient regarding the treatment regimen that assists that patient in improving the patient’s sleep; and

(6) initiating and monitoring treatment, under the orders of a licensed provider, for sleep-related breathing disorders by providing continuous positive airway pressure and bi-level positive airway pressure devices and accessories, including masks that do not extend into the trachea or attach to an artificial airway, to a patient for home use, together with educating the patient about the treatment and managing the treatment.

Z. “Recent veteran” means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a polysomnography license pursuant to section 16.10.20.12. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

[Y.] AA. “Renew” means to begin again after an interval of time; to make valid again for a further period.

[Z.] BB. “Renewal date” means the deadline date upon which the license shall be made valid again for another period of time without a penalty fee.

[AA.] CC. “SDS” means sleep disorders specialist.

[BB.] DD. “Sleep-related services” means acts performed by polysomnographic technicians, polysomnographic trainees, polysomnographic students and other persons permitted to perform these services under the Polysomnography Practice Act, in a setting described in 16.10.20.17 NMAC, that would be considered the practice of polysomnography if performed by a polysomnographic technologist.

[16.10.20.7 NMAC - N, 1/1/10; A, 10/11/13]

REQUIREMENTS: The board may issue a license to an applicant who fulfills the following requirements.

A. Completes an application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one (1) year from the date of receipt. While an application is pending, the applicant is responsible for providing the board with any changes to the submitted information or to the applicant's oath. Applications shall require the following documentation:

- (1) demographic information of the applicant;
- (2) educational history;
- (3) employment history;
- (4) professional references;
- (5) examination information;
- (6) certification information;
- (7) other state licensure information;
- (8) professional practice questions;
- (9) applicant's oath;
- (10) passport-quality color photograph taken within six (6) months prior to filing the application; approximate size 2 x 2 inches, head and shoulders only, full face, front view, plain white or off-white background, standard photo stock paper; and, scanned or computer-generated photographs should have no visible pixels or dots; and
- (11) applicant's signature.

B. Each applicant for licensure as a polysomnographic technologist shall submit the required fees as established in 16.10.9 NMAC.

C. Verification of licensure in all states or territories where the applicant holds or has held a license to engage in the practice of polysomnography, or other health care profession, shall be sent directly to the board by the other state board(s) by United States postal service, facsimile, or in an electronic format acceptable by the board, and shall attest to the current status, issue date, license number, and other information requested and contained on the form.

D. Passage of the national certifying examination given by the BRPT or an examination equivalent to the BRPT examination, or the NBRC-SDS examination, as approved by the board. Proof of passage shall be sent directly to the board by the certifying entity or in an electronic format acceptable by the board. The board may accept hard copy by United States postal service, facsimile or electronic mail.

E. Proof that the applicant has been credentialed by the BRPT or by another national entity equivalent to the BRPT, as approved by the board.

F. Proof of high school

graduation, evidenced by a copy of diploma or general educational development (GED) certificate, or other format acceptable by the board. Proof of a degree from a level of higher education is also acceptable.

G. Proof that the applicant holds current certification of successful completion of formal training in basic cardio pulmonary resuscitation and in the application and management of an automated external defibrillator.

H. Verification of all work experience in the last five (5) years since graduation, if applicable, provided directly to the board from the employer, by letter, or in an electronic format acceptable by the board, or on forms provided by the board.

I. Proof of graduation means official transcripts from an educational program or a certificate acceptable to the board. The applicant shall make arrangements for official transcripts to be sent directly to the board by the educational institution. If official transcripts are not available due to school closure, destroyed records, etc., the applicant shall provide satisfactory evidence to the board that the required polysomnographic educational program has been met for consideration on a case-by-case basis. Proof of completion of a polysomnographic education program, evidenced by:

- (1) graduation from a polysomnographic educational program that is accredited by the CAAHEP; or
- (2) graduation from a respiratory care educational program that is accredited by the CAAHEP and completion of the curriculum for a polysomnography or sleep diagnostic specialist certificate established and accredited by the committee on accreditation for respiratory care of the CAAHEP; or
- (3) graduation from an electroneurodiagnostic technologist educational program with a polysomnographic technology track that is accredited by the CAAHEP; or
- (4) successful completion of a sleep technologist educational program that is accredited by the AASM. This option shall expire two (2) years after the date upon which at least three (3) polysomnographic technologist educational programs in New Mexico have been accredited by the CAAHEP.

J. Waiver of the educational requirement. The board may waive the educational requirements set forth in Subsections F and I of this section for an individual continuously engaged in the practice of polysomnography on or before July 1, 2008, pursuant to Subsection B of Section 61-6B-5 of the Polysomnography Practice Act. To be eligible for this waiver, applicants shall meet all other requirements set forth in this section.

K. Personal interview.

Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or a member of the polysomnographic practice advisory committee designated by the board to evaluate that person's qualifications for a license.

L. Initial license period. The applicant who has met all the requirements for licensure shall be issued an initial license for a period of not more than twenty-four (24) months or less than thirteen (13) months, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1.

M. Initial license expiration. Polysomnographic technologist licenses shall be renewed biennially on March 1 as established in 16.10.20.12 NMAC.

N. State and national criminal history screening. All applicants for initial licensure as a polysomnographic technologist are subject to a state and national criminal history screening at their expense. All applicants shall submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and background screening fee at the time of application.

(1) Applications for licensure shall not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications shall be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Medical Practice Act or the Polysomnography Practice Act, the applicant/licensee shall be notified to submit copies of legal documents and other related information to the board, which shall make the determination if the applicant is eligible for licensure or if disciplinary action will be taken. Questions of felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession need to be resolved satisfactorily. If the prior conviction does not relate to employment in the profession, the board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to: certified proof of completion of probation or parole, payment of fees, community service or any other court ordered sanction.

[16.10.20.8 NMAC - N, 1/1/10; A, 10/11/13]

16.10.20.9 POLYSOMNOGRAPHIC TECHNICIAN TEMPORARY PERMIT:

A. The board may issue a temporary permit to a polysomnographic technician who has met all licensure requirements established in 16.10.20.8 NMAC, except passage of the national certifying examination.

B. The temporary permit is valid for no more than two (2) years from the date of the technician's graduation from an accredited program as described in 16.10.20.8 NMAC.

C. A temporary permit may be renewed for a period of one (1) year beyond the original two (2) year expiration date and upon payment of the temporary permit renewal fee as established in 16.10.9 NMAC. This permit may only be renewed one (1) time.

D. The holder of a temporary permit may not provide sleep-related services until the temporary permit is received and is on file at the principal place of practice.

E. The holder of a temporary permit shall work under the general supervision of a New Mexico licensed physician. The polysomnographic technician is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

- (1) name of the supervising physician;
- (2) specific program or protocol of work planned;
- (3) address of the sponsoring institution or organization where the work will be performed; and
- (4) an affidavit from the supervising physician attesting to the qualifications of the polysomnographic technician and the purpose of the functions the technician will perform while on a temporary permit.

[16.10.20.9 NMAC - N, 1/1/10; A, 10/11/13]

16.10.20.10 NON-LICENSED PERSONS PROVIDING SLEEP-RELATED SERVICES: Non-licensed persons shall meet the following requirements before providing any sleep-related services.

A. A polysomnographic technician shall obtain a temporary permit as established in 16.10.20.9 NMAC.

B. A polysomnographic trainee shall provide proof to the board that the trainee is enrolled in an accredited sleep technologist educational program accredited by the AASM. Acceptable proof consists of a letter or other acceptable affirmation, as approved by the board, that the trainee is enrolled in the program.

C. A polysomnographic student may provide uncompensated sleep-related services under the direct supervision

of a polysomnographic technologist, or a licensed physician, as a part of the student's educational program while actively enrolled in a polysomnographic educational program that is accredited by the CAAHEP.

D. A person credentialed in one (1) of the health-related fields accepted by the BRPT, who may provide sleep-related services while obtaining the clinical experience necessary to be eligible to take the national certification examination, shall work under the direct supervision of a licensed polysomnographic technologist, or a licensed physician, for a period of up to one (1) year.

E. Polysomnographic trainees, polysomnographic students, and persons credentialed in one of the health-related fields accepted by BRPT shall give notice to the board that the person is working under the direct supervision of a licensed polysomnographic technologist or licensed physician and are responsible to provide the board the following documentation on forms provided by the board:

- (1) name of the supervising polysomnographic technologist or physician;
- (2) specific program or protocol of work planned;
- (3) address of the sponsoring institution or organization where the work will be performed; and
- (4) an affidavit from the supervising polysomnographic technologist or physician attesting to the qualifications of the trainee and the purpose of the functions the trainee will perform.

F. Respiratory care practitioners licensed under the Respiratory Care Act are exempt from this requirement. [16.10.20.10 NMAC - N, 1/1/10; A, 10/11/13]

16.10.20.12 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION.

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.20.12 NMAC - N, 1/1/10; 16.10.20.12 NMAC - N, 10/11/13]

16.10.20.13 LICENSE EXPIRATION AND RENEWAL:

A. Polysomnographic technologist licenses shall be renewed biennially on March 1st. An initial license may be issued for a period of up to two (2) years, depending on when in the renewal

cycle the initial license is issued, in order to schedule the license to renew on March 1st.

B. Failure to receive the renewal notice shall not relieve the licensee from the responsibility of renewing the license by the renewal date. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to inform the board of accurate address information and to make a timely request for the renewal application if one has not been received prior to March 1st.

C. Renewal applications postmarked, hand-delivered or completed on-line, on or prior to March 1 shall require the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board; the renewal form shall include the following data:

- (a) demographic information of the licensee;
- (b) license number;
- (c) questions regarding practice information since the last renewal; and
- (d) signature of the licensee if renewing on a hard-copy form; if renewing electronically on-line, no signature is required;

(2) receipt of the renewal fee as established in 16.10.9 NMAC; and

(3) proof of twenty (20) BRPT or AAST approved continuing education contact hours during each biennial renewal cycle; continuing education contact hours acceptable to BRPT for recertification are acceptable for license renewal.

D. Renewal applications postmarked or hand-delivered after March 1 and prior to May 1 shall require the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in subparagraphs (a)-(d) of paragraph (1) of Subsection C of Section 12 above;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) receipt of the late fee as established in 16.10.9 NMAC; and

(4) proof of twenty (20) BRPT or AAST approved continuing education contact hours during each biennial renewal cycle; continuing education contact hours acceptable to BRPT for recertification are acceptable for license renewal.

E. March 1 through April 30 is considered the grace period following the renewal date during which a licensee may continue to provide services and renew with a late fee.

F. When renewal applications are received on or after May 1, the license shall have expired, and the licensee shall not be eligible to provide

polysomnography services in New Mexico.

G. When a retiree reenters the practice of polysomnography, the retiree shall submit the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in subparagraphs (a)-(d) of paragraph (1) of Subsection C of Section 12 above;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) proof of ten (10) BRPT or AAST approved continuing education contact hours for each year since the license was placed in retired status, with a maximum of fifty (50) hours required regardless of the number of years retired;

(4) any other proof of competency as may be requested by the board or the board's designee; and

(5) proof of current BRPT certification.

H. Verification of continuing education.

Each polysomnographic technologist renewing a license shall attest that the required hours of continuing education have been obtained. The board shall randomly select renewal applications for audit to verify compliance. The board may audit continuing education records at any time. The licensee shall maintain continuing education records for one (1) year following the renewal cycle in which they were earned. Any polysomnographic technologist who fails to respond to a continuing education audit shall be considered in violation of Paragraph (23) of Subsection D of Section 61-6-15 of the Medical Practice Act, failure to provide the board with information requested by the board. Potential sanctions include fines, letters of reprimand, license suspension or revocation.

[16.10.20.13 NMAC - Rn & A, 16.10.20.12 NMAC, 10/11/13]

~~[16.10.20.13]~~ **16.10.20.14**

REINSTATEMENT: A licensee with an expired license may apply for reinstatement.

A. Requirements for reinstatement of an expired license *within* one (1) year of the renewal date are as follows:

(1) completion of a reinstatement application;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) receipt of the reinstatement fee as established in 16.10.9 NMAC; and

(4) proof of twenty (20) BRPT or AAST approved continuing education contact hours completed within the previous two (2) years; continuing education contact hours acceptable to BRPT for recertification are acceptable for license reinstatement.

B. Requirements for

reinstatement of an expired license *after* one (1) year of the renewal date are as follows:

(1) completion of a reinstatement application;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) receipt of the reinstatement fee as established in 16.10.9 NMAC;

(4) proof of twenty (20) BRPT or AAST approved continuing education contact hours as required for license renewal;

(5) proof of ten (10) BRPT or AAST approved continuing education contact hours for each year the license has been expired, with a maximum of fifty (50) hours required regardless of the number of years expired;

(6) proof of current BRPT certification; and

(7) any other proof of competency as may be requested by the board or the board's designee; additionally, the board may require the former licensee to reapply as a new applicant.

[16.10.20.14 NMAC - Rn & A, 16.10.20.13 NMAC, 10/11/13]

~~[16.10.20.14]~~ **16.10.20.15** **RETIRED**

STATUS: A licensee who wishes to retire from the practice of polysomnography shall notify the board, in writing, of the retirement effective date. To reenter the practice of polysomnography, the retiree shall meet the requirements as established in Subsection G of 16.10.20.12 NMAC of this part and any other proof of competency as may be requested by the board or the board's designee.

[16.10.20.15 NMAC - Rn, 16.10.20.14 NMAC, 10/11/13]

~~[16.10.20.15]~~ **16.10.20.16** **DISCIPLINARY AND COMPLAINT**

PROCESS: Disciplinary actions and complaints shall be processed as established in 16.10.5 and 16.10.6 NMAC.

[16.10.20.16 NMAC - Rn, 16.10.20.15 NMAC, 10/11/13]

~~[16.10.20.16]~~ **16.10.20.17** **USE OF**

ORAL APPLIANCES: A licensed dentist shall make or direct the making and use of any oral appliance used in the practice of polysomnography. A licensed dentist shall evaluate the structures of a patient's oral and maxillofacial region for purposes of fitting the appliance.

[16.10.20.17 NMAC - Rn, 16.10.20.16 NMAC, 10/11/13]

~~[16.10.20.17]~~ **16.10.20.18** **LOCATIONS FOR THE PRACTICE OF POLYSOMNOGRAPHY:**

A. The practice of polysomnography shall only take place in the following locations:

(1) a hospital;

(2) a stand-alone sleep laboratory;

(3) a sleep center; or

(4) a patient's home.

B. Scoring of data and the education of patients may take place in settings other than in a hospital, sleep laboratory, sleep center or patient's home.

[16.10.20.18 NMAC - Rn, 16.10.20.17 NMAC, 10/11/13]

~~[16.10.20.18]~~ **16.10.20.19** **GENERAL PROVISIONS:**

A. Address changes. Any licensee whose address changes shall notify the board of the address change within thirty (30) calendar days of the change. Address changes shall be provided in writing, by facsimile, letter, or electronic mail. Telephone notification shall be followed with written notification.

B. Display of license. Licensees shall display the license in the office or place in which the licensee practices. The license shall be displayed in a location clearly visible to patients. At secondary places of employment, documentation of the license shall be verified by photocopy with a note attached indicating where the original license is posted.

C. Identification badge required.

(1) Polysomnographic technicians shall wear a badge that appropriately identifies the person as a polysomnographic technician.

(2) Polysomnographic trainees shall wear a badge that appropriately identifies the person as a polysomnographic trainee.

(3) Polysomnographic students shall wear a badge that appropriately identifies the person as a polysomnographic student.

(4) Other clinicians shall wear a badge that appropriately identifies the person and their clinical capacity.

D. Inspection of a business premise. Random inspection of a business premise may be conducted in order to verify compliance with the Polysomnography Practice Act.

[16.10.20.19 NMAC - Rn, 16.10.20.18 NMAC, 10/11/13]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.21 NMAC, Section 7, 8, 9, 10, 13, 14, and 15, and Section 12 is new, effective October 16, 2013.

16.10.21.7 DEFINITIONS:

A. "ABGC" means the American board of genetic counseling, a national agency for certification and recertification of genetic counselors, or its

successor agency.

B. “ABMG” means the American board of medical genetics, a national agency for certification and recertification of genetic counselors and geneticists with medical or other doctoral degrees, or its successor agency.

C. “Accreditation” means any of the following definitions.

(1) **Full accreditation** indicates that the program meets the minimum standards established by ABGC to provide a well-rounded and adequate educational and clinical program for students. ABGC full accreditation is typically conferred for a period of six (6) years and reaccreditation is typically conferred for a period of up to eight (8) years, although ABGC reserves the right to provide probationary or shorter-term accreditation.

(2) **Probationary accreditation** indicates that, while the program continues to have accredited status, it does not meet the minimum standards for providing educational and clinical training for students and has generalized problems that appear to interfere with optimal education of the candidates. This program must make public its probationary status.

(3) **Provisional accreditation** applies to a new program that has completed and submitted an application for becoming an accredited program. Such a program must meet the minimum criteria for providing the master’s degree in genetic counseling, as established by ABGC. Provisionally accredited programs must apply for full accreditation within three (3) years of matriculating their first class. If the program does not attain full accreditation (or accreditation with restrictions), provisional accreditation will be revoked. Probationary accreditation is not an option for a provisionally accredited program.

D. “Active candidate status” means a graduate who has applied to sit for the ABGC certification examination according to published eligibility requirements in effect for that examination cycle, and who has been approved as a candidate for that examination cycle based on review and approval of his/her credentials by the ABGC credentials committee.

E. “Active status” means a license that is current and authorizes the licensee to engage in the practice of genetic counseling.

F. “Alternate supervising genetic counselor or physician” means a genetic counselor or physician who holds a current unrestricted New Mexico license, is a cosignatory on the notification of supervision, and agrees to act as the supervising genetic counselor or physician in the absence of the designated genetic counselor or physician.

G. “Board” means the

New Mexico medical board.

H. “Certification” means successful completion of a comprehensive general genetics examination and genetic counseling specialty examination administered by ABGC or ABMG, or after 2009, successful completion of the ABGC certification examination.

I. “Contact hour” means sixty (60) minutes of actual instructional time. Breaks, meals, evaluations, wrap-up or registration are not included when calculating hours.

J. “Effective supervision” means the oversight, control, and direction of services rendered by a genetic counselor practicing on a temporary license. Supervision shall be provided by a licensed genetic counselor or physician. Elements of effective supervision include:

(1) on-going availability of direct communication, either face-to-face or by electronic means;

(2) active, ongoing review of the genetic counselor’s services, as appropriate, for quality assurance and professional support;

(3) delineation of a predetermined plan for emergency situations, including unplanned absence of the primary supervising genetic counselor or physician; and

(4) identification and registration of an alternate supervising genetic counselor or physician, as appropriate to the practice setting.

K. “Expired” means a license was not renewed by the biennial renewal date of March 1 or at the end of the grace period of May 1, and the licensee is not eligible to practice within the state of New Mexico.

L. “Genetic counseling” means a communication process that may include:

(1) estimating the likelihood of occurrence or recurrence of any potentially inherited or genetically influenced condition or congenital abnormality. Genetic counseling may involve:

(a) obtaining and analyzing the complete health history of an individual and family members;

(b) reviewing pertinent medical records;

(c) evaluating the risks from exposure to possible mutagens or teratogens; and

(d) determining appropriate genetic testing or other evaluations to diagnose a condition or determine the carrier status of one (1) or more family members;

(2) helping an individual, family or health care provider to:

(a) appreciate the medical, psychological and social implications of a disorder, including its features, variability,

usual course and management options;

(b) learn how genetic factors contribute to a disorder and affect the chance for occurrence of the disorder in other family members;

(c) understand available options for coping with, preventing or reducing the chance of occurrence or recurrence of a disorder;

(d) select the most appropriate, accurate and cost-effective methods of diagnosis; and

(e) understand genetic or prenatal tests, coordinate testing for inherited disorders and interpret complex genetic test results; and

(3) facilitating an individual’s or family’s:

(a) exploration of the perception of risk and burden associated with a genetic disorder; and

(b) adjustment and adaptation to a disorder or the individual’s or family’s genetic risk by addressing needs for psychological, social and medical support.

M. “Genetic counselor” means a person licensed pursuant to the Genetic Counseling Act to engage in the practice of genetic counseling.

N. “Grace period” means the sixty (60) day period following the renewal date when a genetic counselor may renew a license that was not renewed by the renewal date, by paying the required renewal fee, the late fee and meeting the renewal requirements. A licensee may continue to practice during the grace period.

O. “Grace period status” means the license has not been renewed by the renewal date and has not expired.

P. “Military service member” means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

[P:] **Q. “NSGC”** means the national society of genetic counselors, a professional membership society promoting the genetic counseling profession as an integral part of health care delivery and offering educational programs.

R. “Recent veteran” means a person who has received an honorable discharge or separation from military service within the two (2) years immediately preceding the date the person applies for a genetic counselor license pursuant to section 16.10.21.12. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

[Q:] **S. “Renew”** means to begin again after an interval of time; to make valid again for a further period.

[R:] **T. “Renewal date”** means the deadline date upon which the license shall be made valid again for another period

of time without a penalty fee.

[16.10.21.7 NMAC - N, 1/1/09; A, 10/16/13]

16.10.21.8 LICENSURE REQUIREMENTS: The board may issue a license to an applicant who fulfills the following requirements.

A. Completes an application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one (1) year from the date of receipt. While an application is pending, the applicant is responsible for providing the board with any changes to the submitted information or to the applicant's oath. Applications shall require the following documentation:

(1) demographic information of the applicant;

(2) educational history;

(3) employment history;

(4) professional references;

(5) examination information;

(6) certification information;

(7) other state licensure information;

(8) professional practice questions;

(9) applicant's oath;

(10) passport-quality color photograph taken within six (6) months prior to filing the application; approximate size 2 x 2 inches, head and shoulders only, full face, front view, plain white or off-white background, standard photo stock paper; and, scanned or computer-generated photographs should have no visible pixels or dots; and

(11) applicant's signature.

B. Each applicant for licensure as a genetic counselor shall submit the required fees as established in 16.10.9 NMAC.

C. Verification of licensure in all states or territories where the applicant holds or has held a license to engage in the practice of genetic counseling, or other health care profession, shall be sent directly to the board by the other state board(s), and shall include a raised seal, attest to the current status, issue date, license number, and other information requested and contained on the form.

D. Proof of certification from the ABGC, ABMG or as approved by the board, shall be sent directly to the board by the certifying entity. The board may accept hard copy by United States postal service, facsimile or electronic mail.

E. Verification of all work experience in the last five (5) years since graduation, if applicable, provided directly to the board from the employer, by letter or on forms provided by the board.

F. Proof of graduation from a genetic counseling educational

program, evidenced by:

(1) a master's degree from a genetic counseling training program prior to 1997; or

(2) a master's degree from a genetic counseling training program that is accredited by the ABGC, or an equivalent program as approved by the board; or

(3) a doctoral degree from a medical genetics training program that is accredited by the ABMG, or an equivalent program as determined by the board.

(4) Proof of graduation means official transcripts from a college or university. The applicant shall make arrangements for official transcripts to be sent directly to the board by the educational institution. If official transcripts are not available due to school closure, destroyed records, etc., the applicant shall provide satisfactory evidence to the board that the required genetic counseling educational program has been met for consideration on a case-by-case basis.

G. Initial license period. The applicant who has met all the requirements for licensure shall be issued an initial license for a period of not more than twenty-four (24) months or less than thirteen (13) months, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1.

H. Initial license expiration. Genetic counselor licenses shall be renewed biennially on March 1 as established in Section 12 of this part.

I. All applicants for initial licensure as a genetic counselor are subject to a state and national criminal history screening at their expense. All applicants shall submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and background screening fee at the time of application.

(1) Applications for licensure shall not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications shall be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee shall be notified to submit copies of legal documents and other related information to the board, which shall make the determination if the applicant is eligible for licensure or if disciplinary action will be taken. Questions of felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession need to be resolved satisfactorily.

If the prior conviction does not relate to employment in the profession, the board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to: certified proof of completion of probation or parole, payment of fees, community service or any other court ordered sanction.

[16.10.21.8 NMAC - N, 1/1/09; A, 10/16/13]

16.10.21.9 TEMPORARY INTERIM LICENSE:

A. The board may issue a temporary license to an applicant who has met all licensure requirements except the certification requirement and has active candidate status conferred by ABGC.

B. The temporary license is valid until the results of the next scheduled ABGC certification examination are available and a license is issued or denied.

C. The temporary license automatically expires three (3) months after the month the ABGC certification examination is offered.

D. A temporary license may be renewed as long as the applicant maintains active candidate status. Individuals with active candidate status must sit for the examination within the first two consecutive exam cycles for which they are eligible following graduation. Individuals who fail to do this will need to apply again as new applicants.

E. The temporary license may be renewed upon a first failure of the certification examination. The temporary license may be renewed a maximum of two (2) consecutive times within a five (5) year period following the first temporary licensure and upon payment of the temporary license renewal fee as established in 16.10.9 NMAC.

F. The temporary licensee may not practice genetic counseling until the temporary license is received and is on file at the principal place of practice.

G. The holder of a temporary license shall work under the effective supervision of a New Mexico licensed genetic counselor or physician. The temporary licensee is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

(1) name of the supervising genetic counselor or physician;

(2) specific program or protocol of work planned;

(3) address of the sponsoring institution or organization where the work will be performed; and

(4) an affidavit from the supervising genetic counselor or physician attesting to the qualifications of the temporary licensee and the purpose of the functions the

temporary licensee will perform.
[16.10.21.9 NMAC - N, 1/1/09; A, 10/16/13]

16.10.21.10 T E M P O R A R Y TEACHING OR ASSISTING LICENSE:

A one (1) year temporary license may be issued to a person providing the following services.

A. The genetic counselor is in New Mexico temporarily to assist a New Mexico resident licensed to practice genetic counseling or to teach. The genetic counselor has met the requirements for New Mexico licensure, or is licensed in another U.S. jurisdiction or country where the requirements were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other U.S. jurisdiction or country; if the genetic counselor is from a U.S. jurisdiction or country that does not have licensure for genetic counselors, the genetic counselor would need to meet the requirements for a New Mexico license as established in Section 8 of this part.

B. The holder of a temporary license shall work under the effective supervision of a New Mexico licensed genetic counselor or physician.

C. The temporary licensee is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

- (1) completed temporary license application;
- (2) temporary teaching or assisting license fee as established in 16.10.9 NMAC;
- (3) written justification for a temporary license;
- (4) verification of licensure, if licensed, in another U.S. jurisdiction, as established in Subsection 8 of this part;
- (5) name of the supervising genetic counselor or physician;
- (6) specific program or protocol of work planned;
- (7) address of the sponsoring institution or organization where the work will be performed; and
- (8) an affidavit from the supervising genetic counselor or physician attesting to the qualifications of the temporary licensee and the purpose of the functions the temporary licensee will perform.

[16.10.21.10 NMAC - N, 1/1/09; A, 10/16/13]

16.10.21.12 E X P E D I T E D MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION.

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate

license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.21.12 NMAC - N, 1/1/09; 16.10.21.12 NMAC - N, 10/16/13]

~~[16.10.21.12]~~ 16.10.21.13 L I C E N S E EXPIRATION AND RENEWAL:

A. Genetic counselor licenses shall be renewed biennially on March 1st. An initial license may be issued for a period of up to two (2) years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1st.

B. Failure to receive the renewal notice shall not relieve the licensee from the responsibility of renewing the license by the renewal date. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to inform the board of accurate address information and to make a timely request for the renewal application if one has not been received prior to March 1st.

C. Renewal applications postmarked or hand-delivered on or prior to March 1 shall require the following documentation:

- (1) completion of a renewal application either electronically on-line or on the form provided by the board; the renewal form shall include the following data:
 - (a) demographic information of the licensee;
 - (b) license number;
 - (c) questions regarding practice information since the last renewal; and
 - (d) signature of the licensee;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC; and
- (3) proof of forty (40) NSGC or ABGC approved continuing education contact hours during each biennial renewal cycle.

D. Renewal applications postmarked or hand-delivered after March 1 and prior to May 1 shall require the following documentation:

- (1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in Subparagraphs (a)-(d) of Paragraph (1) of Subsection C of 16.10.21.12 NMAC;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the late fee as established in 16.10.9 NMAC; and
- (4) proof of forty (40) NSGC or ABGC approved continuing education contact hours during each biennial renewal cycle.

E. March 1 through April

30 is considered the grace period following the renewal date during which a licensee may continue to provide services and renew with a late fee.

F. When renewal applications are received on or after May 1, the license shall have expired, and the licensee shall not be eligible to provide genetic counseling services in New Mexico. [16.10.21.13 NMAC - Rn & A, 16.10.21.12 NMAC, 10/16/13]

~~[16.10.21.13]~~ 16.10.21.14 REINSTATEMENT: A licensee with an expired license may apply for reinstatement.

A. Requirements for reinstatement of an expired license *within* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC; and
- (4) proof of forty (40) NSGC or ABGC approved continuing education contact hours within the previous two (2) years.

B. Requirements for reinstatement of an expired license *after* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC;
- (4) proof of forty (40) NSGC or ABGC approved continuing education contact hours as required for license renewal;
- (5) proof of twenty (20) NSGC or ABGC approved continuing education contact hours for each year the license has been expired; and
- (6) any other proof of competency as may be requested by the board or the board's designee. Additionally, the board may require the former licensee to reapply as a new applicant.

[16.10.21.14 NMAC - Rn & A, 16.10.21.13 NMAC, 10/16/13]

~~[16.10.21.14]~~ 16.10.21.15 DISCIPLINARY AND COMPLAINT PROCESS: Disciplinary actions and complaints shall be processed as established in 16.10.5 and 16.10.6 NMAC.

[16.10.21.15 NMAC - Rn, 16.10.21.14 NMAC, 10/16/13]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.69.8 NMAC, Sections 7, 8, 10 and 11, effective September 30, 2013.

6.69.8.7 DEFINITIONS:

A. "Approved observer" means, for the 2013-2014 school year, an individual who holds a level 3-B license, is employed by a school district or charter school as an administrator and who has completed the PED's teacher observation training.

[A-] B. "Assistant principal" means a properly licensed instructional leader who assists a principal in a public school.

[B-] C. "BIE school" means a bureau of Indian education school that is governmentally owned and controlled, located in New Mexico, provides instruction for first through twelfth grades and is not sectarian or denominational.

D. "Certified observer" means, for the 2013-2014 school year, a teacher, as defined by this rule, who has a minimum of five years of verifiable consecutive classroom teaching experience, has completed the PED's teacher observation training, and who passes the PED's assessment of the adopted observation protocol.

E. "Certified observer" means, for the 2014-2015 school year and succeeding school years, an individual who:

(1) holds an active level 3-B license or an active teaching license;

(2) is employed by a school district or charter school as an administrator or a teacher as defined by this rule;

(3) completes the PED's teacher observation training and who passes the PED's assessment of the adopted observation protocol;

(4) receives a highly effective or exemplary rating during the previous school year; and

(5) completes follow-up training and who passes the PED's assessment of the adopted observation protocol on an annual basis; for purposes of this subsection, annual basis means the earlier of August 1 of a given school year or 90 days after hire; provided, however, that the annual training and certification is transferable within the state.

[C-] F. "Department" means the New Mexico public education department or PED.

[D-] G. "EES" means effectiveness evaluation systems which are developed by school districts to measure the effectiveness of licensed school employees.

[E-] H. "Fidelity observations"

means the requirement of school leaders to periodically observe and evaluate assigned teachers in the classroom with observations that have been documented and are verifiable.

[F-] I. "Licensed school employee" means teachers and school leaders employed in a public school.

[G-] J. "New Mexico standards-based assessment (SBA)" means the collection of instruments that assess student academic performance annually and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards.

[H-] K. "Principal" means the chief instructional leader and administrative head of a public school.

[I-] L. "School district" means one of the 89 political subdivisions of the state created for the administration of public schools and includes those state-authorized charter schools that have not requested waiver of evaluation standards for school personnel. District-authorized charter schools are excluded from being considered a school district for purposes of this rule.

[J-] M. "School district superintendent" means the chief executive officer of a school district and the head administrator of a charter school.

[K-] N. "School leader" means a principal or assistant principal employed in a public school.

[L-] O. "State agency" means the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, any juvenile detention center or facility served by the juvenile justice service of the children youth and families department, the New Mexico youth diagnostic and development center, the Sequoyah adolescent treatment center of the department of health, Carrie Tingley crippled children's hospital, the New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children.

[M-] P. "Teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers. "Teacher" shall not include any person issued a Native American language and culture certificate pursuant to the School Personnel Act [Sections 22-10A-1 to 22-10A-39 NMSA 1978].

[6.69.8.7 NMAC - N, 08-30-12; A, 09-30-13]

6.69.8.8 EFFECTIVENESS EVALUATION SYSTEMS:

A. As soon as possible but not later than the commencement of the 2013-2014 school year, all school districts shall develop and submit to the department for approval and for implementation during the 2013-2014 school year, an effectiveness evaluation system for measuring performance of licensed school employees.

B. School districts may continue to use the highly objective uniform statewide standards of evaluation described in 6.69.4 NMAC for evaluating, promoting, terminating and discharging licensed school employees for performance during the 2012-2013 school year.

C. Each school district shall report annually to the department the results of its effectiveness evaluations of its licensed school employees and the alignment of its effectiveness evaluation system with the three-tiered licensure system.

D. A teacher and school leader EES shall:

(1) be designed to support effective instruction and student achievement, with the results used to inform school district and school level improvement plans;

(2) provide appropriate instruments, procedures and criteria and continuous quality improvement of professional skills, with results used to support the professional development of licensed school employees;

(3) include a mechanism to examine effectiveness data from multiple sources, which may include giving parents and students opportunities to provide input into effectiveness evaluations when appropriate;

(4) identify those teaching fields for which special evaluation procedures and criteria may be developed in a manner that is consistent and reliable;

(5) include measures of student achievement growth worth 50%, observations worth 25% and other multiple measures worth 25%, unless otherwise provided for;

(6) differentiate among at least five levels of performance, which include the following:

(a) exemplary, meets competency;

(b) highly effective, meets competency;

(c) effective, meets competency;

(d) minimally effective, does not meet competency; and

(e) ineffective, does not meet competency.

E. Teacher and school leader effectiveness evaluation procedures for licensed school employees shall be based on the performance of students assigned to their classrooms or public schools.

F. Every public school classroom teacher who teaches in a grade or subject that has a standards-based assessment

that would permit the calculation of student achievement growth, must have an annual effectiveness evaluation, provided that:

(1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and

(2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on:

(a) valid and reliable data and indicators of student achievement growth assessed annually through a combination of 35% standards-based assessment and 15% additional department-approved assessments, for a total of 50%, provided that this calculation shall not be based upon a single test score. For the 2013-2014 school year, if at least 45% of the total is based upon standards-based assessments, student surveys may constitute up to 5%.

(b) assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by state assessments; and

(c) the PED-adopted measure of student achievement growth calculated for all courses associated with state assessments and for which the school district shall select comparable measures of student achievement growth for other grades and subjects.

G. Every public school classroom teacher who teaches in a grade or subject that does not have a standards-based assessment, also must have an annual effectiveness evaluation, provided that:

(1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and

(2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on:

(a) valid and reliable data and indicators of student achievement growth assessed annually on district-selected and department-approved assessments, for a total of 50%. For the 2013-2014 school year, student surveys may constitute up to 5%.

(b) assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by department-approved assessments; and

(c) the PED-adopted measure of student achievement growth calculated for all courses associated with department-approved assessments and for which the school district shall select comparable measures of student achievement growth, and approved by the PED, for other grades and subjects.

H. An EES shall base at least 25% of the results on data and indicators of instructional practice for teachers. School

leaders shall observe instructional practice of teachers using common research-based observational protocol approved by the department that correlates observations to improved student achievement.

I. Effectiveness evaluation criteria for evaluating classroom teachers shall include indicators based on research-based instructional practices as determined by the department.

J. School districts that receive funding under the Bilingual Multicultural Education Act [Sections 22-23-1 to 22-23-6 NMSA 1978] or with students possessing limited English proficiency should ensure that they are doing all they can to carry out all state and federal activities and programs to assist those student populations. [6.69.8.8 NMAC - N, 08-30-12; A, 09-30-13]

[The department maintains a list of approved assessment options and effectiveness evaluation measures and criteria for evaluating classroom teachers on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts for determining the student achievement growth component and evaluation criteria in a teacher's effectiveness evaluation.]

6.69.8.10 EFFECTIVENESS EVALUATIONS OF SCHOOL LEADERS:

A. Every school leader must have an annual effectiveness evaluation, which shall be conducted by a qualified person and approved by PED.

B. All EES ratings for the performance of a school leader shall be based 50% on the change in a school's A through F letter grade that has been assigned pursuant to 6.19.8 NMAC, 25% based on the school's multiple measures and 25% based upon documented fidelity observations of the school leader.

C. The effectiveness evaluation of school leaders shall, whenever possible, include ~~[student achievement growth data]~~ growth based on three years of data for students assigned to the public school [for at least three consecutive school years], provided that, the student achievement growth component of the effectiveness evaluation shall be based on the change in the school's A through F letter grade pursuant to 6.19.8 NMAC.

[6.69.8.10 NMAC - N, 08-30-12; A, 09-30-13]

[The department maintains a list of leadership standards on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts in establishing indicators for conducting effectiveness evaluation of school leaders.]

6.69.8.11 EVALUATIONS, OBSERVATIONS, REPORTS AND

POST-EVALUATION CONFERENCES:

A. ~~[A classroom teacher whose previous annual effectiveness evaluation rating was either highly effective or exemplary shall continue to be observed four separate times a year by their school principal or other qualified external observers. The principal rating this classroom teacher shall have no role in selecting nor be related by blood or marriage to the external observer.]~~ During the 2013-2014 school year, every classroom teacher must be observed using one of the following options, with at least one of the required observations conducted by the school principal or assistant principal:

(1) three observations conducted by the same approved observer; or

(2) two observations, consisting of one observation by each of two different approved observers; or

(3) two observations consisting of one observation by an approved observer and one observation by a certified observer.

B. ~~[All external observers shall receive training provided by either their school district or the PED. School districts may train their own external observers provided they develop mandatory written guidelines and those guidelines at a minimum require:~~

~~(1) that the external observers possess current New Mexico educator licensure and that they have at least five years of verifiable consecutive classroom teaching experience;~~

~~(2) that the external observers be provided with a district or PED developed form that contains at a minimum their name, the classroom teacher's name, the date, the start and stop time of their observation, the number of students present, space for subjective and objective observation, and a total point score of that teacher;~~

~~(3) that the external observers complete one actual training session of a classroom teacher who consents to such an observation solely for training purposes;~~

~~(4) that the external observers complete their written evaluation of a classroom teacher before leaving the school on the day of the observation; and~~

~~(5) that the external observers maintain confidentiality of their observations and written evaluations and do not discuss with anyone except the principal their observations or evaluations, nor may they retain or remove any copies of their evaluations or field notes from school premises.]~~ During the 2014-2015 school year and during each succeeding school year, every classroom teacher must be observed using one of the following options, with at least one of the required observations conducted by the school principal or assistant principal:

(1) three observations conducted

by the same certified observer; or

(2) two observations, consisting of one observation by each of two different certified observers.

C. For the 2014-2015 school year and succeeding school years, districts may propose alternative plans for observing teachers who have highly effective and exemplary performance ratings. The plans must be submitted to the PED for approval and must provide that at least one observation is conducted by the school principal or assistant principal.

D. An approved or certified observer must use a PED-developed protocol and form that contains at a minimum the observer's name, the classroom teacher's name, the date, the start and stop time of the observation, the number of students present, space for subjective and objective observation, and a total point score for that teacher. An external observer must further:

(1) complete the written observation of a classroom teacher before leaving the school on the day of the observation;

(2) agree to maintain confidentiality of the observation and agree not to discuss the observations with anyone except the principal; and

(3) verify that the observer has not retained or removed a copy of the observation or field notes from school premises.

[C-] E. Written feedback from [school leaders and external observers] a school leader and an approved or certified observer shall be provided to an observed classroom [teachers] teacher within ten calendar days after observation is completed, which observation can occur over more than one day, provided that a school district's EES permits this.

[D-] E. Upon approval by the department, multiple measures adopted by a school district for use in their EES by the school districts shall constitute 25% of their teacher and school leader EES, provided that:

(1) the multiple measures align with improved student achievement; and

(2) each school district adopts at least two multiple measures which shall be used district-wide.

[E-] G. The school leader responsible for supervising a licensed school employee shall be the one who evaluates that employee's performance. The school district's EES:

(1) may provide for the supervisor to consider input from other trained evaluators and observers provided that they are not also supervised by the supervisor nor are related by blood or marriage to the supervisor; and

(2) shall provide for contingencies if a supervisor leaves a school district for any reason prior to completing the required

effectiveness evaluations of all teachers within that supervisor's responsibilities.

[F-] H. Every person who evaluates a licensed school employee under this rule shall submit an original written report to the school district superintendent and an exact copy to the licensed school employee being evaluated. The effectiveness evaluation shall not be changed once each component is completed and it has been delivered to either the school district superintendent or the licensed school employee being evaluated.

[G-] I. A licensed school employee rated minimally effective or ineffective may provide a written statement in response to their effectiveness evaluation and that statement shall become a permanent attachment to that employee's evaluation file.

[H-] J. Every person who rates a licensed school employee minimally effective or ineffective shall describe in detail the minimally effective or ineffective performance and inform the licensee in writing:

(1) of a right to a post-evaluation conference which the evaluator must convene and which shall occur no later than ten days after the evaluation is completed unless the employee agrees to an extension;

(2) that during the conference the evaluator will make recommendations to the employee with respect to specific areas of unsatisfactory performance and provide feedback that lays the initial framework for an individual professional growth plan;

(3) that the evaluator will provide assistance in helping the employee correct unsatisfactory performance and that the district will extend strategic support aligned to best practices identified by the department to assist the employee to correct unsatisfactory performance;

(4) that if the employee has an employment contract, the employee shall be placed on a performance growth plan for 90 school days from receipt of the notice of minimally effective or ineffective performance, provided that:

(a) the 90 days shall not include weekends, school holidays or school vacation periods, declared snow days, and approved employee leave days;

(b) during the 90 days the licensed school employee shall be observed and evaluated periodically, that is, more than four times in writing and shall be informed of the results of those observations; and

(c) the evaluator shall maintain documentation of having provided assistance and notification of in-service training opportunities to help correct the performance deficiencies noted of the licensed school employee; and

(5) that receipt of the notice shall constitute notice of uncorrected

unsatisfactory work performance pursuant to Section 22-10A-3 NMSA 1978 and 6.69.2 NMAC.

[I-] K. Within five school days after the expiration of the 90-day performance growth plan, the evaluator shall determine whether the performance deficiencies have been corrected and forward a written recommendation to the school district superintendent.

[J-] L. Within 10 school days after receipt of that written recommendation, the school district superintendent shall in writing notify the licensed school employee who has an employment contract with the school district whether the performance deficiencies have been satisfactorily corrected. A copy of the evaluator's recommendation shall accompany that notice.

[K-] M. If satisfactory progress has not been made, the local superintendent shall determine whether to discharge or terminate the employee pursuant to Sections 22-10A-27 or 22-10A-24, NMSA 1978.

[L-] N. An employee who has been placed on a 90-day performance growth plan because of minimally effective or ineffective performance and who has not been employed by a school district for three consecutive years, shall have no reasonable expectation of continued employment beyond the end of the contract year by reason of being on a growth plan.

[M-] O. The school district superintendent shall provide written notice to the educator quality division of the department of the name and licensure file number of all licensed school employees who have received two consecutive minimally effective or ineffective performance ratings and who have been given a written notice of proposed discharge or of proposed termination, or who have resigned their employment after receiving either of these ratings.

[6.69.8.11 NMAC - N, 08-30-12; A, 09-30-13]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.6 NMAC, Section 9, effective September 30, 2013. Subsections A, B and Subsections D through P were not published as there are no changes.

15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES: The "uniform classification guidelines for foreign substances and recommended penalties and model rule", revised December 2012, version 5.0 as issued by the association of racing commissioners international, is incorporated by reference. Upon a finding of a violation of any medication and

prohibited substances rule, which includes the possession of contraband as listed in 15.2.6.9 NMAC, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures as determined by the New Mexico racing commission.

C. P E N A L T Y RECOMMENDATIONS:

(1) Category A penalties will be assessed against a trainer for violations due to the presence of a drug carrying a category A penalty. Recommended penalties for category A violations for a licensed trainer are as follows:

(a) First offense shall be a minimum one-year suspension to a maximum three-year suspension, a fine of \$10,000 or 10% of total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

(b) Second lifetime offense in any jurisdiction shall be a minimum three-year suspension with a maximum license revocation with no reapplication for a three-year period, a fine of \$10,000 or 25% of total purse (greater of the two), and may be referred to the commission for further action deemed necessary by the commission.

(c) Third lifetime offense in any jurisdiction shall be a minimum five-year suspension with a maximum of license revocation with no reapplication for a five-year period, a fine of \$10,000 or 50% of the purse (whichever of the two is greater), and may be referred to the commission for any further action deemed necessary by the commission.

(2) Category A penalties will be assessed against an owner for violations due to the presence of a drug carrying a category A penalty. Recommended penalties for category A violations for a licensed owner are as follows:

(a) First offense shall be disqualification, loss of purse and horse shall be placed on the veterinarian's list for 90 days and must pass a commission-approved examination before becoming eligible to be entered.

(b) Second lifetime offense in owner's stable in any jurisdiction shall be disqualification, loss of purse and horse shall be placed on the veterinarian's list for 120 days and must pass a commission-approved examination before becoming eligible to be entered.

(c) Third lifetime offense in owner's stable in any jurisdiction shall be

disqualification, loss of purse, \$10,000 fine, horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered, and referral to the commission with a recommendation of a suspension for a minimum of 90 days.

(3) Category B penalties will be assessed against a trainer for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma/serum sample. Recommended penalties for category B violations and for the presence of more than one NSAID in a plasma/serum sample for a licensed trainer are as follows:

(a) First offense shall be a minimum 15-day suspension to a maximum 60-day suspension and \$500 to \$1,000 fine.

(b) Second offense within a 365-day period in any jurisdiction shall be a minimum 30-day suspension to a maximum 180-day suspension and a minimum \$1,000 to a maximum \$2,500 fine.

(c) Third offense within a 365-day period in any jurisdiction shall be a 60-day suspension to a maximum one year suspension, a minimum \$2,500 to a maximum \$5,000 fine or 5% of purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

(4) Category B penalties will be assessed against a licensed owner for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma/serum sample. Recommended penalties for category B violations and for the presence of more than one NSAID in a plasma/serum sample:

(a) First offense shall be disqualification, loss of purse and horse must pass a commission-approved examination before becoming eligible to be entered.

(b) Second offense in stable with a 365-day period in any jurisdiction shall be disqualification, loss of purse and horse must pass a commission-approved examination before becoming eligible to be entered.

(c) Third offense in stable within a 365-day period in any jurisdiction shall be disqualification, loss of purse, \$5,000 fine and horse shall be placed on the veterinarian's list for 45 days and must pass a commission-approved examination before becoming eligible to be entered.

(5) Category C penalties will be assessed against a licensed trainer for violations due to the presence of a drug carrying a category C penalty and overages for NSAID's and furosemide (all concentrations are for measurements in serum or plasma). Recommended penalties for category C violations, overages for permitted NSAID's and furosemide are as follows:

(a) First offense in the following levels within a 365-day period in any jurisdiction shall be a minimum of a written warning to a maximum of a \$500 fine:

(i) 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or

(ii) 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or

(iii) 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or

(iv) 101 nanograms per milliliter of furosemide; or

(v) no furosemide when identified as administered.

(b) Second offense in the following levels within a 365-day period in any jurisdiction shall be a minimum of a written warning to a maximum \$750 fine:

(i) 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or

(ii) 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or

(iii) 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or

(iv) 101 nanograms per milliliter of furosemide; or

(v) no furosemide when identified as administered.

(c) Third offense in the following levels within a 365-day period in any jurisdiction shall be a minimum of \$500 fine to a maximum fine of \$1,000:

(i) 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or

(ii) 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or

(iii) 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or

(iv) 101 nanograms per milliliter of furosemide; or

(v) no furosemide when identified as administered.

(d) First offense in the following levels within a 365-day period in any jurisdiction shall be a minimum \$1,000 fine:

(i) 5.1 micrograms per milliliter of phenylbutazone; or

(ii) 101 nanograms per milliliter of flunixin; or

(iii) 51 nanograms per milliliter of ketoprofen; or

(iv) class C violations.

(e) Second offense in the following levels within a 365-day period in any jurisdiction shall be a minimum \$1,500 fine and a 15-day suspension:

(i) 5.1 micrograms per milliliter of phenylbutazone; or

- (ii) 101 nanograms per milliliter of flunixin; or
 (iii) 51 nanograms per milliliter of ketoprofen; or
 (iv) class C violations.
- (f) Third offense in the following levels within a 365-day period in any jurisdiction shall be a minimum \$2,500 fine and a 30-day suspension:
- (i) 5.1 micrograms per milliliter of phenylbutazone; or
 (ii) 101 nanograms per milliliter of flunixin; or
 (iii) 51 nanograms per milliliter of ketoprofen; or
 (iv) class C violations.
- (6) Category C penalties will be assessed against a licensed owner for violations due to the presence of a drug carrying a category C penalty and overages for NSAID's and furosemide (all concentrations are for measurements in serum or plasma). Recommended penalties for category C violations, overages for permitted NSAID's and furosemide are as follows:
- (a) First offense in the following levels within a 365-day period in any jurisdiction the horse may be required to pass commission-approved examination before being eligible to run:
- (i) 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or
 (ii) 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or
 (iii) 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or
 (iv) 101 nanograms per milliliter of furosemide; or
 (v) no furosemide when identified as administered.
- (b) Second offense in the following levels within a 365-day period in any jurisdiction the horse may be required to pass a commission-approved examination before being eligible to run:
- (i) 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or
 (ii) 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or
 (iii) 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or
 (iv) 101 nanograms per milliliter of furosemide; or
 (v) no furosemide when identified as administered.
- (c) Third offense in the following levels within a 365-day period in any jurisdiction shall be disqualification, loss of purse and horse must pass a commission-approved examination before being eligible to run:
- (i) 2.1 micrograms per milliliter to 5.0 micrograms per milliliter of phenylbutazone; or
 (ii) 21 nanograms per milliliter to 100 nanograms per milliliter of flunixin; or
 (iii) 11 nanograms per milliliter to 50 nanograms per milliliter of ketoprofen; or
 (iv) 101 nanograms per milliliter of furosemide; or
 (v) no furosemide when identified as administered.
- (d) First offense in the following levels within a 365-day period in any jurisdiction shall a loss of purse and horse must pass a commission-approved examination before being eligible to run:
- (i) 5.1 micrograms per milliliter of phenylbutazone; or
 (ii) 101 nanograms per milliliter of flunixin; or
 (iii) 51 nanograms per milliliter of ketoprofen; or
 (iv) class C violations.
- (e) Second offense in the following levels within a 365-day period in any jurisdiction shall be a loss of purse and if same horse, that horse will be placed on a veterinarian's list for 45 days and must pass a commission approved examination before being eligible to run:
- (i) 5.1 micrograms per milliliter of phenylbutazone; or
 (ii) 101 nanograms per milliliter of flunixin; or
 (iii) 51 nanograms per milliliter of ketoprofen; or
 (iv) class C violations.
- (f) Third offense in the following levels within a 365-day period in any jurisdiction shall be a loss of purse, minimum \$5,000 fine and if same horse that horse shall be placed on veterinarian's list for 60 days and must pass commission-approved examination before being eligible to run:
- (i) 5.1 micrograms per milliliter of phenylbutazone; or
 (ii) 101 nanograms per milliliter of flunixin; or
 (iii) 51 nanograms per milliliter of ketoprofen; or
 (iv) class C violations.
- (7) If the trainer has not had more than one violation within the previous two years, the stewards may issue a warning in lieu of a fine provided the reported level in phenylbutazone is below 3.0 micrograms per milliliter.
- (8) After a two-year period, if a licensee has had no further violations, any penalty due to an overage in the 2.0-5.0 micrograms per milliliter in phenylbutazone will be expunged from the licensee's record for penalty purposes.]

(1) Category A penalties will be assessed for violations due to the presence of a drug carrying a category A penalty. Recommended penalties for category A violations are as follows:

LICENSED TRAINER:

1st offense:

A minimum one-year suspension to a maximum three-year suspension, a fine of \$25,000 or 25% of total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

2nd LIFETIME offense in any jurisdiction:

A minimum three-year suspension with a maximum license revocation with no reapplication for a three-year period, a fine of \$50,000 or 50% of total purse (greater of the two), and may be referred to the commission for further action deemed necessary by the commission.

3rd LIFETIME offense in any jurisdiction:

A minimum five-year suspension with a maximum of license revocation with no reapplication for a five-year period, a fine of \$100,000 or 100% of the purse (whichever of the two is greater), and may be referred to the commission for any further action deemed necessary by the commission.

LICENSED OWNER:

1st offense:

Disqualification, loss of purse and horse shall be placed on the veterinarian's list for 90 days and must pass a commission-approved examination before becoming eligible to be entered.

2nd LIFETIME offense in stable (365-day period) in any jurisdiction:

Disqualification, loss of purse and horse shall be placed on the veterinarian's list for 120 days and must pass a commission-approved examination before becoming eligible to be entered.

3rd LIFETIME offense in stable (365-day period) in any jurisdiction:

Disqualification, loss of purse, \$100,000 fine, and horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered, and referral to the commission with a recommendation of a suspension for a minimum of 90 days.

(2) Category B penalties will be assessed for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma/serum sample. Recommended penalties for category B violations and for the presence of more than one NSAID in a plasma/serum sample are as follows:

LICENSED TRAINER:

1st offense:

A minimum 15-day suspension to a maximum 60-day suspension and \$500 to \$1,000 fine.

2nd LIFETIME offense (365-day period) in any jurisdiction:

A minimum 30-day suspension to a maximum 180-day suspension and a minimum \$1,000 to a maximum \$2,500 fine.

3rd LIFETIME offense (365-day period) in any jurisdiction:

A 60-day suspension to a maximum one year suspension, a minimum \$2,500 to a maximum \$5,000 fine or 5% of purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

LICENSED OWNER:

1st offense:

Disqualification, loss of purse and horse must pass a commission-approved examination before becoming eligible to be entered.

2nd LIFETIME offense in stable (365-day period) in any jurisdiction:

Disqualification, loss of purse and horse must pass a commission-approved examination before becoming eligible to be entered.

3rd LIFETIME offense in stable (365-day period) in any jurisdiction:

Disqualification, loss of purse, \$5,000 fine and horse shall be placed on the veterinarian's list for 45 days and must pass a commission-approved examination before becoming eligible to be entered.

(3) Category C penalties will be assessed for violations due to the presence of a drug carrying a category C penalty and overages for NSAID's and furosemide (all concentrations are for measurements in serum or plasma). Recommended penalties for category C violations, overages for permitted NSAID's and furosemide are as follows:

LICENSED TRAINER:

1st offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum of a written warning to maximum fine of \$500:

phenylbutazone (>2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11 ng-50 ng/ml)

furosemide (101 ng/ml)

no furosemide when identified as administered.

2nd offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum of a written warning to maximum fine of \$750:

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11 ng-50 ng/ml)

furosemide (101 ng/ml)

no furosemide when identified as administered.

3rd offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum fine of \$500 to a maximum fine of \$1,000:

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11 ng-50 ng/ml)

furosemide (101 ng/ml)

no furosemide when identified as administered.

LICENSED OWNER:

1st offense (365-day period) in any jurisdiction in the following levels, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run:

phenylbutazone (>2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11 ng-50 ng/ml)

furosemide (101 ng/ml)

no furosemide when identified as administered.

2nd offense (365-day period) in any jurisdiction in the following levels, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run:

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11 ng-50 ng/ml)

furosemide (101 ng/ml)

no furosemide when identified as administered.

3rd offense (365-day period) in any jurisdiction in the following levels, the penalty is disqualification, loss of purse and horse must pass a commission-approved examination before being eligible to run:

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11 ng-50 ng/ml)

furosemide (101 ng/ml)

no furosemide when identified as administered.

LICENSED TRAINER:

1st offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum fine of \$1,000:

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations.

2nd offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum fine of \$1,500 and 15 day suspension:

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations.

3rd offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum fine of \$2,500 and a 30 day suspension:

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations.

LICENSED OWNER:

1st offense (365-day period) in any jurisdiction in the following levels, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run:

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations.

2nd offense (365-day period) in any jurisdiction in the following levels, the penalty is loss of purse and if same horse, that horse shall be placed on veterinarian's list for 45 days and must pass a commission-approved examination before being eligible to run:

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations.

3rd offense (365-day period) in any jurisdiction in the following levels the penalty is a loss of purse, minimum \$5,000 fine and if same horse that horse shall be placed on veterinarian's list for 60 days and must pass a commission-approved examination before being eligible to run:

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations.

(4) Any violation subsequent to a third violation will carry the same terms as imposed for a third violation. Penalties will run consecutively for a trainer or owner.

(5) If the trainer has not had more than one violation involving a drug that carries a category C penalty within the previous two years, the stewards may issue a warning in lieu of a fine provided the reported level in phenylbutazone is below 3.0 micrograms per milliliter.

(6) After a two-year period, if a licensee has had no further violations involving a drug that carries a category C penalty, any penalty due to an overage in the 2.0-5.0 micrograms per milliliter in phenylbutazone will be expunged from the licensee's record for penalty purposes.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 04/30/2012; A, 07/31/2012; A, 12/14/2012; A, 05/01/2013; A/E, 05/02/2013; A, 09/30/2013]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF STATE IMPLEMENTATION PLAN REVISION

The New Mexico Environmental Improvement Board ("Board") will hold, if requested, a public hearing on December 16, 2013 at 10:00 a.m. in Room 322 at the State Capital in Santa Fe, New Mexico. The purpose of the hearing would be to consider the matter of No. EIB 13-08(R), proposed changes to the New Mexico State Implementation Plan ("SIP") revision for the 2013 Regional Haze Progress Report. A hearing will only be held if requested by a member of the public.

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

The purpose of the public hearing would be to consider and take possible action on a petition from NMED regarding the proposed SIP revision to adopt a 2013 Regional Haze Progress Report. 40 CFR § 51.309 requires states to develop regional haze progress report SIPs in 2013 and 2018 to evaluate the state's progress towards the reasonable progress goal for each Class I area located within the state and in each Class I area located outside the state which may be affected by emissions from within the state. On December 31, 2003 and June 29, 2011, the State of New Mexico submitted regional haze SIPs to the U.S. Environmental Protection Agency (EPA) to meet the requirements of 40 CFR § 51.309 ("Section 309 SIP") and 51.309(g) ("Section 309(g) SIP"). The 2003 Section 309 SIP, and subsequent revisions to the Section 309 SIP, address the first phase of regional haze requirements, with an emphasis on stationary source sulfur dioxide (SO₂) emission reductions and a focus on improving visibility on the Colorado Plateau. The 2011 Section 309(g) SIP addressed the visibility requirements and improvements in New Mexico's remaining eight Class I areas.

The proposed 2013 Regional Haze Progress Report is available for a 60-day public comment period during which a hearing request may be made. All comments and hearing requests must be received by November 29, 2013. All public comments received during the comment period will be evaluated and responded to as appropriate by NMED prior to the hearing or, if no hearing is requested, prior to submission of the

proposed progress report to EPA. If a request for a public hearing is received during the 60-day public comment period, a hearing will be held on December 16, 2013 at the above listed location, in accordance with 20.1.1 NMAC – Rulemaking Procedures – Environmental Improvement Board. If a request for hearing is not received during the 60-day comment period, the December 16, 2013 hearing before the Board shall be cancelled. The proposed progress report does not adopt or amend any regulations; therefore, it is not subject to the mandatory public hearing requirement of NMSA 1978 § 74-2-6. For more information, contact Gail Cooke at 505-476-4319 or via email at gail.cooke@state.nm.us. Upon completion of the 60-day public comment period and, if requested, the hearing process, all documents included in the New Mexico 2013 Regional Haze Progress Report will be submitted to EPA to be included in the New Mexico State Implementation Plan.

The NMED will host an informational open house on the proposed 2013 Regional Haze Progress Report at the NMED Air Quality Bureau Office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico 87505, from 12:00 p.m. - 3:00 p.m. on November 6, 2013. To attend the informational open house, please contact Gail Cooke at 505-476-4319 or gail.cooke@state.nm.us.

The proposed progress report may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino del los Marquez, Suite 1, Santa Fe, New Mexico. The full text of NMED's proposed revised plans are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Gail Cooke at (505) 476-4319 or gail.cooke@state.nm.us.

The hearing, if requested, will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the Air Quality Control Act Section, NMSA 1978, 74-2-6, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

(1) identify the person for whom the witness(es) will testify;

(2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;

(3) include a copy of the direct testimony of each technical witness in narrative form;

(4) list and attach each exhibit anticipated to be offered by that person at the hearing; and

(5) attach the text of any recommended modifications to the proposed SIP revision.

Notices of intent to present technical testimony at the hearing, if requested, must be received in the Office of the Board not later than 5:00 p.m. on November 26, 2013 and should reference the docket number, EIB 13-08(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator
Environmental Improvement Board
P.O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-0310

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

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

Persons having a disability and needing help in being a part of this hearing process should contact J.C. Borrego of the NMED Human Resources Bureau by November 29, 2013 at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-0424 or email juancarlos.borrego@state.nm.us. TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

If a hearing is held, the Board may make a decision on the proposed SIP revision at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

**End of Other Related Material
Section**

Submittal Deadlines and Publication Dates 2013

Volume XXIV	Submittal Deadline	Publication Date
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

Submittal Deadlines and Publication Dates 2014

Volume XXV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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.