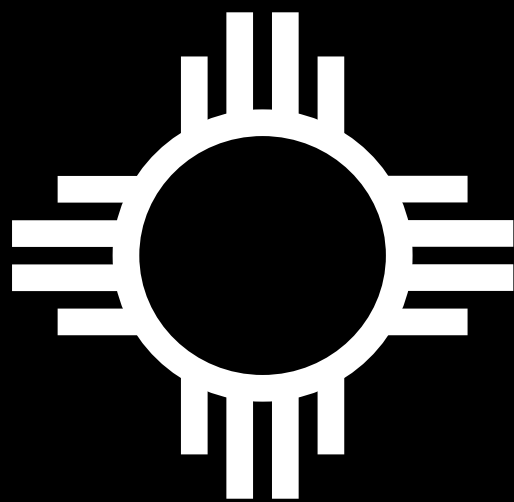


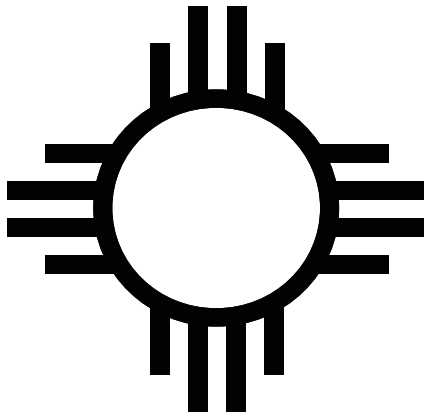
**NEW
MEXICO
REGISTER**



Volume XXIV
Issue Number 19
October 15, 2013

New Mexico Register

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October 15, 2013



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

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2013

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New Mexico Register

Volume XXIV, Number 19

October 15, 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.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Acupuncture and Oriental Medicine will hold a Rule Hearing on Friday, November 15, 2013. Following the Rule Hearing the New Mexico Board of Acupuncture and Oriental Medicine will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Acupuncture and Oriental Medicine Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the Rule Hearing. The meeting will be held at the Regulation & Licensing Department, 2nd Floor, Rio Grande Conference Room located at 2550 Cerrillos Road, Santa Fe, New Mexico.

The purpose of the Rule Hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.2.1 NMAC -General Provisions; 16.2.9 NMAC – Continuing Education; 16.2.10 NMAC – Fees; 16.2.16 NMAC - Auricular Detoxification; 16.2.17 NMAC – Licensure by Endorsement; 16.2.18 NMAC – Expanded Practice Educational Courses; 16.2.19 NMAC – Expanded Practice Certifications; New Part 16.2.21 NMAC – Licensure for Military Service Members, Spouses and Veterans

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4630 after October 11, 2013. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing by close of business day on November 4, 2013. Persons wishing to present their comments at the Rule Hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

A copy of the agenda will be available at least 72 hours prior to the meeting and may be obtained at the Board office located on the 2nd Floor of the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, or by calling the Board office at (505) 476-4630 and will also be posted on our website at www.rld.state.nm.us Acupuncture &

Oriental Medicine, under Members and Meetings.

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

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

NOTICE OF RULE MAKING AND PUBLIC HEARING ON PROPOSED AMENDMENTS TO RULE GOVERNING THE APPROVAL OF CONTRACTS FOR THE PURCHASE OF PROFESSIONAL SERVICES, 2.40.2 NMAC. The Department of Finance and Administration is considering the adoption of amendments to the rule Governing the Approval of Contracts for the Purchase of Professional Services, New Mexico Department of Finance and Administration, 2.40.2 NMAC.

A public hearing on the proposed rule amendments will be held at 9:00 a.m. on November 14, 2013, in Room 238, the Old Senate Chambers, of the Bataan Memorial Building, 407 Galisteo Street, Santa Fe NM 87501.

Beginning October 15, 2013, copies of the proposed rule amendments will be available from the contact person identified below and DFA's website, <http://www.nmdfa.state.nm.us/>.

Interested persons may present their views on the proposed rule amendments at the public hearing or by submitting written or recorded comments. It is not necessary to submit written or recorded comments and to appear at the public hearing, since written or recorded comments are given the same weight as comments provided at the public hearing. To be considered, written or recorded comments must be received by 9:00 a.m. on November 14, 2013, by the contact person identified below.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the public hearing, please

contact the contact person identified below at least one (1) week prior to the public hearing. This notice and the proposed rule amendments can be provided in various accessible formats. If another type of accessible format is needed, please contact the contact person identified below.

Malia Melhoff is the contact person for all matters related to the proposed rule amendments. Requests for copies of the proposed rule amendments, written or recorded comments on the proposed rule amendments, requests for auxiliary aids or services to attend or participate in the public hearing, and requests for this notice and the proposed rule amendments in another accessible format should all be sent to Ms. Melhoff. Ms. Melhoff's contact information is as follows:

Malia Melhoff
Administrative Assistant
Department of Finance and Administration
Financial Control Division
407 Galisteo Street
Bataan Memorial Building, Suite 166
Santa Fe NM 87501
Telephone: 505.827.3682
Facsimile: 505.827.3692
Email: MaliaM.Melhoff@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

A public hearing to receive testimony on these proposed rules will be held in The Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on November 18, 2013, at 8:30 a.m.

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing new new managed care rules for the implementation of Centennial Care. All of these rules will be in the New Mexico Administrative Code Chapter 308, Managed Care Program. The proposed rules are 8.308.2 *Provider Networks*, 8.308.6 *Eligibility and Enrollment*, 8.308.7 *Enrollment and Disenrollment*, 8.308.8 *Member Education*, 8.308.10 *Care Coordination*, 8.308.11 *Transition of Care*, 8.308.20 *Reimbursement*, 8.308.21 *Quality Management*, and 8.308.22 *Fraud, Waste and Abuse*.

The register and the proposed rule are available on the Medical Assistance Division web site at www.hsd.state.nm.us/mad. If you do not have Internet access, a copy of the rules may be requested by

contacting the Medical Assistance Division at 505-827-3152. Interested persons may submit written comments no later than 5:00 p.m., November 18, 2013 to Sidonie Squier, Secretary, Human Services Department, PO Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

Recorded or written comments must be received no later than 5:00 p.m. mountain standard time Tuesday, November 18, 2013. Recorded comments may be left by calling 505-827-3152. Comments may be submitted electronically to Emily.Floyd@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3171. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

A public hearing to receive testimony on these proposed rules will be held in The Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on November 18, 2013, at 10:00 a.m.

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal and replace the following eligibility rules that are part of New Mexico Administrative Code: 8.200.400 NMAC, *General Medicaid Eligibility*, 8.200.410 NMAC, *General Recipient Requirements*, 8.200.420 NMAC, *Special Recipient Requirements*, 8.200.430 NMAC, *Recipient Rights and Responsibilities*, 8.200.520 NMAC, *Income Standards*, 8.202.400 NMAC, *Recipient Requirements*, 8.202.500 NMAC, *Income and Resources Standards*, 8.202.600

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The register and the proposed rule are available on the Medical Assistance Division web site at www.hsd.state.nm.us/mad. If you do not have Internet access, a copy of the rules may be requested by contacting the Medical Assistance Division at 505-827-3152. Interested persons may submit written comments no later than 5:00 p.m., November 18, 2013 to Sidonie Squier, Secretary, Human Services Department, PO Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

Recorded or written comments must be received no later than 5:00 p.m. mountain standard time Tuesday, November 18, 2013. Recorded comments may be left by calling 505-827-3152. Comments may be submitted electronically to Emily.Floyd@state.nm.us. Written, electronic and recorded comments

will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3171. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, November 21, 2013 at 8:30 a.m. and conduct a public rule hearing on Friday, November 22, 2013 at 9:00 a.m. at the Board Office Conference Room, located at 2055 S. Pacheco Street, Building 400, Santa Fe, New Mexico 87505. The Board will reconvene after the Hearing to take action on the proposed rule. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider adopting amendments to 16.10.2 NMAC, PHYSICIANS: LICENSURE REQUIREMENTS and 16.10.15 PHYSICIAN ASSISTANTS: LICENSURE AND PRACTICE REQUIREMENTS.

Copies of the proposed rule amendments are available upon request from the Board office at the address listed above, by phone (505) 476-7220, or on the Board's website at www.nmmb.state.nm.us.

Persons desiring to present their views on the proposed rule may appear in person at said time and place or may submit written comments to the Board. The deadline for written comments is 5:00 p.m. on November 15, 2013.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please

contact Samantha Breen, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

**NEW MEXICO WORKERS'
COMPENSATION
ADMINISTRATION**

NOTICE OF PUBLIC HEARING

Notice is hereby given that on Thursday, November 7, 2013, commencing at 1:30 p.m., the New Mexico Workers' Compensation Administration will conduct a public hearing on the changes to the medical fee schedule and WCA Rules, including updates to Part 2, Data Reporting and Safety Requirements, Part 6, Judicial Selection, Part 13, Controlled Insurance Plans, and the repeal and reissuance of Part 7, Payments for Health Care Services.

The hearing will be conducted at the Workers' Compensation Administration, 2410 Centre Avenue S.E., Albuquerque, NM. Copies of the proposed fee schedule and rule amendments will be available by October 18, 2012. You may obtain a copy of the proposed changes at the WCA website at: <http://www.workerscomp.state.nm.us/> or contact the WCA General Counsel Office at 841-6083 for a copy via e-mail. If you would like to receive a copy by mail, please submit a postage paid, self-addressed envelope with your request.

Comments made in writing and at the public hearing will be taken into consideration. Written comments pertaining to these issues will be accepted until the close of business on November 18, 2013. Oral comments will be limited to five (5) minutes per speaker.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact the General Counsel Office at (505) 841-6083. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

**End of Notices and Proposed
Rules Section**

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Adopted Rules

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.4 NMAC, Section 14 effective 10-15-13.

19.31.4.14 WATERS WITH AGE OR HANDICAPPED USE RESTRICTIONS:

A. Only persons under 12 years of age may fish in the following waters: Shuree kids' ponds on Valle Vidal (Vermejo tract-Carson national forest); valley improvement association ponds at Belen, ~~Young pond in Las Cruces~~; Harris pond in Las Vegas, Spring river park in Roswell, and the Brood pond at Seven Springs state fish hatchery.

B. Only persons under 12 years of age, those 65 years and over, and handicapped persons may fish in the designated Red River hatchery pond located at the Red River state fish hatchery, Blue Hole park pond (formerly Santa Rosa seniors pond), Estancia park lake at Estancia, and in ponds located in Harry McAdams park.

C. Only handicapped persons and those under 12 years of age may fish in the posted small pond at Cowles.

D. **Olympic pond:** Only persons under 12 years of age and those 65 years and over may fish in Olympic pond located at Angel Fire.

E. **Laguna del campo:** Only persons 14 years of age and under, those 65 years and over, handicap persons, or up to two parents/guardians in direct supervision of a child or children 14 years of age and under who are fishing, may fish in Laguna del campo located near Los Ojos trout hatchery.

F. **Conservancy park/Tingley beach kids' pond:** Only persons 12 years of age and under may fish in Conservancy park/Tingley beach kids' pond in Albuquerque.

G. **Red River city middle kids' pond:** Only handicapped persons and those 12 years of age and under may fish in Red River city middle kids' pond.

H. **Grants city pond:** Only persons under 17 years of age, those 65 years and over, and handicapped persons may fish in Grants City Pond in Grants. [19.31.4.14 NMAC - Rp, 19.31.4.14 NMAC, 4-1-2010; A, 10-15-2013]

NEW MEXICO BOARD OF PODIATRY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 21 PODIATRISTS PART 9 MANAGEMENT OF PAIN WITH CONTROLLED SUBSTANCES

16.21.9.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry. [16.21.9.1 NMAC - N, 11-01-13]

16.21.9.2 SCOPE: This part applies to all New Mexico licensed podiatrists who hold a federal drug enforcement administration registration. [16.21.9.2 NMAC - N, 11-01-13]

16.21.9.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to and in accordance with the Podiatry Act, Sections 61-8-1 through 61-8-17 NMSA 1978 and the Pain Relief Act, Sections 24-2D-1 NMSA through 24-2D-6. [16.21.9.3 NMAC - N, 11-01-13]

16.21.9.4 DURATION: Permanent. [16.21.9.4 NMAC - N, 11-01-13]

16.21.9.5 EFFECTIVE DATE: 11-01-13, unless a later date is cited at the end of a section. [16.21.9.5 NMAC - N, 11-01-13]

16.21.9.6 OBJECTIVE: It is the position of the board that practitioners have an obligation to treat chronic pain and that a wide variety of medicines including controlled substances and other drugs may be prescribed for that purpose. When such medicines and drugs are used, they should be prescribed in adequate doses and for appropriate lengths of time after a thorough medical evaluation has been completed. [16.21.9.6 NMAC - N, 11-01-13]

16.21.9.7 DEFINITIONS:

A. "Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

B. "Acute pain" means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

C. "Chronic pain" means pain that persists after reasonable medical efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. "Chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

D. "Clinical expert" means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

E. "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.

F. "Pain" means acute or chronic pain or both.

G. "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

H. "Prescription monitoring program" means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

I. "Therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

J. "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time. [16.21.9.7 NMAC - N, 11-01-13]

16.21.9.8 HEALTH CARE PRACTITIONER'S PRESCRIPTIVE PRACTICES: The following regulations shall be used by the board to determine whether a health care practitioner's prescriptive practices are consistent with the appropriate treatment of pain.

A. The treatment of pain with various medicines or controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

(1) A practitioner shall complete a physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

(2) A practitioner shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The practitioner shall consider an integrative approach to pain management.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) The practitioner shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

(5) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for opioids shall include indications for use. For chronic pain patients treated with controlled substance analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. As part of a written agreement, chronic pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

(6) The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic pain, the patient's state of health, and any new information about the etiology of the chronic pain at least every six months. In addition, a practitioner shall consult, when indicated by the patient's condition, with health care professionals who are experienced (by the length and type of their practice) in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(7) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

C. Pain management for patients with substance use disorders shall include:

- (1) a contractual agreement;
- (2) appropriate consultation;
- (3) drug screening when other factors suggest an elevated risk of misuse or diversion; and
- (4) a schedule for re-evaluation at appropriate time intervals at least every six months.

D. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

E. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

F. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Podiatry Act or board rules.

[16.21.9.8 NMAC - N, 11-01-13]

16.21.9.9 P O D I A T R I C PHYSICIAN TREATED WITH OPIATES: Podiatric physicians who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by an MD or DO pain specialist,

and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on opiates while continuing to practice.

[16.21.9.9 NMAC - N, 11-01-13]

16.21.9.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:

The intent of the New Mexico board of podiatry in requiring participation in the PMP is to assist practitioners in balancing the promotion of the safe use of controlled substances for the provision of medical care and services with the need to impede illegal and harmful activities involving these pharmaceuticals.

A. A podiatrist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A podiatrist shall, before prescribing, ordering, administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when one of the following situations exists:

(1) the patient is a new patient of the podiatrist, in which situation a patient PMP report for the previous 12 months shall only be required when Schedules II, III, and IV drugs are prescribed for a period greater than 10 days; and

(2) during the continuous use of opioids by established patients a PMP shall be requested and reviewed a minimum of once every six months.

[16.21.9.10 NMAC - N, 11-01-13]

16.21.9.11 P A I N MANAGEMENT CONTINUING EDUCATION:

This section applies to all New Mexico board of podiatry licensees.

A. **I m m e d i a t e requirements effective January 2, 2014.**

Beginning January 2, 2014 and then for each annual renewal cycle, all New Mexico board of podiatry licensees shall complete no less than two continuing medical education hours in appropriate courses:

(1) an understanding of the pharmacology and risks on controlled substances;

(2) a basic awareness of the problems of abuse, addiction and diversion;

(3) awareness of state and federal regulations for the prescription of controlled substances;

(4) management of the treatment of pain; and

(5) courses may also include a review of this rule (16.21.9 NMAC); the applicability of such courses toward

fulfillment of the continuing medical education requirement is subject to New Mexico board of podiatry approval; podiatrists who have taken CME in these educational elements between January 1, 2013 and December 31, 2014 may apply those hours toward the required two CME described in this section.

B. Requirements for new licensees. All New Mexico board of podiatry licensees, whether or not the New Mexico license is their first license shall complete two continuing medical education hours in pain management during the first year of licensure and then for each annual renewal cycle.

C. The continuing education requirements of this section are included in the sixteen hours needed for renewal.

[16.21.9.11 NMAC - N, 11-01-13]

16.21.9.12 NOTIFICATION: In addition to the notice of procedures set forth in the State Rules Act, Section 14-4-1 et seq NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and the New Mexico podiatry board rule, 16.21.9 NMAC:

A. health care practitioners under its jurisdiction; and

B. a health care practitioner being investigated by the board in relation to the practitioner's pain management services. [16.21.9.12 NMAC - N, 11-01-13]

HISTORY OF 16.21.9 NMAC:
[RESERVED]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.3 NMAC, Sections 8 and 9, effective 11-01-13.

16.21.3.8 REQUIREMENTS FOR LICENSE: Each applicant for a license as a podiatrist must possess the following qualifications:

A. graduated and been awarded a doctor of podiatric medicine degree from an accredited college of podiatric medicine as defined in the Podiatry Act, Section 61-8-8,(A)(3) NMSA 1978;

B. ~~[passed the APMLE examinations, part 1 and 2]~~ passed the NBPME examinations part 1, 2, and 3;

C. ~~[completed a residency program as defined in the Podiatry Act, Section 61-8-8,(A),(4)]~~ every applicant shall have completed at minimum one year of residency approved by the CPME; and

~~[D. passed the podiatric medical licensing examination for states (PM-Lexis or APMLE examination part 3) within the past five years; and]~~

~~[E.]~~ **D.** passed the New Mexico

jurisprudence examination with a score of [75%] 90% or higher.

[16.21.3.8 NMAC - Rp, 16 NMAC 21.3.8, 10-15-04; A, 7-15-07; A, 07-29-11; A, 11-01-13]

16.21.3.9 DOCUMENTATION REQUIREMENTS: The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. Each applicant for a license by examination must submit the required fees and following documentation:

A. completed application, ~~[signed and notarized]~~ with signature and a passport quality photo taken within the past 6 months; applications are valid for one year from the date of receipt;

B. official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

C. ~~[a certified copy of a certificate of completion of a residency program approved by the CPME]~~ certificate or letter from residency director verifying completion of residency program approved by the CPME;

D. proof that the applicant has passed the [APMLE] NBPME examinations sent directly from the [APMLE; and] NBPME;

E. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification must be sent directly to the board office from the other state(s), and must attest to the status, issue date, license number, and other information contained in the form; and

F. electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section 14-16-19 NMSA 1978.

[16.21.3.9 NMAC - Rp, Rule V, 10-15-04; A, 7-15-07; A, 07-29-11; A, 11-01-13]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.4 NMAC, Sections 8, 9 and 10, effective 11-01-13.

16.21.4.8 REQUIREMENTS FOR LICENSURE BY RECIPROCITY: Each applicant for licensure as a podiatrist by reciprocity must possess the following qualifications:

A. graduated and received a degree from an accredited podiatric school as defined in the Podiatry Act, 61-8-8(A)(3); NMSA 1978;

B. hold a valid license by examination in another state or territory of the United States, with requirements for

licensure equal to or exceeding those in New Mexico;

C. provide proof of active practice for at least five consecutive years immediately preceding the date of application;

D. passed the [APMLE] NBPME examinations part 1, 2 and 3, or equivalent exam for part 3 as determined by the board; and

E. passed the jurisprudence examination with a score of [75%] 90% or higher.

[16.21.4.8 NMAC - Rp, 16 NMAC 21.4.8, 10-15-04; A, 07-29-11; A, 11-01-13]

16.21.4.9 DOCUMENTATION REQUIREMENTS: The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. Each applicant for a license by reciprocity must submit the required fees and submit or provide for the following documentation:

A. completed application, ~~[signed and notarized]~~ with signature and a passport quality photo taken within the past 6 months; applications are valid for one year from the date of receipt;

B. official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

C. one letter of recommendation from a practicing podiatrist who is personally acquainted with the applicant and who can attest that the applicant is of good moral character;

D. ~~[a certified copy of a certificate of completion of a residency program accredited by the CPME]~~ certificate or letter from residency director verifying completion of residency program approved by the CPME;

E. proof that the applicant has passed the [APMLE] NBPME examinations part 1, 2 and 3 sent directly from [APMLE] NBPME.

F. proof that the applicant who has not taken [APMLE] NBPME part 3 or the PM lexis exam provide equivalent examination proof of passing;

G. proof of active practice for the five consecutive years immediately preceding the date of application (proof may include a letter from an accountant, the professional society, tax forms, or other documentation approved by the board);

H. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; and verification must be sent directly to the board office from the other state(s), and must attest to the license status, issue date, license number, and other information requested in the verification

form.

I. electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section 14-16-19 NMSA 1978.

[16.21.4.9 NMAC - Rp, 16 NMAC 21.4.8, 10-15-04; A, 7-15-07; A, 07-29-11; A, 11-01-13]

16.21.4.10 REPORTS: The board requires obtainment of reports from the national practitioners data bank, or other national reporting organization, and the federation of podiatric medical boards disciplinary data bank [if the applicant is currently licensed, or has previously been licensed, as a podiatrist in another state]. [16.21.4.10 NMAC - Rp, 16 NMAC 21.4.8, 10-15-04; A, 7-15-07; A, 11-01-13]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.5 NMAC, Sections 8, 10 through 12, effective 11-01-13.

16.21.5.8 TEMPORARY LICENSE: A temporary license may be issued by the board in the following situations.

A. In cases of emergency as determined by the board; a temporary license to practice podiatry may be issued under this rule for practice in the office of a New Mexico licensed podiatrist who is unable to continue his or her practice due to an emergency.

B. To facilitate educational programs; a temporary license to practice podiatry in New Mexico may be issued to:

(1) a participant in a residency training program located in New Mexico accredited by the "CPME" and insure that at all times throughout the program the temporary license holder is supervised by a New Mexico licensed podiatrist; or

(2) a participant in a residency program that is located in a bordering state accredited by the "CPME" and insure that at all times the temporary license holder is supervised by a New Mexico licensed podiatrist, if the program offers part of its program residency in New Mexico.

(3) a participant in a post-graduate 1 year preceptorship program in New Mexico that at all times throughout the program is supervised by a New Mexico licensed podiatrist(s) in good standing and without restriction(s) of license; the board of podiatry requires the supervising podiatrist(s) of this preceptorship to have notified the board in writing of the start and end dates for this post-graduate training position.

C. In cases to assist or perform surgical procedures with a licensed New Mexico podiatrist which is beyond the

training and experience available in New Mexico.

[16.21.5.8 NMAC - Rp, 16.21.5.8 NMAC, 7-15-07; A, 07-29-11; A, 11-01-13]

16.21.5.10 REQUIREMENTS FOR TEMPORARY LICENSURE AND TEMPORARY EMERGENCY LICENSURE: The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources.

A. Applicants for temporary license or temporary emergency license due to situations defined under 16.21.5.8 NMAC A or C must meet the following qualifications:

(1) graduated and been awarded a doctor of podiatric medicine degree from an accredited college of podiatric medicine as defined in the Podiatry Act, Section 61-8-8,(A)(3) NMSA 1978;

(2) passed the [APMLE] NBPME examinations parts 1, 2 and 3, or equivalent exam for part 3 as determined by the board;

(3) completed a residency program as defined in the Podiatry Act, Section 61-8-8,(A),(4); and

(4) passed the New Mexico jurisprudence examination with a score of [75%] 90% or higher.

B. Applicants for temporary licensure to facilitate an educational or residency program must meet the following qualifications:

(1) graduated and been awarded a doctor of podiatric medicine degree from an accredited college of podiatric medicine as defined in the Podiatry Act, Section 61-8-8(A)(3) NMSA 1978;

(2) passed the podiatric medical examiners national board exams Part 1 and 2; and

(3) passed the jurisprudence examination with a score of [75%] 90% or higher.

[16.21.5.10 NMAC - Rp, 16.21.5.9 NMAC, 7-15-07; A, 07-29-11; A, 11-01-13]

16.21.5.11 TEMPORARY LICENSE DOCUMENTATION REQUIREMENTS: Each applicant for a temporary license must submit the required fees and submit or provide for the following documentation:

A. a completed application [signed and notarized] with signature and a passport quality photo taken within the past 6 months; applications are valid for one year from the date of receipt;

B. an official transcript from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

C. proof that the applicant has passed the [APMLE] NBPME

examinations parts 1, 2 and 3, or equivalent exam for part 3 as determined by the board, with the exception of applicants who are in residency training programs for part 3 only;

D. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification must be sent directly to the board office by the licensing state and attest to the status, issue date, license number of the licensee;

E. in addition, applicants obtaining temporary licensure to work in an existing practice due to an emergency must provide a certified copy of a certificate of completion of a residency program approved by the CPME;

F. applicants for temporary licensure to facilitate an educational or residency program must submit proof of enrollment in the educational or residency training program.

G. electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section 14-16-19 NMSA 1978.

[16.21.5.11 NMAC - Rp, 16.21.5.10 NMAC, 7-15-07; A, 07-29-11; A, 11-01-13]

16.21.5.12 TEMPORARY EMERGENCY LICENSE DOCUMENTATION REQUIREMENTS:

A. Podiatric physicians currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure, in a state in which a disaster has been declared by federal authorities, may apply for a license in New Mexico during the four months following the date the disaster was declared, at no cost, upon satisfying the following requirements:

(1) proof applicant resides and is in active practice in the federally declared disaster areas in the form of a signed and notarized affidavit, accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

(3) one letter of recommendation from a practicing licensed podiatrist who is personally acquainted with the applicant and who can attest that the applicant is of good moral character;

(4) [a certified copy of a certificate of completion of a residency program accredited by the "CPME";] certificate or letter from residency director verifying completion of residency program approved by the CPME;

(5) proof that the applicant has passed the [APMLE] NBPME examinations, parts 1, 2 and 3, or equivalent exam for part

3, as determined by the board;

(6) the board may waive the specific forms required under Paragraphs (1) through (6) of Subsection A of 16.21.5.12 NMAC if the applicant is unable to obtain documentation from the federally declared disaster areas;

(7) other required verification may be obtained online by board staff to include: current licensure status, national practitioner's data bank, federation of podiatric medical board's disciplinary database;

(8) the board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources;

(9) nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.21.5 NMAC.

B. Upon receipt of a completed application, including all required documentation, the secretary-treasurer or the delegate of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be reviewed by the complaint/review committee. The board may formally accept the recommendation of the complaint/review committee at the next scheduled meeting.

[16.21.5.12 NMAC - N, 7-15-07; A, 07-29-11; A, 11-01-13]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.7 NMAC, Section 9, effective 11-01-13.

16.21.7.9 R E N E W A L DEADLINE: A completed renewal application accompanied by the required fees, documentation of [4] 16 hours of continuing education as defined in 16.21.8.13 NMAC and must be post-marked, received electronically, or hand delivered on or before January 1 of each year. Fourteen hours of CE is required for the renewal years before January 2, 2105. On or after January 2, 2015 the CE requirement is 16 hours of CE, including 2 hours of pain management.

[16.21.7.9 NMAC - Rp, Rule VI.A, 10-15-04; A, 07-29-11; A, 11-01-13]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.8 NMAC, Sections 8, 13 and 15, effective 11-01-13.

16.21.8.8 HOURS REQUIRED:

[~~Fourteen (14)~~ Sixteen hours of continuing education are required annually, [~~or twenty-eight (28) hours bi-annually~~] with two hours specifically related to pain management as defined in 16.21.9.11 NMAC; or 32 hours bi-annually with four hours specifically related to pain management. Initial licenses issued for a period of less than six months do not require any continuing education for the initial licensing period. Licenses issued for more than six months but less than twelve months require eight hours of continuing education for the initial licensing period.

A. Continuing education coursework must contribute directly to the practice of podiatric medicine.

B. One hour of credit will be granted for every contact hour of instruction. This credit shall apply to either academic or clinical instruction.

[16.21.8.8 NMAC - Rp, Rule VII.A, 10-15-04; A, 7-15-07; A, 11-01-13]

16.21.8.13 VERIFICATION OF CONTINUING EDUCATION HOURS:

[~~The board during each renewal cycle will complete a random audit of continuing education hours. The board may select by accepted RLD random computer processes, up to 10% of the renewal applicants. Individuals selected for audit must submit proof of compliance with the continuing education requirements. The records indicated in 16.21.8.12 NMAC are acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned and they may be audited by the board at any time.~~] Each podiatrist renewing a license shall attest that they have obtained the required hours of CME. Documentation of CME is not required unless you are selected for the annual CME compliance audit. If you are selected for audit you will be notified and provided with instructions for compliance. The board may audit CME records at any time, so CME records must be maintained for at least one year following the renewal cycle in which they are earned.

[16.21.8.13 NMAC - N, 10-15-04; A, 07-29-11; A, 11-01-13]

16.21.8.15 WAIVER OF REQUIREMENTS:

Waivers of the continuing education requirement [~~shall be given only for prolonged illness or physical incapacity~~] may be considered for the following situations for licensees.

A. [~~For purposes of this rule, a prolonged illness or physical incapacity is one which is defined as lasting for a period of more than six months~~] During periods of prolonged illness or physical incapacity.

(1) For the purposes of this rule, the duration of a prolonged illness or physical incapacity period will be defined as longer than six months.

(2) Any licensee who wishes to apply for this type of waiver of continuing education must submit in writing a letter detailing the nature of the illness or incapacity and its probable duration. The board will review this waiver request and allow the licensee or the licensee's representative to attend board meeting to present evidence of support of this waiver request and to speak to the board concerning the petition for waiver. The burden shall be on the licensee to prove to the board the necessity of the waiver. The decision of the board on the waiver shall be final.

B. Any licensee who believes that she or he is entitled to a waiver of a continuing education requirement for reasons of prolonged illness or physical incapacity shall request such a waiver by sending the board a letter from his or her physician setting out in detail the nature of the illness or incapacity and its probable duration. The board shall notify the licensee in writing of the date on which the application will be considered by the board. The licensee or the licensee's representative may attend the meeting, present evidence on behalf of a petition for waiver, and to speak to the board concerning the petition. The burden shall be on the licensee to satisfy the board of the necessity of the waiver. The decision of the board on the waiver shall be final.

C. Licensee in the United States military practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The board must be notified prior to license expiration that the licensee will be outside the United States, including the period of the absence.

(2) Upon return to the United States, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply [~~for an emergency deferral~~] in writing to the board detailing reason for deferral of this requirement.

D. Applications for waiver under this section must be filed as soon as the licensee has reason to believe that grounds for the waiver exist.

[16.21.8.15 NMAC - Rp, Rule VII.E, 10-15-04; A, 7-15-07; A, 11-01-13]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.10 NMAC, Section 9, effective 11-30-13.

16.21.10.9 REINSTATEMENT OF SUSPENDED LICENSE: A podiatrist may request reinstatement of a lapsed license within three (3) years from the date the license expired by notifying the board in writing. Upon receipt of the request for reinstatement, board staff will send a reinstatement application. The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. The following information is required for the request to be considered:

A. a completed application, payment of the reinstatement fee, any delinquent renewal fees, and proof of [fourteen] ~~sixteen~~ hours of continuing education per the year of renewal and each full year the license was allowed to lapse;

B. the application may be approved by the designee of the board if the application is complete and all requirements have been fulfilled;

C. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification must be sent directly to the board office from the other state(s) and must attest to the status, issue date, license number, and other information contained in the form;

D. the board required reports from the national practitioners data bank, or other national reporting organization, and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed, or has previously been licensed as a podiatrist in another state;

E. no podiatrist shall reactivate or resume their podiatric practice until his or her lapsed license is reinstated and a new license is issued;

F. upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.

[16.21.10.9 NMAC - Rp, Rule VI.A&B, 10-15-04; A, 7-15-07; A, 11-01-13]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.11 NMAC, Section 10, effective 11-01-13.

16.21.11.10 S U S P E N S I O N , REVOCATION OR REFUSAL OF A LICENSE: For the purpose of the Podiatry Act, Section 61.8.11.10 NMSA 1978 of, the following may apply.

A. "Gross negligence" or "gross incompetency" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients, or any act or omission by a podiatrist such as to indicate a willful act or injury to the patient, or such incompetence on the part of the podiatrist as to render the podiatrist unfit to hold himself out to the public as a licensed podiatrist.

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

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

(2) practicing beyond the scope of practice of a podiatrist as defined by the Podiatry Act, Section 61-8-1 NMSA 1978, or board rule;

(3) failure of a podiatrist to comply with the following advertising guidelines:

(a) shall not [advertize] advertise in a false, fraudulent or misleading manner;

(b) shall include in the advertisement the podiatrist's name or medical group name, address and telephone number;

(4) the making of false or misleading statement in communication with patients or potential patients;

(5) the use of misleading or deceptive titles or designations in a name or title of a podiatric practice, including the unauthorized advertisement of a specialty designation;

(6) failure to release to a patient copies of that patient's records and x-rays; in a reasonable period of time;

(7) conviction of a felony; a certified copy of the record of the court of conviction shall be proof of such conviction;

(8) impersonating another person licensed to practice podiatry or permitting or allowing any person to use his license or certificate of registration;

(9) failure to obtain informed consent prior to incisional surgical treatment;

(10) deliberate and willful failure

to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another podiatrist licensed or applying for licensure by the board;

(11) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a professional partnership, association, HMO, or similar association shall not be construed as fee-splitting;

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

(13) sexual misconduct;

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

(15) the falsifying of medical records, whether or not for personal gain;

(16) any intentional conduct or practice which is harmful or dangerous to the health of the patient;

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

(18) obtaining or attempting to obtain a license through fraud, misrepresentation, or other dishonesty;

(19) cheating on an examination for licensure;

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

(21) treating patients when the podiatrist is under the influence of alcohol, illegal drugs, or injudicious use of prescription medications; or

(22) failure to report to the board the involuntary surrender of a license to practice in another state, or involuntary surrender of membership on any medical staff or in any podiatric or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(23) willful abandonment of a patient;

(24) has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation;

(25) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American podiatric medical association.

[16.21.11.10 NMAC - Rp, Rules VIII, X, & XV, 10-15-04; A, 7-15-07; A, 07-29-11; A, 11-01-13]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to Sections 14 and 15 of 6.80.4 NMAC (CHARTER SCHOOL APPLICATION AND APPEAL REQUIREMENTS), effective October 15, 2013. Subsection E of Section 14 (APPEALS TO THE SECRETARY) is amended by striking paragraph (7) in its entirety and including the following new language in lieu thereof: "The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal." Subsection F is stricken in its entirety and Subsection G is accordingly renumbered as subsection F. Section 15 (REVIEW ON THE SECRETARY'S OWN MOTION) is amended by striking subsection H in its entirety.

6.80.4.14 APPEALS TO THE SECRETARY:

A. Right of appeal. A charter applicant may appeal to the secretary from any chartering authority decision denying a charter school application, revoking or refusing to renew a previously approved charter, or imposing conditions for approval or renewal that are unacceptable to the applicant. Appeals from suspension of governing bodies and head administrators by the secretary shall be governed by the procedures set forth in 6.30.6 NMAC ("Suspension of Authority of a Local School Board, Superintendent or Principal").

B. Notice of appeal

(1) Filing and service of notice.

A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal within thirty (30) days after service of the chartering authority's decision. One (1) original plus four (4) copies of the notice of appeal together with any supporting documents shall be filed with the secretary at the department's main office in Santa Fe. No notice of appeal, including exhibits and other related documents, shall be filed using compact disks, floppy disks or email; instead, paper documents must be filed with the department.

(2) Grounds of appeal. The notice shall include a brief statement of the reasons why the appellant contends the chartering authority's decision was in error with reference to the standards set forth in Section 22-8B-7B that the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with

law. The appellant shall limit the grounds of its appeal to the authorizer's written reasons for denial, nonrenewal, revocation or imposition of conditions.

(3) Required attachments. The appellant shall attach to each copy of the notice of appeal:

(a) a copy of the chartering authority's written decision, together with a copy of the authorizer's minutes or draft minutes of the meeting if available; and

(b) a copy of the charter or proposed charter in question.

C. Filing and service of other documents. An original document shall be filed with the secretary at the department's main office in Santa Fe. Each party shall simultaneously serve a copy of all documents filed with the secretary including any attachments upon the other party at that party's address of record on appeal. A party may file documents other than a notice of appeal and required documents referenced at Paragraph (5) of Subsection D of 6.80.4.14 NMAC below, by email to the secretary provided that the email includes any attachments, as well as the sender's name and mailing address. Filings with the secretary shall reflect by certification of the sender that a copy of all documents being submitted is simultaneously being served on the other party, the method of service, and the address where filed. Filing or service by mail is not complete until the documents are received.

D. Pre-hearing procedures

(1) Within ten (10) days after receipt of the notice of appeal, the secretary shall inform the parties by letter of the date, time and location for the appeal hearing.

(2) Except for brief inquiries about scheduling, logistics, procedure or similar questions that do not address the merits of the case, neither party shall communicate with or encourage others to communicate with any employee of the department about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call. Nor shall any employee of the department initiate such prohibited communications. The secretary must disqualify himself or herself from hearing an appeal if the secretary determines, after learning of a prohibited communication, that the secretary is unable to render an unbiased decision. Appellants will be provided a point of contact in the letter referenced in Paragraph (1) of Subsection D of 6.80.4.14 NMAC.

(3) The deadlines in 6.80.4.14 NMAC may be extended by the secretary for good cause. Good cause may include, but shall not be limited to, an agreement between the parties or a well-reasoned request from either party based upon hardship, a

scheduling conflict or an event beyond the control of the requester.

(4) All submissions to the secretary on appeal shall focus on the factual and legal correctness of the chartering authority's decision in light of the grounds upon which a chartering authority may deny an application set forth in Section 22-8B-6K or the grounds for non-renewal or revocation as set forth in Subsection F of Section 22-8-12, NMSA 1978, and the standards for affirmation or reversal that the chartering authority's decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law.

(5) Within ten (10) days after filing the notice of appeal, the appellant shall file one (1) original and four (4) copies with the secretary and serve upon the chartering authority one (1) copy of:

(a) the appellant's arguments for reversal of the chartering authority's decision, clearly labeled accordingly;

(b) the chartering authority's written decision that the appellant is appealing;

(c) the charter or proposed charter in question, of which only two (2) copies need to be filed; and

(d) any other materials related to the issues raised by the appellant which the appellant wishes to have considered in support of its appeal.

(6) Within ten (10) days after receiving the appellant's submissions, the chartering authority shall file one (1) original and four (4) copies with the secretary and serve upon the appellant one (1) copy of:

(a) the chartering authority's response to the appellant's arguments; and

(b) any other materials the chartering authority wishes to have considered in support of its decision.

(7) If requested by the secretary, the division and other department staff as appropriate shall review each party's submissions and prepare a report for the secretary which:

(a) analyzes and outlines the parties' contentions on appeal with reference to the standards of Subsection K of Section 22-8B-6 and Subsections B and E of Section 22-8B-7 NMSA 1978;

(b) sets forth the staff's recommendations for the secretary to affirm or reverse the chartering authority's decision, with or without reasonable conditions or changes to the charter, and the reasons for those recommendations.

(8) At least five (5) days before the hearing date, the division shall deliver its report and recommendations to the secretary and shall simultaneously serve a copy upon each party.

(9) While an appeal is pending, the parties are strongly encouraged to continue

discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the secretary reaches a final decision. If an appeal is withdrawn, the secretary shall approve an appropriate order of dismissal. The secretary's decision and order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled.

E. Secretary hearing and decision

(1) Unless an extension for good cause has been granted pursuant to Paragraph (4) of Subsection D of 6.80.4.14 NMAC within sixty (60) days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.

(2) Participants at the hearing before the secretary shall be the designated representatives of the appellant, the chartering authority and the division and other department staff as appropriate.

(3) The time allotment for a hearing shall be three (3) hours. Both parties shall be allowed up to thirty (30) minutes for their presentations. Department staff shall be allowed twenty (20) minutes for their presentation. The appellant may reserve part of its thirty (30) minutes for rebuttal if desired. The order of presentations will be department staff, appellant, chartering authority and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their thirty (30) minutes but must include any comments they wish to make on the staff recommendations within their allotted time. Presentations, questions or discussions that exceed these limits may be ruled out of order by the secretary. The secretary may ask questions of the staff, the parties or the secretary's counsel at any time and may take up to one (1) hour after the staff's and the parties' presentations for further questions, discussion and its decision. Unless stricken during the hearing for good cause or withdrawn, the parties can assume that the department staff and the secretary have reviewed their written submissions, which shall be deemed evidentiary submissions subject to be given increased or diminished weight based upon the oral presentations.

(4) All presentations and discussion before the secretary shall focus on the factual and legal correctness of the chartering authority's decision in light of the standards and grounds set forth in Subsection K of Section 22-8B-6, Subsections B, C or E of Section 22-8B-7 and Subsection F of Section 22-8B-12.

(5) The secretary may reverse the decision of the chartering authority, with or without the imposition of reasonable conditions, if the secretary finds that the chartering authority:

- (a) acted arbitrarily or capriciously;
- (b) rendered a decision not supported by substantial evidence; or
- (c) did not act in accordance with the law.

(6) The secretary shall reverse a decision of the chartering authority denying an application, refusing to renew an application or revoking a charter if the secretary finds that the decision was based upon a determination by the public school capital outlay council that the facilities of the proposed or exiting charter school did not meet the standards required by Section 22-8B-4.2, NMSA 1978 and that the decision was:

- (a) arbitrary or capricious;
- (b) not supported by substantial evidence; or
- (c) otherwise not in accordance with the law.

~~(7) [If the secretary reverses the chartering authority's decision, the secretary shall remand the decision to the chartering authority with written instructions for approval of the charter. The instructions shall include specific recommendations concerning approval of the charter and any changes the secretary directs to remedy any concerns identified under Paragraphs (5) or (6) of Subsection E of 6.80.4.14 NMAC above.] The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal.~~

(8) A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

~~[F. Implementation of secretary's decision~~

~~(1) The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal.~~

~~(2) If the chartering authority's decision is reversed and remanded, the chartering authority, at a public hearing, shall approve the charter with any required changes within thirty (30) days following the receipt of the notice of the decision. If the chartering authority does not comply with the secretary's order, the secretary may take appropriate administrative or judicial action.]~~

~~[G.] E.~~ The provisions of this section shall apply to conversion schools. [6.80.4.14 NMAC - Rp, 6.80.4.10 NMAC, 6/29/07; A, 6/30/08; A, 10/15/13]

6.80.4.15 REVIEW ON THE SECRETARY'S OWN MOTION:

A. The secretary, on the secretary's own motion, may review a

chartering authority's decision to grant a charter.

B. Within ten (10) days after the secretary moves to review, the secretary shall issue an appropriate order establishing procedures for the chartering authority and the charter applicant to submit information and arguments for review by the secretary and division staff.

C. Within sixty (60) days after the secretary moves to review, the secretary, at a public hearing that may be held in Santa Fe or in the district in which the proposed charter school applied for a charter, shall review the decision of the chartering authority and determine whether the decision was arbitrary and capricious or whether the establishment or operation of the proposed charter school would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978.

D. If the secretary determines that the charter would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978, the secretary shall reverse the chartering authority's decision and remand the decision to the chartering authority with instructions to deny the charter application, suspend or revoke the charter.

E. The timelines in 6.80.4.15 NMAC may be extended by the secretary for good cause. Good cause may include but shall not be limited to an agreement between the parties, a reasonable request from either party or reasonable consideration of the secretary's previously established meeting schedule.

F. A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

G. The secretary shall promptly serve a copy of the decision on the parties to the proceeding.

~~[H. If the chartering authority's decision is reversed and remanded, the chartering authority, at a public hearing, shall deny or revoke the charter within thirty (30) days following the receipt of the secretary's decision. If the chartering authority does not comply with the secretary's order, the secretary may take appropriate administrative or judicial action.]~~

[6.80.4.15 NMAC - Rp, 6.80.4.11 NMAC, 6/29/07; A, 6/30/08; A, 10/15/13]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS
HISTORICAL RECORDS ADVISORY
BOARD**

This is an amendment to 1.13.5 NMAC, Sections 12, 13, 14, and 17 effective October 15, 2013.

1.13.5.12 EXCLUSIONS:

A. ~~Grants cannot be used to replace organization budgets for staff, but grant funds can be used to hire temporary staff. Grant funds cannot be used to acquire software or equipment, or to pay the indirect costs of the applicant. Grant funds may be used to supplement organizational staff or hire temporary staff, but cannot be used to supplant the organization's staffing budget. Grant funds may also be used to pay indirect costs and to purchase hardware, software or equipment specifically for the project and costing less than \$1,000 per unit.~~ However, staff committed by the organization to the project and equipment and software purchased specifically for the project and costing more than \$1,000 per unit can be used as in-kind match.

B. Consultant fees funded by the grant may not exceed \$50.00 per hour. Related travel expenses shall be within state of New Mexico allowable rates. (See Per Diem and Mileage Act)

(1) Current members of the NMHRAB are not eligible to serve as paid consultants.

(2) Former board members are not eligible to serve as paid consultants for one year after their resignation or replacement.

C. Proposals for digitization projects shall be acceptable only if they take into consideration the issue of migration to newer technologies. Digitization projects shall follow scanning guidelines specified by the state records center and archives for creating master and access copies.

D. Microfilming projects shall be justified on the basis of the volume of original records, the demand for usage or the risk of loss of their content.

[1.13.5.12 NMAC - N, 11/30/00; A, 07/15/03; A, 06/30/04; A, 06/29/07; A, 10/15/13]

1.13.5.13 FUNDING: Maximum awards of \$8,500 per applicant are possible, depending on available funds. Applicants shall provide a minimum match valued at 25 percent of the total ~~[cost of their projects]~~ grant award in either cash or in-kind services or materials. The in-kind match shall be rendered during the project period.

[1.13.5.13 NMAC - N, 11/30/00; A, 09/30/02; A, 07/15/03; A, 06/30/04; A,

12/30/10; A, 10/15/13]

1.13.5.14 APPLICATION FOR HISTORICAL RECORDS GRANTS:

A. An applicant shall answer all questions on the application form. An applicant may submit pertinent attachments to support its application, but the number of pages shall be limited to the essential minimum. An applicant shall submit one completed application with original signatures and supporting documents, and ten copies. Incomplete applications shall not be considered.

B. The following information shall be included in the application.

(1) Applicant information - legal name, address, contact name, phone number and e-mail address (if available).

(2) Signature by an individual authorized to obligate the applicant.

(3) Project title, period and amount of both the grant request and the proposed match.

(4) Applicant's status: An organization shall be an eligible entity as defined in Subsection A of 1.13.5.8 NMAC.

(5) A summary statement that briefly summarizes the nature and purpose of the project proposed for funding no more than one-quarter page in length.

(6) A project description narrative limited to ~~[three]~~ four pages in length. The narrative shall discuss content and significance of the historical records to be affected by this project, the scope of the work to be performed, key personnel and the work plan for the project.

(7) The budget for the project submitted on the form prescribed by the NMHRAB.

(8) The project work plan for the project submitted on the form prescribed by the NMHRAB.

(9) A DUNS number for the applicant.

C. Application deadline: Completed applications (original and ten copies) shall be received by the deadline set forth in the call for proposals.

D. Rejection: Applications that do not comply with these criteria shall be rejected.

[1.13.5.14 NMAC - N, 11/30/00; A, 09/30/02; A, 07/15/03; A, 06/30/04; A, 06/30/05; A, 12/31/08; A, 12/30/10; A, 10/15/13]

1.13.5.17 POST-AWARD REQUIREMENTS: Successful historical record grant applicants shall comply with the following post award requirements.

A. Submit interim reports by ~~[the end of the seventh month for work completed in the first six months of the grant period]~~ January 31 of the fiscal year for which the grant award is made or as required

in the agreement or contract. Progress reported shall be substantially in line with the project timeline included in the grant application. Any appreciable deviation from the timeline shall be justified in the progress report.

(1) If work has not been initiated as stipulated in the timeline included in the grant application, the entire grant award may be nullified.

(2) If progress reported lags substantially behind that described in the project timeline, the grant administrator shall review the project, consult with the grantee to determine whether timely completion of the project is feasible and make a recommendation to the chair of the NMHRAB on continuation of the project. Based on the recommendation, the chair reserves the right to terminate the grant or require an amended scope of work and reduced award.

(3) Failure to submit the interim report by the established deadline may result in suspension of further reimbursements or payments until the report is submitted and accepted. If the report is not submitted within 30 days of the due date of the interim report, no further requests for reimbursements or payments shall be honored and any balance remaining in the grant award shall revert to the state records center and archives.

B. Submit final reports within 30 days of project completion or no later than June 15 of the fiscal year for which the grant award is made, whichever is earlier.

C. Request funds for reimbursement or payment based on amount of work completed.

D. Submit proof of completion of training before project start date, if required.

E. Adhere to the state Procurement Code for purchase of goods and services.

F. Maintain grant records for at least two years after completion of the project.

G. Complete the project within the grant period specified in the grant award. No extensions of the grant period shall be made.

[1.13.5.16 NMAC Rn to 1.13.5.17 NMAC & A, 09/30/02; A, 06/30/04; A, 06/30/05; A, 06/01/06; A, 06/29/07; A, 12/31/08; A, 12/30/10; A, 10/15/13]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

This is an amendment to 14.5.2 NMAC, Sections 8 and 19, effective 11-01-13.

**14.5.2.8 PERMITS
REQUIRED:**

A. Permits required.

Subject to CILA Section 60-13-3, Section 60-13-45, and the provisions of the CID rules, no building or structure shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, and no electrical wiring, plumbing or mechanical work as defined and described in the applicable New Mexico construction codes for those trades, may be installed, repaired or maintained in or on such building or structure, unless the applicable permit has first been obtained from the division. All re-roofs require a building permit and inspections.

B. Exceptions to permit requirement. Exceptions from permit requirements of the New Mexico construction codes shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of CILA, any part of the CID rules, or any other applicable law.

C. Previously permitted work; previously submitted plans.

(1) Any work for which a permit has lawfully been issued prior to the effective date of this rule, which permit has not expired, deactivated or been revoked or suspended by the division pursuant to this part, may proceed as permitted, and the rules, codes and standards in effect at the time the permit was issued shall be the rules, codes and standards governing the work and its inspection.

(2) Any work for which plans have been submitted and received by the division shall be permitted and inspected pursuant to the rules in effect at the time the plans were received.

D. Eligibility. No person who is not appropriately, validly and currently licensed by the division is eligible to apply for or be issued a permit under this rule. **Exception.** Subject to the provisions of this part, a homeowner's permit may be issued to an unlicensed person.

E. Application for permit. In order to obtain a permit, the applicant must complete and submit a written application on the form and in the manner indicated by the division for the type of permit sought.

F. Types. Separate permits are required for general building, electrical and mechanical/plumbing, and liquefied

petroleum gas work.

**G. Solar collector systems
10 KW or less.**

(1) Any person bidding or contracting for the installation of a solar collector system must possess a valid license issued by the construction industries division (CID) in the EE-98 or ER-1 license classification. CID license classifications can be found pursuant to Section 9 of 14.6.6 NMAC.

(2) Any person performing the installation of a solar collector system, or related work, must possess a valid journeyman certificate issued by CID in the EE-98J or ER-1J classification, or be an apprentice working under the direct supervision of such a certified journeyman.

(3) Structural analysis must be performed by a structural engineer licensed in the state of New Mexico in order to determine if the roof structure is capable of supporting the added loads of a solar collector or wind turbine.

(4) A general solar collector system construction building permit for the mounting of the system on the roof will be required only if structural reinforcement is required by a structural engineer licensed in the state of New Mexico.

(5) If structural modifications are required, engineered details shall be provided. Structural documents must be sealed by a structural engineer licensed in the state of New Mexico. Reinforcement of the structure will require corresponding building permits and inspections by a certified building inspector.

(6) If structural modifications are not required one electrical permit shall be issued to a properly licensed contractor for solar collector installation.

[14.5.2.8 NMAC - Rp, 14.5.2.8 NMAC, 14.7.2.10 NMAC, 14 NMAC 9.2.I.100-105, 14 NMAC 9.2.II.100 & 14.10.4.8 NMAC, 7-1-04; A, 1-28-11; A, 11-1-13]

**14.5.2.19 ANNUAL PERMIT:
A. INDUSTRIAL**

(1) Types and scopes.

(a) ERMI. Electrical R/M - industrial permits. The scope of this permit is: repair or maintenance performed on existing electrical systems in industrial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved electrical installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved electrical installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or

alteration of an electrical installation or any portion thereof.

(b) MRMI. Mechanical and plumbing R/M - industrial permits. The scope of this permit is repair or maintenance performed on existing mechanical/plumbing systems in commercial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved mechanical/plumbing installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved mechanical / plumbing installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of a mechanical/plumbing installation or any portion thereof.

(c) General construction repair and maintenance work that is required as a direct consequence of, or that is necessary to, work performed pursuant to an R/M industrial permit is authorized under these permits. All such general construction work must be reported pursuant to subsection 6, below, and whether general construction work is covered by an R/M industrial permit will be determined by the division. General construction work that is not covered by an R/M industrial permit will subject the permit holder to penalties as provided in the act and the CID rules.

(2) **Issuance.** R/M industrial permits may be issued to:

(a) an industrial entity duly authorized to do business in New Mexico; and

(b) a licensed contractor holding one of the following classifications of license and who has a written contract with an industrial entity to perform work covered by an R/M industrial permit:

(i) for an ERMI permit: EE98, EL1, ES3, ES7;

(ii) for an MRMI permit: MM1, 2, 3, 4 and MM98;

(c) work to be performed under an R/M industrial permit may only be performed by a journeyman, pursuant to Subsection A of Section 8 of 14.6.4 NMAC; properly certified by the division in the classification of work to be performed pursuant to the permit, who is an employee of the authorized entity, or of the licensee, to whom the permit was issued. In no case shall experience gained under an annual permit count for more than ¼ of the experience requirement for qualifying party or journeyman certification.

(3) Duration.

(a) R/M industrial permits are valid for 12 months from the date of issuance, are not renewable. ERMI and MRMI permits

automatically expire on the first day of the thirteenth month after the month of issuance.

(b) Suspension, cancellation, revocation. See 14.5.2.13 NMAC of this rule.

(c) Expiration and deactivation of permit. See 14.5.2.14 NMAC of this rule.

(4) **Denial.** See 14.5.2.15 NMAC of this rule.

(5) **Failure to obtain permit.** See 14.5.2.16 NMAC of this rule.

(6) **Report log.** All work performed pursuant to an R/M Industrial permit must be recorded by the permit holder in a log that contains, at a minimum, the following information:

(a) the location of the work with sufficient specificity that an inspector can locate the work;

(b) the date the work was performed;

(c) a description of the work performed. If tool replacement was performed, the identifying information for each tool replaced and for the new tool;

(d) the name of the individual who performed the work and the individual's journeyman classification and certificate number;

(e) in the case of tool exchange, a copy of the design or installation plan for the proposed exchange, which has been approved and stamped by a professional engineer who is properly licensed by the state of New Mexico;

(f) the entity authorization number, or the contractor license number, to whom the permit covering the work was issued.

(7) **Inspections.** All work performed under an R/M Industrial permit is subject to inspection by CID and must comply with all applicable codes.

(a) CID inspectors will inspect the work covered by an annual permit at regular intervals.

(b) If the work inspected is not recorded fully and accurately on the log, the annual permit is subject to forfeiture and the holder may not be eligible to apply for another annual permit for one year thereafter.

(8) **Limitation.** Industrial R/M permits may not be issued by a municipality, a county or any other political subdivision of the state.

B. COMMERCIAL

(1) Types and scopes.

(a) ERMC. Electrical R/M - commercial permit. The scope of this permit is repair or maintenance performed on existing electrical systems in commercial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved electrical installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-

like exchange of a portion or portions of an approved electrical installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of an electrical installation or any portion thereof.

(b) MRMC. Mechanical and plumbing R/M - commercial permits. The scope of this permit is: repair or maintenance performed on existing mechanical/plumbing systems in commercial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved mechanical/plumbing installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved mechanical/plumbing installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of a mechanical/plumbing installation or any portion thereof.

(c) General construction repair and maintenance work that is required as a direct consequence of, or that is necessary to, work performed pursuant to an R/M commercial permit is authorized under these permits. All such general construction work must be reported pursuant to subsection 6, below, and whether general construction work is covered by an R/M commercial permit will be determined by the division. General construction work that is not covered by an R/M commercial permit will subject the permit holder to penalties as provided in the act and the CID rules.

(2) **Issuance.** R/M commercial permits may be issued to:

(a) a commercial entity duly authorized to do business in New Mexico and;

(b) a licensed contractor holding one of the following classifications of license and who have a written contract with a commercial entity to perform work covered by an R/M commercial permit:

(i) for an ERMC permit: EE98, EL1, ES3, ES7;

(ii) for an MRMC permit: MM1, 2, 3, 4 and MM98;

(c) work to be performed under an R/M commercial permit may only be performed by a journeyman, pursuant to Subsection A of Section 8 of 14.6.4 NMAC; properly certified by the division in the classification of work to be performed pursuant to the permit, who is an employee of the authorized entity, or of the licensee, to whom the permit was issued. In no case shall experience gained under an

annual permit count for more than ¼ of the experience requirement for qualifying party or journeyman certification.

(3) Duration.

(a) R/M commercial permits are valid for 12 months from the date of issuance, are not renewable. ERMC and MRMC permits automatically expire on the first day of the thirteenth month after the month of issuance.

(b) Suspension, cancellation, revocation. See 14.5.2.13 NMAC of this rule.

(c) Expiration and deactivation of permit. See 14.5.2.14 NMAC of this rule.

(4) **Denial.** See 14.5.2.15 NMAC of this rule.

(5) **Failure to obtain permit.** See 14.5.2.16 NMAC of this rule.

(6) **Report log.** All work performed pursuant to an R/M commercial permit must be recorded by the permit holder in a log that contains, at a minimum, the following information:

(a) the location of the work with sufficient specificity that an inspector can locate the work;

(b) the date the work was performed;

(c) a description of the work performed;

(d) the name of the individual who performed the work;

(e) the entity authorization number, or the contractor license number, to whom the permit covering the work was issued.

(7) **Inspections.** All work performed under an R/M commercial permit is subject to inspection by CID and must comply with all applicable codes.

(a) CID inspectors will inspect the work covered by an annual permit at regular intervals.

(b) If the work inspected is not recorded fully and accurately on the log, the annual permit is subject to forfeiture and the holder may not be eligible to apply for another annual permit for one year thereafter.

(8) **Limitation.** Commercial R/M permits may not be issued by a municipality, a county or any other political subdivision of the state.

C. School.

(1) Types.

(a) ERMS. Electrical R/M school permit. The scope of this permit is: repair or maintenance performed on existing 120-volt (277-volt lighting circuits) or less de-energized electrical systems in a school, and is intended to allow for the exchange of like parts or components in an existing electrical system. ~~Repair and maintenance includes work on de-energized receptacle outlets, luminaries (light fixtures), switches, fuses and circuit breakers, one horsepower or less evaporative cooler motors and specialty low~~

voltage systems.] It does not include: work on life safety systems which is intended to protect the occupants of the structure such as fire protection, energy, and egress lighting systems, except replacement of light bulbs and batteries in emergency lights and exit signs; work that entails new construction, relocation, expansion or alteration of an electrical installation or any portion thereof; work on energized electrical systems of any kind; boilers; or work product or process that is hazardous to ~~[the maintenance technician,]~~ the public, or the occupants of the school. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved electrical installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of an electrical installation or any portion thereof.

(b) MRMS. Mechanical and plumbing R/M school permit. The scope of this permit is: repair or maintenance performed on existing plumbing or mechanical systems in a school is intended to allow for the exchange of like parts or components in an existing mechanical or plumbing system. ~~[Repair and maintenance includes work on inoperative fixtures, such as faucets, toilets and urinals; repair or replacement of pumps, two hundred and fifty cubic feet per minute or smaller exhaust fans, and irrigation sprinkler systems excluding connections to the water source.]~~ It does not include: work on life safety systems which are intended to protect the occupants of the structure such as fire protection and smoke evacuation systems; and, all venting; work that entails new construction, relocation, expansion or alteration of a mechanical or plumbing installation or any portion thereof; work on gas piping systems of any kind, except repair of low-pressure gas leaks down stream of the isolation valve to the appliance, limited to supply tubes or connections to gas valves or fuel train. Does not include repair or replacement of gas valves, regulators or fuel train; boilers; or work product or process that is hazardous to the maintenance technician, the public, or the occupants of the school. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved mechanical/plumbing installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved mechanical/plumbing installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of a mechanical/

plumbing installation or any portion thereof.

(c) GRMS. General construction R/M school permit. The scope of this permit is: repair and maintenance of existing structures in a school and is intended to allow for the exchange of like parts or components in an existing structure. The scope of this permit is limited to the maintenance and repair of non-structural facility components: floor surfaces, drywall and ceiling surfaces, cabinetry, countertops, room partitions, wall and door trim, door hardware, molding, and window replacement; patching roof surfaces not to exceed one hundred square feet; asphalt, concrete, playground and athletic equipment, landscaping, fencing, gates and site drainage. It does not include new construction of any kind, or work that modifies egress, affects fire resistance or structural integrity of a wall, or any work product or process that is hazardous to the maintenance technician, the public, or the occupants of the school.

(2) Issuance.

(a) Permits authorized by this section may be issued to a school that employs at least one individual who holds a valid ~~[maintenance technician]~~ certification or license in the classification covering the work to be permitted.

(b) ~~[Work to be performed under a permit authorized by this rule may only be performed by a maintenance technician, properly certified by the division in the classification of work covered by the permit, who is an employee of the authorized school to whom the permit was issued.]~~ Apprentices as defined under 60-13-2 H of the CILA can work under the supervision of a licensed journeyman at a ratio of one to one. Work to be performed under an R/M school permit may only be performed by a journeyman pursuant to Subsection A of Section 8 of 14.6.4 NMAC. In no case shall experience gained under an annual permit count for more than ¼ of the experience requirement for qualifying party or journeyman certification.

(3) Duration.

(a) Permits authorized by this rule are valid for twelve months from the date of issuance and are not renewable. These permits automatically expire on the first day of the thirteenth month following the month of issuance.

(b) Suspension, cancellation, revocation. See 14.5.2.13 NMAC of this rule.

(c) Expiration and deactivation of permit. See 14.5.2.14 NMAC of this rule.

(d) Denial. See 14.5.2.15 NMAC of this rule.

(e) Failure to obtain permit. See 14.5.2.16 NMAC of this rule.

(f) Report log. All work performed pursuant to a permit issued according to this rule must be recorded by the permit holder in a log that contains, at a minimum, the

following information:

(i) the location of the work with sufficient specificity that an inspector can locate the work;

(ii) the date the work was performed;

(iii) a description of the work performed;

(iv) the name of the individual who performed the work;

(v) the permit number issued to the school for the work performed.

(4) All work performed under a permit issued pursuant to this rule is subject to inspection by CID and must comply with all applicable codes and rules.

(5) School R/M permits may not be issued by a municipality, a county or any political subdivision of the state.

[14.5.2.19 NMAC - Rp, 14.5.2.10 NMAC, 7-1-04; A, 09-02-09; A, 01-01-10; A, 11-01-13]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.6.3 NMAC, Section 10, effective 11-01-13.

14.6.3.10 ~~[REPAIR AND MAINTENANCE CERTIFICATE OF AUTHORIZATION.~~

~~A. General information.~~

~~(1) Notwithstanding anything to the contrary in the licensing requirements of the Act, an unlicensed school may perform repair and maintenance on its existing facility upon authorization by the division as provided in this rule and upon obtaining a permit for repair and maintenance work pursuant to 14.5.2 NMAC. For purposes of this rule, school shall have the meaning set forth in Subsection D of 14.5.2.7 NMAC.~~

~~(2) R/M Certificate of Authorization. Certificates of R/M authorization are:~~

~~(a) issued only to a school that employs one or more school maintenance technician, validly certified in the classification required for the type of authorization for which the school is applying;~~

~~(b) grant authority to engage only in the type of work covered by the R/M classification specified on the certificate of authorization that is issued to the school, and on the certificate issued to its school maintenance technician;~~

~~(c) are not transferable and may not be used by any person other than the school to which it is issued, and any school that permits another person to use its certificate of authorization, or knows that its certificate~~

of authorization is being used by another person and fails to promptly notify CID of such use, shall be subject to disciplinary action, up to and including revocation of the certificate of authorization; and

(d) authorizes only the school as named on the certificate to engage in repair and maintenance work, and no registered school may engage in such work using a name other than the name that is shown on the certificate of authorization issued to it.

(3) Any school maintenance technician who is named on a certificate of authorization application must maintain a valid maintenance technician certificate in the same classification as the employing school's certificate of authorization for the duration of employment with the authorized school, and must comply with all statutes and rules applicable to that maintenance technician certification, including without limitation, all renewal requirements. In the event a school maintenance technician who is listed on an authorization application ceases to be employed by the authorized school, the school must notify CID in writing of the separation within three business days of the separation.

(4) All written communication with a school holding a certificate of authorization shall be mailed to its address of record. The address of record is the address shown on the application for certificate of authorization, or a different address of which CID has received timely written notice from the school. A school holding a certificate of authorization shall report any change of address to CID in writing within thirty days after such change. Failure to do so is cause for disciplinary action up to and including revocation of the certificate of authorization.

(5) Certificates of authorization are effective for three years from the date of issuance.

B. Prerequisites for certification:

(1) Only schools, as that term is defined in 13.4.2.7 NMAC, may apply for a certificate of authorization.

(2) A school must employ at least one maintenance technician, certified by CID in the appropriate classification, at all times.

(3) A school is eligible to be certified only in the repair and maintenance classifications provided in 14.6.6.12 NMAC.

C. Application:

(1) Every application for authorization, and all requests for formal action to be taken on a certificate of authorization, such as renewal or addition of a classification, must be made on the applicable form issued by CID and the applicable fee as required by 14.5.5 NMAC.

(2) An incomplete or insufficient application shall be rejected and returned to the applicant, with a statement of the reason

for the rejection:

D. Authorization renewal:

(1) CID shall mail to every authorized school at its address of record a renewal application form at least 30 days prior to the expiration of the authorization. Whether or not the application form is received by the school, it is the sole duty and responsibility of each school to timely renew its authorization.

(2) The filing date of the renewal application shall be the date the envelope is postmarked or, if hand-delivered, the date it is received by CID.

(3) The signatures of each journeyman employed by the applying school must appear on the renewal form.

(4) If a renewal application is not timely received, or if received but is rejected for failure to comply with renewal requirements, the authorization shall be suspended and any active R/M permits issued to the school will be cancelled. The school will not be eligible to obtain a new R/M permit until it has been issued a valid certificate of authorization pursuant to this rule.

E. Validity of registration:

The following events may cause a certificate of authorization to be, or to become, invalid:

(1) failure of an authorized school to employ at least one certified maintenance technician, or failure to report the separation of a certified maintenance technician, as required by this rule;

(2) performance of repair and maintenance work without a valid permit issued pursuant to, or failure to comply with, the requirements of 14.6.6 NMAC;

(3) performance of repair or maintenance work by an individual who is not properly certified as a certified maintenance technician in the classification of work performed;

(4) failure to timely renew authorization;

(5) failure to comply with a valid correction notice issued by a CID inspector; and

(6) action of the commission.

F. School repair and maintenance technician certification:

(1) General information:

(a) A maintenance technician certificate in the appropriate trade classification for the work to be performed is required of an individual performing repair and maintenance work at a school.

(b) Maintenance technician certifications shall be issued such that each certificate parallels the repair and maintenance authorization classification numbers and scopes set forth in 14.6.6 NMAC.

(c) A maintenance technician certificate of competence is issued to an individual only and is not transferable or

assignable.

(d) No individual under the age of eighteen (18) shall be issued a maintenance technician certificate.

(e) A maintenance technician certificate is valid for the work authorized by the certificate only when the certified individual is employed by a school holding a valid certificate of authorization.

(f) For information regarding compliance with the Parental Responsibilities Act, revocations and suspensions and administrative penalties, please see Subsections H and I of 14.6.3.8 NMAC and 14.6.3.9 NMAC.

(2) Application:

(a) An application submitted for a maintenance technician certificate shall be on a form approved by CID and shall be accompanied by the prescribed certification fee.

(b) An incomplete or insufficient application shall be rejected and returned to the applicant with a statement of the reason for the rejection.

(c) All requirements for certification must be met within six (6) months after the date the application is received by CID or its designee. Any application not completed within the six (6) month period shall expire and any fees paid in connection with the expired application shall automatically forfeit.

(d) The applicant must submit proof of the required experience with the application on form(s) approved by CID. No applicant shall be eligible to take an examination for a maintenance technician certificate before proof of experience is submitted and approved.

(e) Proof of completion of the appropriate CID approved training course:

(3) Examination:

(a) Examinations shall be administered by CID or its designee according to a schedule which shall be published.

(b) A passing examination score is seventy-five percent (75%) or above.

(c) An applicant who fails to appear for a scheduled examination or fails to attain a passing score of at least 75% may take another regularly scheduled exam, provided the applicant reapplies to take the exam, pays the fee, and does not repeat the exam more than twice in any thirty (30) day period.

(d) If CID or its agent has determined that an applicant has cheated, the exam shall be deemed invalid, all fees shall be forfeited, any certificate issued on basis of that examination shall be automatically and immediately voided, and the applicant will not be eligible to take any examination administered by CID or its designee for a minimum of one (1) year after the date of such event.

~~**G. Renewal of maintenance technician certificates:**~~

~~(1) CID or its designee shall mail to every certificate holder a renewal application form at least thirty (30) days prior to the expiration of the certificate to the current address of record for that certificate holder. Whether or not the application form is received, it is the sole duty and responsibility of each certificate holder to timely renew the certificate.~~

~~(2) The filing date of the renewal application shall be the date the envelope is postmarked or, if hand delivered, the date it is received by CID or its designee.~~

~~(3) No maintenance technician certificate shall be renewed in the absence of proof of compliance with all continuing education requirements.~~

~~(4) If a renewal application is not timely received, or if received but is rejected for failure to comply with renewal requirements, the license or certificate shall be suspended and is subject to cancellation]~~

[RESERVED]

[14.6.3.10 NMAC - N, 01-01-10; A, 11-1-13]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**This is an amendment to 14.12.2 NMAC,
Section 14, effective 11-1-13**

**14.12.2.14 INSTALLER AND
REPAIRMEN:**

A. An installer's license entitles its holder to install manufactured homes for remuneration or consideration as provided for by these regulations.

B. A repairman's license entitles its holder to repair manufactured homes for remuneration or consideration as provided for by these regulations. An exception to this rule is a person(s) who makes manufacturer's warranty repairs and is employed and paid wages by a New Mexico licensed manufacturer or its designated agent. Such person(s) are not required to maintain a repairman's license.

C. Licenses for installers and repairmen shall be classified as MHD-1, MHD-2, MHD-3, MHD-3 Y and MHD-3 E.

(1) MHD-1 shall permit the holder to level ground and place piers to support a manufactured home, to attach and tighten tie downs, to connect existing water and sewer lines, to connect electrical cable to the home's approved existing receptacle, to install and repair skirting, and to install concrete associated with footings or foundations.

(2) MHD-2 shall permit the holder to perform all functions of an MHD-1 and to make structural repairs and alterations.

(3) MHD-3 shall permit the holder to perform all the functions of an MHD-2 and to service and repair natural gas piping and appliances, change and adjust orifices in a manufactured home prior to connection to L.P. gas, and to service and repair plumbing and electrical systems.

(4) The scope of an MHD-3 Y licensee shall be extended to install gas yardlines to manufactured homes upon acquiring an appropriate endorsement from the division.

(5) The scope of an MHD-3 E licensee shall be extended to install feeder assemblies from the on-site utility terminal to the manufactured home not to exceed 30 feet. The provisions for obtaining a separate electrical endorsement shall include a minimum of two years in the last 10 years of verifiable experience performing electrical work on manufactured homes or related equipment.

D. Structural repairs, alterations and modifications allowed by classifications MHD-2 and MHD-3 are limited to the manufactured home itself and include awnings and porches supported by the home. Any structural repair, alteration or modification outside the manufactured home, including any concrete construction other than small pads for support posts, is not included under the MHD-2 or MHD-3 classifications. Licensees must comply with provisions of the Construction Industries Licensing Act, Sections 60-13-1, et. seq., NMSA 1978, to build any structure which requires a license under that act.

E. An applicant shall provide evidence of meeting at least one of the following minimum experience requirements:

(1) 1,800 hours of experience installing manufactured homes;

(2) 3,600 hours of experience in the construction of manufactured homes;

(3) 3,600 hours of experience as a building construction supervisor;

(4) 1,800 hours as an active manufactured home installation inspector;

(5) completion of one year of a college program in construction-related field; or

(6) any combination of experience or education from 1 - 5 above that totals 3,600 hours.

F. An applicant for installation license must complete 12 hours of training, at least 4 of which must consist of training on the federal installation standards and installation program. The training must be conducted by committee approved trainers who meet the requirements of 24 C.F.R. Section 3286 subpart D. The curriculum must include, at a minimum,

training in the following areas:

(1) an overview of the Manufactured Home Construction and Safety Standards Act and the general regulatory structure of the HUD manufactured housing program;

(2) an overview of the manufactured home installation standards and regulations established in parts 24 C.F.R. Section 3285 and 24 C.F.R. Section 3286, and specific instruction including:

(a) preinstallation considerations;

(b) site preparation;

(c) foundations;

(d) anchorage against wind;

(e) optional features, including comfort cooling systems;

(f) ductwork and plumbing and fuel supply systems;

(g) electrical systems; and

(h) exterior and interior close-up work;

(3) an overview of the construction and safety standards and regulations found in parts 24 C.F.R. Section 3280 and 24 C.F.R. Section 3282;

(4) licensing requirements applicable to installers;

(5) installer responsibilities for correction of improper installation, including installer obligations under applicable state and HUD manufactured housing dispute resolution programs;

(6) inspection requirements and procedures;

(7) problem-reporting mechanisms;

(8) operational checks and adjustments; and

(9) penalties for any person's failure to comply with the federal or state requirements;

(10) qualified trainers must revise and modify course curriculum as needed to include, at a minimum, any relevant modifications to the federal or state act or the standards, rules and regulations, as well as to provide any training further mandated by the division and HUD.

G. An applicant for licensure must provide evidence of receiving a passing grade of 70 percent on a HUD administered or HUD approved examination.

H. An installer or repairman shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where accounts and records shall be available for inspection during normal working hours by a representative of the division. A post office box, secretarial service, telephone answering service or similar entity does not constitute an actual physically established location for purposes of this subsection.

I. The division may, upon request, grant separate licensure for any person holding a valid license in the electrical

or mechanical classifications issued under the Construction Industries Licensing Act (Sections 60-13-1, et. seq., NMSA 1978), as amended, and may permit such person to act in the capacity of an installer or repairman for electrical or mechanical work on a manufactured home within the scope of such license. The division may also, upon request, grant separate licensure for any person holding a valid license in the general construction classifications, including GB-2, GB-98, or GS-4 classifications issued under the Construction Industries Licensing Act (Sections 60-13-1, et. Seq., NMSA 1978), as amended, and may permit such person to act in the [limited] capacity of a contractor for [excavation and preparation of dirt and concrete] work associated with [footings, anchors, foundations and stem walls] the general construction license classification. A person licensed under this provision may not perform or permit the installation of a manufactured home, including installations of alternate manufactured home foundation systems. Any person requesting a license, in accordance with this provision, shall furnish proof satisfactory to the division of his status as a licensee of the construction industries division or its successor. Nothing in this provision shall be construed as a waiver of any obligation to comply with any other requirement of the Manufactured Housing Act or these regulations, including the bonding requirements of these regulations. [14.12.2.14 NMAC - N, 12-01-10; A, 11-1-13]

End of Adopted Rules Section

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