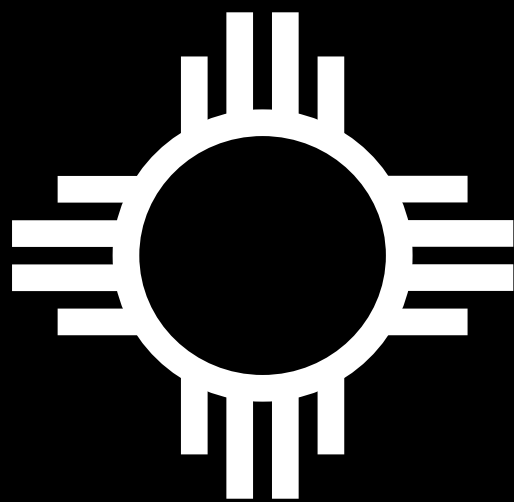


**NEW  
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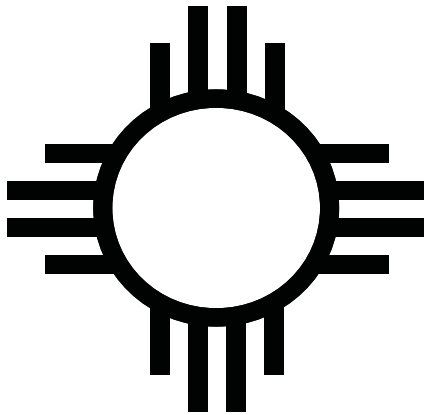


Volume XXIV  
Issue Number 22  
November 27, 2013



# **New Mexico Register**

**Volume XXIV, Issue Number 22**  
**November 27, 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 22

November 27, 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 CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### NOTICE OF PUBLIC HEARING 8.15.2 NMAC

The Children, Youth and Families Department (CYFD), Early Childhood Services (ECS), will hold a formal public hearing on Friday, December 27, 2013, at 11:00 a.m. in Apodaca Hall of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding changes to regulation 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers.

The proposed regulation changes may be obtained at [www.newmexicokids.org](http://www.newmexicokids.org) or by calling 505-827-7499 or 1-800-832-1321. Interested persons may testify at the hearing or submit written comments no later than 12:00 p.m. on December 27, 2013. Written comments will be provided the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Jeffrey Miles, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-9978. For questions regarding the proposed regulation changes, please call 505-827-7499 or 1-800-832-1321.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please call 505-827-7499 or 1-800-832-1321. ECS requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

#### NOTICIA DE AUDICION PÚBLICA 8.15.2 NMAC

El Departamento de Children, Youth and Families, Servicios de Niñez Temprana, tendrá una audición formal para el público el viernes, 27 de diciembre de 2013, a las 11:00 de la mañana en el salón Apodaca, el segundo piso del edificio PERA localizado en 1120 Paseo de Peralta, Santa Fe, New Mexico, para recibir comentarios públicos con respecto a cambios propuestos a las regulaciones NMAC 8.15.2, Los Requisitos para Programas de Ayuda de Guardería para Clientes y Proveedores.

Los cambios propuestos de la regulación

pueden ser obtenidos en [www.newmexicokids.org](http://www.newmexicokids.org) o por llamar 505-827-7499 o 1-800-832-1321. Las personas interesadas pueden testificar en la audición o someter comentarios escritos hasta las 12:00 de la tarde el día 27 de diciembre de 2013. Los comentarios escritos serán proporcionados la misma consideración como testimonio oral en la audición. Los comentarios escritos deben ser dirigidos a: Jeffrey Miles, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax #: 505-827-9978. Preguntas con respecto a los cambios propuestos de regulación, por favor llame 505-827-7499 o 1-800-832-1321.

Si usted es una persona con incapacidades y usted requiere esta información en un formato alternativo o requiere alojamientos especiales para tomar parte en la audición pública, por favor llame 505-827-7499 o 1-800-832-1321. CYFD requiere aviso de las peticiones por lo menos 10 días de preaviso para proporcionar formatos solicitados alternativos y alojamientos especiales.

### NEW MEXICO HIGHER EDUCATION DEPARTMENT

#### NEW MEXICO HIGHER EDUCATION DEPARTMENT

The Higher Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at 2048 Galisteo Street, Santa Fe, NM 87505-2100, on January 8, 2014, from 9:00 a.m. to 4:30 p.m. The purpose of the public hearing will be to obtain input on the following rule(s):

Rule Number	Rule Name	Proposed Action
5.3.5 NMAC	OPERATING BUDGETS-FUNDING RECOMMENDATIONS	Rule Repeal and Replace
5.3.12 NMAC	INSTRUCTIONAL FUNDING	Rule Amendment

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Mr. David Mathews, Office of General Counsel, Higher Education Department, 2048 Galisteo Street, Santa Fe, New Mexico 87505-2100 ([david.mathews@state.nm.us](mailto:david.mathews@state.nm.us)) (505) 476-8402 (telefax (505) 476-8454).

Written comments must be received no later than 5:00 pm on December 24, 2013. However, the submission of written comments as soon as possible is encouraged.

The proposed rulemaking action may be accessed on the Department's website (<http://hed.state.nm.us/>) or obtained from David Mathews, Office of General Counsel, Higher Education Department, 2048 Galisteo Street, Santa Fe, New Mexico 87505-2100 ([david.mathews@state.nm.us](mailto:david.mathews@state.nm.us)) (505) 476-8402(telefax (505) 476-8454). The proposed rule will be made available at least thirty (30) days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact the Higher Education Department as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The public hearing scheduled for December 6, 2013 at 2:30 p.m. has been modified from the announcement published in the New Mexico Register, Volume XXIV, Number 20 on October 31, 2013. Based on information received after the publication of the above referenced announcement, the Human Services Department (HSD) will not pursue promulgation of two of the three proposed rules: 8.309.2 NMAC, *Alternative Benefit Program, Managed Care*

*Structure and Organization* and 8.309.3 NMAC, *Alternative Benefit Program, MCO Administered Benefits and Limitation of Services*. HSD has incorporated the information on the MCO Alternative Benefit Program into the proposed rule of 8.308.9 NMAC, *Managed Care Program, Benefit Package*. The hearing for 8.308.9 NMAC, *Managed Care Program, Benefit Package* will be held on December 6, 2013 at 8:30 a.m. in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe.

The Department will proceed with its promulgation of 8.309.4 NMAC, *Alternative Benefit Program, MAD Administered Benefits and Limitation of Services*. The

hearing for 8.309.4 NMAC, *Alternative Benefit Program, MAD Administered Benefits and Limitation of Services* will be held on December 6, 2013 at 2:30 p.m. in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe.

For more information, contact Emily Floyd, at [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us) or at (505) 827-3152.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend 8.352.2 NMAC *Administrative Hearings, Claimant Hearings*. The proposed amendment will change the number of days a claimant has to request an HSD administrative hearing from 90 days to 30 days.

A public hearing to receive testimony on these proposed rules will be held in the South Park Conference Room, 2055 Pacheco Street, Santa Fe on Tuesday, January 7, 2014 at 9:00 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, PO Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comment must be received no later than 5:00 p.m. Mountain Standard Time Tuesday, January 7, 2014.

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 MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. 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

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal 8.353.3 NMAC *Provider Hearings, Provider Hearings*. The contents of this rule have been incorporated into 8.352.3 NMAC *Administrative Hearings, Provider Hearings* which will be effective January 1, 2014.

A public hearing to receive testimony on the proposed repeal of this rule will be held in the South Park Conference Room, 2055 Pacheco Street, Santa Fe on Tuesday, January 7, 2014 at 10:00 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, PO Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comment must be received no later than 5:00 p.m. Mountain Standard Time Tuesday, January 7, 2014.

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 MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. 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 LIVESTOCK BOARD

#### NEW MEXICO LIVESTOCK BOARD

#### NOTICE OF RULE MAKING AND ADOPTION OF RULE HEARING AND REGULAR BOARD MEETING

**NOTICE IS HEREBY GIVEN** that a rule making and adoption of rule hearing

and a regular board meeting will be held on Thursday, December 5, 2013 at the Albuquerque Marriott Pyramid (West Frontage Road), Albuquerque, New Mexico at 9:00 a.m. The Board will initiate rule changes regarding Import Requirements, Grazing, Tuberculosis Test Requirements, Brand Recording Fees and the Horse Shelter Rescue Fund and discuss other matters of general business.

Copies of the rule and agenda can be obtained by contacting Ray E. Baca, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161. Interested persons may submit their views on the proposed rule to the Board at the above address and/or may appear at the scheduled hearing and make a brief verbal presentation of their view.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting or need to make handicap parking arrangements, please contact the New Mexico Livestock Board at (505) 841-6161 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the New Mexico Livestock Board if a summary or other type of accessible format is needed.

### NEW MEXICO TAXATION AND REVENUE DEPARTMENT

#### NEW MEXICO TAXATION AND REVENUE DEPARTMENT

#### NOTICE OF HEARING AND PROPOSED RULES

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

**Property Tax Code**  
3.6.3.16 NMAC  
Section 7-35-5 NMSA 1978  
(*New Mexico Certified Appraiser Certification*)

This proposal was placed on file in the Office of the Secretary on November 15, 2013. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of this proposal, if filed, will be filed as required by law on or about January 31, 2014.

A public hearing will be held on this proposal



on Friday, January 10, 2014, at 9:30 a.m. in the Bid Room on the first floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposal are available upon request; contact (505) 827-0928. Comments on the proposal are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposal should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before January 10, 2014.

### **3.6.3.16 NEW MEXICO CERTIFIED APPRAISER**

**CERTIFICATION:** The purpose of the New Mexico certified appraiser certificate is to recognize professionalism and competency in the valuation of property for property taxation purposes. Certified appraisers may use this designation in conjunction with the valuation of a wide range of property as it is customarily defined in their assessment jurisdiction in accordance with New Mexico property tax division's commitment to excellence. To qualify for certification, the following general educational requirements must be fulfilled.

A. To receive a New Mexico certified appraiser certificate from the New Mexico taxation and revenue department an individual must have received credit for the following qualifying educational courses:

(1) IAAO Course 101, *fundamentals of real property appraisal* (30 hours);

(2) IAAO Course 102, *income approach to valuation* (30 hours);

(3) IAAO Course 300, *fundamentals of mass appraisal* (30 hours); and

(4) 30 hours of any of the following:

(a) IAAO Course 201, *appraisal of land*;

(b) IAAO Course 112, *income approach to valuation II*;

(c) IAAO Course 311, *residential modeling concepts*;

(d) IAAO Course 312, *commercial/industrial modeling concepts*; or

(e) IAAO Course 320, *multiple regression analysis*.

B. To receive qualifying credit for a course an individual you must pass the test with a seventy percent or better.

C. Courses taken to satisfy the qualifying educational requirements shall not be repetitive in nature; each course completed shall be credited toward the required number of qualifying education hours, shall represent an increase in appraiser's knowledge and none may be taken online.

D. Courses approved by the New Mexico board of real estate appraisers as qualifying education are allowed but must be at least 30 hours each, not taken online, similar to the above requirements and approved by property tax division prior to the completion of the course.

E. An individual who has received an equivalent real property appraiser certification or licensing from the New Mexico board of real estate appraisers and successfully completed the IAAO Course 300 may seek a waiver of all other educational requirements by submitting a copy of your license/certificate to the property tax division for consideration.

F. An approved IAAO or New Mexico board of real estate appraisers, uniform standards of professional appraisal practice course is highly encouraged at any time during the certification process and for continuing education hours after certification.

G. A minimum of 30 hours of continuing education should be completed every three years by all certified appraisers. Continuing education hours may be completed online and can be IAAO or New Mexico board of real estate appraisers approved courses. Certified appraisers are responsible for maintaining the necessary documentation to demonstrate compliance with the continuing education requirements in this rule.

H. Courses for continuing education credit shall have significant intellectual or practical content and shall deal primarily with matters directly related to appraisal practice or to the ethical obligations of certificate holders. The primary objective of such courses shall be consistent with the taxation and revenue department's charge to protect the public and to increase the professional competency of certificate holders.

[3.6.3.16 NMAC - N, XXX]

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**End of Notices and Proposed  
Rules Section**

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## Adopted Rules

### NEW MEXICO DEPARTMENT OF HEALTH

7.5.2 NMAC Immunization Requirement (filed 8/15/2000) repealed 11/27/13 and replaced by 7.5.2 NMAC Immunization Requirement, effective 11/27/13.

7 NMAC 5.3 Religious Exemption from School Immunization (filed 10/18/96) repealed 11/27/13 and replaced by 7.5.3 NMAC Exemption from School, Childcare, and Pre-School Immunizations, effective 11/27/13.

Part name change 7.5.3 NMAC Exemption from School, Childcare, and Pre-School Immunizations, effective 11/27/13.

### NEW MEXICO DEPARTMENT OF HEALTH

#### TITLE 7           HEALTH CHAPTER 5       VACCINATIONS AND IMMUNIZATIONS PART 2           IMMUNIZATION REQUIREMENT

**7.5.2.1           ISSUING AGENCY:**  
Public Health Division, Department of Health.  
[7.5.2.1 NMAC - Rp, 7.5.2.1 NMAC, 11/27/13]

**7.5.2.2           SCOPE:** These regulations govern children presenting satisfactory evidence of age appropriate immunization, or children presenting satisfactory evidence demonstrating that they are in the process of being age appropriately immunized, enrolled in, or who are seeking to be enrolled in, all public, private, home, parochial, elementary, childcare, pre-school, and secondary schools, except for those children who have been legally exempted from these immunizations and those children attending school in areas/counties that have not been targeted for a specific immunization requirement. This regulation is incorporated by reference in 6.12.2.8 "Requirements for Immunization of Children Attending Public, Nonpublic, or Home Schools" as promulgated by the New Mexico public education department, and 8.16.2 and 8.17.2 NMAC, "Childcare Centers, Out of School Time Programs, Family Childcare Homes, and Other Early Care and Education Programs and Requirements Governing Registration of Non-Licensed Family Childcare Homes," as promulgated by the children youth and families department (CYFD).  
[7.5.2.2 NMAC - Rp, 7.5.2.2 NMAC, 11/27/13]

**7.5.2.3           S T A T U T O R Y  
AUTHORITY:** These regulations are promulgated by the secretary of the New Mexico department of health under the authority of Section 9-7-6.3, Section 24-1-3 (N); and Section 24-5-1 NMSA 1978. Enforcement of these regulations is the responsibility of the public health division of the New Mexico department of health.  
[7.5.2.3 NMAC - Rp, 7.5.2.3 NMAC, 11/27/13]

**7.5.2.4           D U R A T I O N :**  
Permanent.  
[7.5.2.4 NMAC - Rp, 7.5.2.4 NMAC, 11/27/13]

**7.5.2.5           EFFECTIVE DATE:**  
November 27, 2013, unless a later date is cited at the end of a section.  
[7.5.2.5 NMAC - Rp, 7.5.2.5 NMAC, 11/27/13]

**7.5.2.6           OBJECTIVE:** The objective is to provide for the health and safety of students enrolled in New Mexico schools, educational facilities, and daycare centers by requiring immunizations to abate the spread of diseases that are dangerous to the public health.  
[7.5.2.6 NMAC - Rp, 7.5.2.6 NMAC, 11/27/13]

**7.5.2.7           DEFINITIONS:**  
**A. "Age appropriately immunized"** means satisfactory evidence has been provided documenting that the person has completed all required immunizations which someone his or her age is eligible to receive according to the public health division school/daycare entry immunization requirements, which are within the Advisory Committee on Immunization Practice (ACIP) recommendations.

**B. "Child" or "Children"** are persons who are of the age birth through 18 years.

**C. "Department"** means the New Mexico department of health.

**D. "In the process of being age appropriately immunized"** means a child has received all required immunizations he or she is eligible to receive according to the public health division school/daycare entry immunization requirements, but has not completed one or more vaccine series because a sufficient time interval has not elapsed for the subsequent dose or doses of vaccine to be administered according to the recommended intervals between doses published by the ACIP.

**E. "Licensed physician"** means physician licensed to practice medicine or osteopathic medicine in New

Mexico, another state or territory.

**F. "Public health authority"** means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate. The public health authority is authorized by law to collect or receive protected health information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority.

**G. "Public health division"** means the public health division of the department.

**H. "Public health division regional health officer"** means the physician medical director assigned to a public health region in New Mexico as defined by the public health division of the department.

**I. "Public health division school/daycare entry immunization requirements"** means the immunizations required for entry into all schools and facilities (public, private, home, parochial, elementary, childcare, pre-school, and secondary schools) in New Mexico as set forth by the secretary of the department.

**J. "Required immunizations"** means those immunizations against diseases deemed to be dangerous to the public health by the public health division, and set forth in its immunization requirements, which are within recommendations of the ACIP.

**K. "Satisfactory evidence of commencement of immunization"** means satisfactory evidence of a person having begun the process of immunizations, such as a certificate or record signed by a duly licensed physician or other recognized licensed public or private health facility stating that the person has received at least the first in the series of required immunizations and is proceeding with the immunizations according to the prescribed schedule.

**L. "Satisfactory evidence of immunization"** means a statement, certificate, or record signed by a duly licensed physician or other recognized licensed public or private health facility

stating that the required immunizations have been given to the person or record of receipt of immunization in the New Mexico Statewide Immunization Information System (NMSIIS) registry. [7.5.2.7 NMAC - Rp, 7.5.2.7 NMAC, 11/27/13]

**7.5.2.8 IMMUNIZATION REQUIREMENTS:**

**A.** In accordance with Section 9 below required immunizations shall be administered in accordance with guidelines established by the ACIP of the United States department of health and human services and the American academy of pediatrics.

**B.** A child shall be determined to be non-compliant with these regulations if the child has not been properly exempted from immunization and has not received any of the required immunization doses within the recommended intervals between doses published by the ACIP.

**C.** Immunization records shall be kept on file at all schools and facilities (public, private, home, parochial, elementary, childcare, pre-school, and secondary schools) or in the NMSIIS under these regulations in accordance with retention periods defined in Subsection D of 1.20.2.101 NMAC and in 1.15.8.101 NMAC.

**D.** Immunization records shall be kept current and available to the public health division as defined in Section 24-5-4, NMSA 1978.

**E.** All schools and facilities under these regulations shall be required to participate in an annual immunization records audit at the request of the department.

**F.** All schools required to comply with these regulations shall notify the local public health division regional health officer if a child about to be enrolled or while enrolled has been held out of school for more than five consecutive school days for non-compliance with these regulations. Contact information for regional health officers shall be published in the school immunization requirements.

[7.5.2.8 NMAC - Rp, 7.5.2.8 NMAC, 11/27/13]

**7.5.2.9 REQUIRED IMMUNIZATIONS LIST:**

- A.** Diphtheria.
- B.** Pertussis.
- C.** Tetanus.
- D.** Poliomyelitis.
- E.** Measles.
- F.** Mumps.
- G.** Rubella.
- H.** Haemophilus influenza type b (HiB) (for facilities regulated by CYFD as described in 8.16.2 NMAC or other pre-school or school-age populations

as determined by the secretary of the department of health).

**I.** Hepatitis B.

**J.** Varicella.

**K.** Hepatitis A (for facilities regulated by CYFD as described in NMAC 8.16.2 or other pre-school populations as determined by the secretary of the department of health).

**L.** Pneumococcal Disease.

**M.** Other vaccines for preventable diseases as determined by the secretary of the department of health and within those recommended by the ACIP.

[7.5.2.9 NMAC - Rp, 7.5.2.9 NMAC, 11/27/13]

**7.5.2.10 IMMUNIZATION RECORD SHARING:**

**A.** Under the Health Insurance Portability and Accountability Act (HIPAA), immunization data are protected health information; however, HIPAA permits covered entities to disclose, without individual authorization or prior notification, protected health information to public health authorities authorized by law to collect or receive such information for the purpose of prevention or controlling disease (45 CFR § 164.502). Under federal guidelines, the definition of a “public health authority” requires that an agency’s official mandate include the responsibility for public health matters. The mandate can be responsibility for public health matters, generally, or it can be for specific public health matters. An agency’s official mandate does not have to be exclusively or primarily for public health. To the extent a public health authority is authorized by law to collect or receive information for the public health purposes specified in the public health provision, covered entities may disclose protected health information to such public health authorities without authorization pursuant to the public health provision.

**B.** Public health authorities include federal public health agencies, tribal health agencies, state public health agencies, local public health agencies, and anyone performing public health functions under a grant of authority from the department.

**C.** New Mexico schools shall act as a “public health authority” in cooperation with the department when they track immunization status of enrolled students and those in the process of enrolling. [7.5.2.10 NMAC - Rp, 7.5.2.10 NMAC, 11/27/13]

**History of 7.5.2 NMAC:**

**Pre-NMAC Filing History:**

Material in this part was derived from that previously filed with the State Records Center:

HSSD 70-2, Regulations Governing Immunizations Required for School

Attendance, 2/17/70.

HSSD 71-2, Regulations Governing Immunizations Required for School Attendance, 12/27/71.

**History of Repealed Material:**

HSSD 71-2, Regulations Governing Immunizations Required for School Attendance, repealed by Rule 91-05, Rule Repealing Obsolete Rules and Regulations, filed 10-24-91.

7.5.2 NMAC, Immunization Requirement, filed 8/15/00 - Repealed effective 11/27/13.

**NEW MEXICO DEPARTMENT OF HEALTH**

**TITLE 7 HEALTH CHAPTER 5 VACCINATIONS AND IMMUNIZATIONS**

**PART 3 EXEMPTION FROM SCHOOL, CHILDCARE, AND PRE-SCHOOL IMMUNIZATION**

**7.5.3.1 ISSUING AGENCY:**

Public Health Division, Department of Health.

[7.5.3.1 NMAC - Rp, 7 NMAC 5.3.1, 11/27/13]

**7.5.3.2 SCOPE:**

These regulations govern the procedures for seeking exemptions from any of the immunizations required for public, private, home, parochial, elementary, and secondary schools, as well as early childhood education facilities under the New Mexico public education department and licensed preschool or child care centers.

[7.5.3.2 NMAC - Rp, 7 NMAC 5.3.2, 11/27/13]

**7.5.3.3 STATUTORY AUTHORITY:**

This regulation has been promulgated by the secretary of the department of health under the authority of Sections 9-7-6, 24-1-3(N), 24-5-1, and Section 24-5-3 NMSA, 1978. Enforcement of this regulation is the responsibility of the public health division of the New Mexico department of health.

[7.5.3.3 NMAC - Rp, 7 NMAC 5.3.3, 11/27/13]

**7.5.3.4 DURATION :**

Permanent.

[7.5.3.4 NMAC - Rp, 7 NMAC 5.3.4, 11/27/13]

**7.5.3.5 EFFECTIVE DATE:**

November 27, 2013, unless a later date is cited at the end of a section or paragraph.

[7.5.3.5 NMAC - Rp, 7 NMAC 5.3.5, 11/27/13]

**7.5.3.6 OBJECTIVE:**

The

objective is to establish standards and procedures for obtaining exemptions to required immunizations as allowed by Section 24-5-3 NMSA 1978; specifically for children whose:

**A.** duly licensed physician provides a certificate stating that any of the required immunizations would seriously endanger the life or health of the child; or

**B.** parent or legal guardian attests via affidavit or written affirmation from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

**C.** parent or legal guardian attests via affidavit or written affirmation that their religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent.

[7.5.3.6 NMAC - Rp, 7 NMAC 5.3.6, 11/27/13]

#### 7.5.3.7 DEFINITIONS:

**A.** "ACIP" means advisory committee on immunization practice.

**B.** "Administrative authority" means the superintendent, principal, or the designee of such person.

**C.** "Denial" means a denial of a request for exemption from immunizations.

**D.** "Department" means the department of health.

**E.** "Licensed physician" means physician licensed to practice medicine or osteopathic medicine.

**F.** "NMSIIS" means the New Mexico Statewide Immunization Information System; a secured, confidential, population-based, computerized registry for recording vaccination information established pursuant to Sections 24-5-7 through 24-5-15 NMSA 1978.

**G.** "Public health division" means a division of the department of health within which the immunization program is located.

**H.** "Required immunizations" means those immunizations against diseases deemed to be dangerous to the public health by the public health division, and set forth in its immunization requirements, which are within recommendations of the ACIP.

**I.** "Satisfactory evidence of commencement of immunization" means satisfactory evidence of a person having begun the process of immunizations, such as a certificate, or record signed by a duly licensed physician or other recognized public or private health facility stating that the person has received at least the first in the series of required immunizations

and is proceeding with the immunizations according to the prescribed schedule.

**J.** "Satisfactory evidence of immunization" means a statement, certificate, or record signed by a duly licensed physician or other recognized licensed health provider stating that the required immunizations have been given to the person or record of receipt of immunization in the NMSIIS registry.

**K.** "Secretary" means the secretary for the department of health. [7.5.3.7 NMAC - Rp, 7 NMAC 5.3.7, 11/27/13]

#### 7.5.3.8 REQUIREMENTS FOR APPROVAL OF EXEMPTIONS FROM IMMUNIZATION:

**A.** Any minor child through his parent or guardian may file a request for exemption from required immunization with the director of the public health division by providing the following:

(1) certificate or affidavit from a duly licensed physician attesting that any of the required immunizations would seriously endanger the life or health of the child; or

(2) an affidavit or written affirmation from an officer of a recognized religious denomination stating that the parents or guardians are bona fide members of the recognized denomination, whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

(3) an affidavit or written affirmation by a parent or guardian whose religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agents.

**B.** The original request for approval of any exemptions from immunization must be mailed to the department of health, public health division, immunization program. The address is P.O. Box 26110, Suite S-1250, Santa Fe, NM, 87502. Request forms can be found at the immunization program offices 1190 St. Francis Drive, Suite South 1250 or on the program's website.

**C.** Within 60 days of receipt of a request for exemption from immunization, the department of health immunization program manager shall review the request to determine whether the certificate has been duly completed. Incomplete requests shall be returned to the requester with information regarding what elements are missing.

**D.** The department of health immunization program manager shall determine approval status of all requests for exemption:

(1) exemption requests shall be approved for a nine-month period indicated by the public health division director or

designee;

(2) in the case of approval of a request for exemption, an approved, signed copy of the request shall be provided to the parents or guardian of the child and to the administrative authority of the school or director of the pre-school or childcare center at which the child has been conditionally enrolled;

(3) in the case of a denial, the department of health immunization program manager shall state the reasons for denial in a letter of notification to the parents or guardian of the child and to the administrative authority of the school at which the child has been conditionally enrolled. The notice to the parents or guardians shall also include information about the review process in 7.5.3.9 NMAC.

[7.5.3.8 NMAC - Rp, 7 NMAC 5.3.8, 11/27/13]

#### 7.5.3.9 REVIEW CRITERIA:

**A.** The department of health immunization program manager will consider the requirements and allowances of the law and the completeness and clarity of the requests for exemption in his or her review. Written criteria for review of exemption from immunization shall be available on the department of health website, included in documents required for submission of immunization exemptions, and provided upon request made to the department.

**B.** Requests for exemption based on a certificate or affidavit from a duly licensed physician will be reviewed for the following:

(1) an original document signed by a duly-licensed doctor of medicine or doctor of osteopathic medicine, which

(2) contains a statement that immunizations would seriously endanger the health of the child.

**C.** Requests for religious exemption based on an affidavit or written affirmation from an officer of a religious denomination will be reviewed for the following:

(1) an original document signed by an officer of the denomination, which

(2) contains a statement affirming that the parent or guardian of the child are members of the religious denomination; and

(3) that the religious teachings of the denomination require reliance on prayer or spiritual means alone for healing.

**D.** Requests for exemption based on an affidavit or written affirmation from a parent will be reviewed for the following:

(1) an original, signed, complete, properly notarized form, which

(2) contains a statement of affirmation from the parent or guardian that their personal religious belief, or



jointly-held religious belief does not permit immunization of their child.

[7.5.3.9 NMAC - Rp, 7 NMAC 5.3.9, 11/27/13]

**7.5.3.10 CHILDREN EXPERIENCING HOMELESSNESS:**

Children experiencing homelessness: Pursuant to the McKinney-Vento Homeless Assistance Act (42 USC § 11432(g)(3)(C)), children experiencing homelessness must be able to enroll in school immediately, even if they are unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation. If the child needs to obtain immunizations, or medical or immunization records, the enrolling school must immediately refer the parent or guardian of the child or youth to the designated local educational agency liaison, who must assist in obtaining necessary immunizations, or immunization or medical records.

[7.5.3.10 NMAC - Rp, 7 NMAC 5.3.10, 11/27/13]

**7.5.3.11 ADMINISTRATIVE REVIEW OF DENIALS:**

In the case of a denial, the parent or guardian shall have the right to request an administrative review. Criteria for administrative review shall be available on the department of health website, included in documents required for submission of immunization exemptions, and provided upon request made to the department of health. Any hearing process under 7.5.3.12 NMAC can only be commenced after the administrative review pursuant to 7.5.3.11 NMAC is completed and the parent or guardian receives notification by mail that the administrative review was denied.

**A.** The parent or guardian may submit a letter requesting administrative review and any supporting documents to the public health division director or designee within 30 days of receipt of notice of the initial denial from the department of health immunization program manager.

**B.** Within 10 working days of receipt of the request for administrative review, the department of health's public health division director shall review the request for administrative review and any supporting documents and make a determination of approval or denial as to the underlying request for exemption. After the administrative review is complete the department's public health division director shall notify the parent or guardian and the child's school, by certified mail, if the administrative review of the request for exemption was approved or denied.

**C.** If approved, the child shall be considered exempt from immunizations for a nine-month period.

**D.** If the appeal is denied, and the parent or guardian desires further review or consideration, the parent or guardian may request a hearing pursuant to 7.5.3.12 NMAC.

[7.5.3.11 NMAC - Rp, 7 NMAC 5.3.11, 11/27/13]

**7.5.3.12 RIGHT TO HEARING AFTER ADMINISTRATIVE REVIEW:**

**A. Right to appeal:** A parent or guardian may request a hearing to appeal a decision of the public health division director only after a denial of an administrative review. A hearing may not be requested at the same time as an administrative review is underway pursuant to 7.5.3.11 NMAC.

**B. Right to hearing:** A parent or guardian may request a hearing before a hearing officer appointed by the secretary to contest a denial of an immunization exemption under this rule, by mailing a certified letter, return receipt requested, to the public health division director within 30 days after the denial resulting from the administrative review. If the parent or guardian fails to request a hearing in the time and manner required by this section, the parent or guardian shall forfeit the right to a hearing, and the denied immunization exemption shall become final and not subject to judicial review.

**C. Scheduling the hearing:**

**(1) Appointment of hearing officer:** Upon the public health division director's receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing.

**(2) Hearing date:** The hearing shall be held not more than 60 days and not less than 15 days from the date of service of the notice of the hearing.

**(3) Notice of hearing:** The department shall notify the parent or guardian of the date, time, and place of the hearing and the identity of the hearing officer, and shall identify the statute(s) and regulation(s) authorizing the department to deny the immunization exemption, within 20 days of the public health division director's timely receipt of the request for hearing.

**(4) Hearing venue:** The hearing shall be held in Santa Fe, New Mexico.

**D. Method of service:** Any notice or decision required to be served under this section may be served either personally or by certified mail, return receipt requested directed to the parent or guardian at the last known mailing address (or, if service is made personally, by the last known physical address) shown by the records of the department immunization program. If the notice or decision is served personally, service shall be made in the same manner allowed by the rules of civil

procedure for the state district courts of New Mexico. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery, or the date of the last attempted delivery of the notice or decision, or the date of the addressee's refusal to accept delivery.

**E. Hearing officer duties:** The hearing officer shall conduct the hearing, rule on any motions or other matters that arise prior to the hearing, and issue a written report and recommendation(s) to the secretary following the close of the hearing.

**F. Official file:** Upon appointment, the hearing officer shall establish an official file which shall contain all notices, hearing requests, pleadings, motions, written stipulations, evidence, briefs, and correspondence received in the case. The official file shall also contain proffered items not admitted into evidence, which shall be so identified and shall be separately maintained. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall tender the complete official file to the department for its retention as an official record of the proceedings.

**G. Powers of hearing officer:** The hearing officer shall have all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to the power to:

(1) administer oaths or affirmations;

(2) schedule continuances;

(3) direct discovery;

(4) examine witnesses and direct witnesses to testify;

(5) subpoena witnesses and relevant books, papers, documents, and other evidence;

(6) limit repetitious and cumulative testimony;

(7) set reasonable limits on the amount of time a witness may testify;

(8) decide objections to the admissibility of evidence or receive the evidence subject to later ruling;

(9) receive offers of proof for the record;

(10) take notice of judicially cognizable facts or take notice of general, technical, or scientific facts within the hearing officer's specialized knowledge (provided that the hearing officer notifies the parties beforehand and offers the parties an opportunity to contest the fact so noticed);

(11) direct parties to appear and confer for the settlement or simplification of issues, and otherwise conduct pre-hearing conferences;

(12) impose appropriate evidentiary sanctions against a party who

fails to provide discovery or who fails to comply with a subpoena;

(13) dispose of procedural requests or similar matters;

(14) enter proposed findings of fact and conclusions of law, orders, reports and recommendations; and

(15) utilize his or her experience, technical competence, or specialized knowledge in the evaluation of evidence presented.

**H. Minimum discovery; inspection and copying of documents:** Upon written request to another party, any party shall have access to documents in the possession of the other party that are relevant to the subject matter of the appeal, except confidential or privileged documents.

**I. Minimum discovery; witnesses:** The parties shall each disclose to each other and to the hearing officer, either orally or in writing, the names of witnesses to be called, together with a brief summary of the testimony of each witness. In situations where written statements will be offered into evidence in lieu of a witness's oral testimony, the names of the persons making the statements and a brief summary of the statements shall be disclosed.

**J. Additional discovery:** At the hearing officer's discretion, upon a written request by a party that explains why additional discovery is needed, further discovery in the form of production and review of documents and other tangible things, interviews, depositions or written interrogatories may be ordered. In exercising his or her authority to determine whether further discovery is necessary or desirable, the hearing officer should consider whether the complexity of fact or law reasonably requires further discovery to ensure a fair opportunity to prepare for the hearing, and whether such request will result in unnecessary hardship, cost, or delay in holding the hearing. Depositions shall not be allowed, except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or who will not be able to attend the hearing.

**K. Subpoena limits; service:** Geographical limits upon the subpoena power shall be the same as if the hearing officer were a district court sitting at the location at which the hearing or discovery proceeding is to take place. The method of service shall be the same as that under the Rules of Civil Procedure for the district courts, except that rules requiring the tendering of fees shall not apply to the department.

**L. Pre-hearing disposition:** The subject matter of any hearing may be disposed of by stipulation, settlement, or consent order, unless otherwise precluded by law. Any stipulation,

settlement, or consent order reached between the parties shall be written and shall be signed by the hearing officer and the parties or their attorneys.

**M. Postponement or continuance:** The hearing officer, at his or her discretion, may postpone or continue a hearing upon his or her own motion, or upon the motion of a party, for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the previously scheduled hearing date.

**N. Conduct of hearing:** These hearings will be closed to prevent the disclosure of confidential information, including but not limited to health information protected by state and federal laws.

**O. Telephonic testimony:** Upon timely notice to the opposing party and the hearing officer, and with the approval of the hearing officer, the parties may present witnesses by telephone or live video (if available).

**P. Legal representation:** The department may appear by an officer or employee and parent or guardian may appear pro se or either the department or parent or guardian may be represented by an attorney licensed to practice in New Mexico.

**Q. Recording:** The hearing officer or a designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. Such recording need not be transcribed, unless requested by a party who shall arrange and pay for the transcription.

**R. Burden of proof:** Except as otherwise provided in this rule, the department has the burden of proving by a preponderance of the evidence the basis for the denied immunization exemption.

**S. Order of presentation; general rule:** Except as provided in this rule, the order of presentation for hearings in all cases shall be:

(1) **appearances:** Opening of proceeding and taking of appearances by the hearing officer;

(2) **pending matters:** Disposition by the hearing officer of preliminary and pending matters;

(3) **opening statements:** The opening statement of the department, and then the opening statement of the party challenging the department's action or proposed action;

(4) **cases:** The department's case-in-chief, and then the case-in-chief of the party challenging the department's action;

(5) **rebuttal:** The department's case-in-rebuttal;

(6) **closing argument:** The department's closing statement, which

may include legal argument; and then the closing statement of the party opposing the department's action or proposed action, which may include legal argument;

(7) **close:** Close of proceedings by the hearing officer.

**T. Admissible evidence; rules of evidence not applicable:** The hearing officer may admit evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs. Rules of evidence, such as the New Mexico Rules of Evidence for the district courts, shall not apply but may be considered in determining the weight to be given any item of evidence. The hearing officer may at his or her discretion, upon his or her motion or the motion of a party or a party's representative, exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence, including testimony, and may exclude confidential or privileged evidence.

**U. Objections:** A party may timely object to evidentiary offers by stating the objection together with a succinct statement of the grounds for the objection. The hearing officer may rule on the admissibility of evidence at the time an objection is made or may receive the evidence subject to later ruling.

**V. Official notice:** The hearing officer may take notice of any facts of which judicial notice may be taken, and may take notice of general, technical, or scientific facts within his or her specialized knowledge. When the hearing officer takes notice of a fact, the parties shall be notified either before or during the hearing of the fact so noticed and its source, and the parties shall be afforded an opportunity to contest the fact so noticed.

**W. Record content:** The record of a hearing shall include all documents contained in the official file maintained by the hearing officer, including all evidence received during the course of the hearing, proposed findings of fact and conclusions of law, the recommendations of the hearing officer, and the final decision of the secretary.

**X. Written evidence from witnesses:** The hearing officer may admit evidence in the form of a written statement made by a witness, when doing so will serve to expedite the hearing and will not substantially prejudice the interests of the parties.

**Y. Failure to appear:** If a party who has requested a hearing or a party's representative fails to appear on the date, time, or location announced for a hearing, and if no continuance was previously granted, the hearing officer may proceed to hear the evidence of such witnesses as may have appeared or may accept offers of proof regarding anticipated testimony and other

evidence, and the hearing officer may further proceed to consider the matter and issue his report and recommendation(s) based on the evidence presented; and the secretary may subsequently render a final decision. Where a person fails to appear at a hearing because of accident, sickness, or other cause, the person may within a reasonable time apply to the hearing officer to reopen the proceeding, and the hearing officer may, upon finding sufficient cause, fix a time and place for a hearing and give notice to the parties.

**Z. Hearing officer written report and recommendation(s):** The hearing officer shall submit a written report and recommendation(s) to the secretary that contains a statement of the issues raised at the hearing, proposed findings of fact and conclusions of law, and a recommended determination. Proposed findings of fact shall be based upon the evidence presented at the hearing or known to all parties, including matters officially noticed by the hearing officer. The hearing officer's recommended decision is a recommendation to the secretary of the New Mexico department of health and is not a final order.

**AA. Submission for final decision:** The hearing officer's report and recommendation(s) shall be submitted together with the complete official file to the secretary of the New Mexico department of health for a final decision no later than 30 days after the hearing.

**BB. Secretary's final decision:** The secretary shall render a final decision within 45 calendar days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested within 15 days after the final decision is rendered and signed. A copy shall be provided to legal counsel for the public health division. [7.5.3.12 NMAC - Rp, 7 NMAC 5.3.12, 11/27/13]

**HISTORY OF 7.5.3 NMAC:**

Pre-NMAC History: The material in this Part was derived from that previously filed with the state records center: HSSD 76-1, Religious Exemption From School Immunization, 1/14/76.

History of Repealed Material: 7 NMAC 5.3, Religious Exemption from School Immunization, filed 10/18/96 – Repealed effective 11/27/13.

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

**Notice of Repeals**

The Income Support Division of the Human Services Department repeals its rule 8.100.140 NMAC, General Operating Policies - Case Files, filed 3-26-2001 and replaces it with 8.100.140 NMAC, General Operating Policies - Case Files, effective 11-27-2013.

The Income Support Division of the Human Services Department repeals its rule 8.100.970 NMAC, Oversight - Program Participation Hearings, filed 3-26-2001 and replaces it with 8.100.970 NMAC, Oversight - Program Participation Hearings, effective 11-27-2013.

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

**TITLE 8 SOCIAL SERVICES  
CHAPTER 100 GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS  
PART 140 GENERAL OPERATING POLICIES CASE FILES**

**8.100.140.1 ISSUING AGENCY:** New Mexico Human Services Department. [8.100.140.1 NMAC - Rp, 8.100.140.1 NMAC, 11/27/2013]

**8.100.140.2 SCOPE:** The rule applies to the general public. [8.100.140.2 NMAC - Rp, 8.100.140.2 NMAC, 11/27/2013]

**8.100.140.3 STATUTORY AUTHORITY:**

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

**B.** The income support division (ISD) of the human services department (HSD) was created by the HSD secretary under authority granted by Section 9-8-6-B-(3) NMSA 1978.

[8.100.140.3 NMAC - Rp, 8.100.140.3 NMAC, 11/27/2013]

**8.100.140.4 DURATION:** Permanent. [8.100.140.4 NMAC - Rp, 8.100.140.4 NMAC, 11/27/2013]

**8.100.140.5 EFFECTIVE DATE:** November 27, 2013, unless a later date is

cited at the end of a section. [8.100.140.5 NMAC - Rp, 8.100.140.5 NMAC, 11/27/2013]

**8.100.140.6 OBJECTIVE:** The objective of these regulations is to provide general policy and procedures for the ISD administered programs. [8.100.140.6 NMAC - Rp, 8.100.140.6 NMAC, 11/27/2013]

**8.100.140.7 DEFINITIONS:** [Reserved]

**8.100.140.8 PURPOSE OF CASE FILES**

**A.** ISD case records consisting of forms, records, narrative material, correspondence, and documents are scanned into electronic format and maintained in the department's secure electronic data management system. Documents submitted in person will be electronically scanned and returned to the individual. Original documents mailed to or left with the office will be photocopied and the originals mailed back to the client at his/her last known address known to the department. The copied documents will be electronically scanned and destroyed once successful completion of a scan into electronic format is confirmed. The case record documents the current and historical eligibility of a recipient group and thereby to establish the validity of decisions to approve or deny assistance.

**B.** Case records are the property of the department and are established and maintained solely for use in the public assistance programs administered by the department. Information contained in the case records is confidential and is released only under the limited circumstances and conditions as provided in federal and state laws and regulations, including 8.100.100 NMAC, Sections 13 through 15. Case records and their contents must remain in the possession of the department, its contractors, or approved federal employees. Copies of case records may be released in accordance with federal and state laws and regulations or pursuant to a court order.

**C. Electronic eligibility system information:** Client information stored on the department's electronic eligibility system is subject to the same guidelines for release of information as the department's case record. [8.100.140.8 NMAC - Rp, 8.100.140.8 NMAC, 11/27/2013]

**8.100.140.9 CONTENT OF CASE NARRATIVE:** The following narrative outline is used on all applications for assistance, and to record data and verification concerning all variable conditions of eligibility. After the initial determination of



eligibility for assistance, no additional data are required in redeterminations except for those eligibility conditions which are subject to change.

**A.** The case narrative is used for the comprehensive recording of relevant factual information in the case record. Narrative entries must be made promptly, with dates of relevant contacts.

**B.** Recorded information should be limited to items which are applicable to the case, such as changes in eligibility factors since the last review. Information which does not change, such as social security numbers, is not repeated.

**C.** The items below are intended as a minimum requirement for case narratives. Each county office manager has the privilege of expanding it at his/her discretion.

[8.100.140.9 NMAC - Rp, 8.100.140.9 NMAC, 11/27/2013]

#### **8.100.140.10 ESSENTIAL INFORMATION AT INITIAL DETERMINATION**

**A. Heading:** Case name and number.

**B. Application and intake:**

(1) date of application, program applied for and reason for application stated in terms of the client's circumstances;

(2) documentation of worker's explanation of client's rights and responsibilities;

(3) names of individuals for whom application is being made.

**C. Basic eligibility factors:** Explanation of how each basic eligibility factor has been established, including: residence; non-transfer of property; school attendance; nonconcurrent receipt of assistance; living in the home of the specified relative; citizenship; parentage; and age.

**D. Child support enforcement division (CSED) cooperation:** Status of cooperation with the CSED.

**E. Enumeration:** Status of enumeration (social security number) of each person.

**F. Retroactive medicaid status:** Status of eligibility for retroactive medicaid requested by applicant.

**G. Work program status:**

(1) current work program participation status, work participation agreement, assessment certification or copy of assessment and individual responsibility plan for each benefit group member subject to work program requirements;

(2) disability determination request for applying for limited work participation status;

(3) determination of limited work participation status request;

(4) any other work program related documentation.

**H. Medical resources - third party liability:** Verification of third party liability that includes the name(s) of the private health insurance, type of available coverage, name of each insured individual(s), the policy and group number for each insured individual, and other information, as needed, in accordance with federal and state laws and regulations.

**I. Need:**

(1) documentation and discussion of all pertinent factors relating to the condition of eligibility;

(2) list of amounts, verifications and dates of income and resources by individual;

(3) explanation of earned income computations.

**J. Shelter** (for applicable programs): Documentation of shelter information, including whether housing is subsidized by the government.

**K. SNAP:** Status of the certification. Explanation of circumstances affecting SNAP certification.

**L. Disposition of application:** Effective date of approval/denial. Reference to appropriate manual section for denials.

**M. Follow-up:** Necessary follow-ups.

[8.100.140.10 NMAC - Rp, 8.100.140.10 NMAC, 11/27/2013]

#### **8.100.140.11 REDETERMINATION/RECERTIFICATION**

**A.** date of interview and how household composition or living arrangements are established;

**B.** documentation of school attendance of children in benefit group;

**C.** documentation of current resources and income; accounting for all formerly reported income and resources;

**D.** updated information on non-custodial parents and status of cooperation with the CSED;

**E.** review of work and work program participation and planning;

**F.** disposition of SNAP certification; and

**G.** list of necessary follow-ups.

[8.100.140.11 NMAC - Rp, 8.100.140.11 NMAC, 11/27/2013]

#### **History of 8.100.140 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: ISD Rule 131, Administrative Policy, filed 2/10/1988.

#### **History of Repealed Material:**

8 NMAC 3.ISD.140, General Operating

Policies, Case Files, filed 6/16/1997 - Repealed effective 7/1/1997.

8.100.140 NMAC, General Operating Policies Case Files, filed 3/26/2001 - Repealed effective 11/27/2013.

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

#### **TITLE 8 SOCIAL SERVICES CHAPTER 100 GENERAL PROVISIONS FOR PUBLIC ASSISTANCE PROGRAMS PART 970 OVERSIGHT - PROGRAM PARTICIPATION HEARINGS**

**8.100.970.1 ISSUING AGENCY:** New Mexico Human Services Department. [8.100.970.1 NMAC - Rp, 8.100.970.1 NMAC, 11/27/2013]

**8.100.970.2 SCOPE:** The rule applies to the general public. [8.100.970.2 NMAC - Rp, 8.100.970.2 NMAC, 11/27/2013]

**8.100.970.3 STATUTORY AUTHORITY:**

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

**B.** The income support division (ISD) of the human services department (HSD) was created by the HSD secretary under authority granted by Section 9-8-6-B-(3) NMSA 1978.

[8.100.970.3 NMAC - Rp, 8.100.970.3 NMAC, 11/27/2013]

**8.100.970.4 DURATION:** Permanent. [8.100.970.4 NMAC - Rp, 8.100.970.4 NMAC, 11/27/2013]

**8.100.970.5 EFFECTIVE DATE:** November 27, 2013, unless a later date is cited at the end of a section. [8.100.970.5 NMAC - Rp, 8.100.970.5 NMAC, 11/27/2013]

**8.100.970.6 OBJECTIVE:** The objective of these regulations is to provide general policy and procedures for the public assistance programs administered by the department.

[8.100.970.6 NMAC - Rp, 8.100.970.6 NMAC, 11/27/2013]

**8.100.970.7 DEFINITIONS:**

**A. Agency review conference (ARC):** means an optional

conference offered by the department to households adversely affected by a department action that is normally held prior to a fair hearing. An ARC may be attended by all parties responsible for and affected by the adverse action taken by the department, including but not limited to, the ISD field office staff, the child support enforcement division (CSED), a New Mexico works (NMW) representative and the household or its authorized representative for the purpose of informally resolving the dispute. The ARC is optional and shall in no way delay or replace the fair hearing process.

**B. Authorized representative:** means an individual designated by a household to represent and act on its behalf during the fair hearing process. The household must provide formal documentation authorizing the named individual(s) to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian ad litem, or any other individual(s) designated by the household.

**C. Claimant:** means the household requesting a fair hearing that is claiming to be adversely affected by an action(s) taken by the department.

[8.100.970.7 NMAC - N, 11/27/2013]

#### 8.100.970.8 FAIR HEARINGS

**A.** A household aggrieved by an adverse action taken by the department that affects the participation of the household in a department administered public assistance program may appeal the department's decision by requesting a fair hearing in accordance with federal and state laws and regulations. Medicaid recipients wanting to request a fair hearing due to termination, modification, reduction or suspension of services must do so in accordance with any applicable federal and state laws and regulations, including 8.200.430.12 NMAC and 8.352 NMAC, et seq.

**B.** A household may designate an authorized representative to request a hearing on its behalf and to represent them during the fair hearing process. The claimant or his or her authorized representative must complete a request for access to a case record each time he or she wishes to have access to the record outside what is provided to the claimant in the summary of evidence (SOE). If the claimant wishes to have his or her authorized representative review the record in his or her absence, the claimant must provide formal documentation authorizing the named individual(s) to access the identified case information for a specified purpose and time frame.

**C. Hearing rights:** Each household has the right to request a fair hearing and:

(1) to be advised of the nature and availability of a fair hearing and an ARC;

(2) to be represented by counsel or other authorized representative of the claimant's choice;

(3) to receive reasonable assistance in completing procedures necessary to request a fair hearing; and

(4) to receive a copy of the SOE and any document contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC; the department shall forward the SOE and any other document(s) submitted to the fair hearings bureau for admission into the fair hearing record to the claimant's authorized representative once the department becomes aware that an authorized representative has been designated by the claimant;

(5) to have a fair hearing that safeguards the claimant's opportunity to present a case;

(6) to elect to continue to receive the current level of benefit, provided the request for hearing is received by the department before the close of business of the thirteenth (13th) day immediately following the date of the notice of adverse action; a claimant that elects to continue to receive the same level of benefit pending the fair hearing decision shall be informed that a hearing decision in favor of the department may result in an overpayment of benefits and a requirement that the household repay the benefits; a claimant may waive a continuation of benefits pending the outcome of the fair hearing;

(7) to have prompt notice and implementation of the final fair hearing decision; and

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

**D.** The department will neither provide representation for, nor pay for any costs incurred by a claimant or the authorized representative in preparation for, or attendance at an ARC, fair hearings or judicial appeals.

#### **E. Notice of rights:**

(1) At the time of application for assistance, the department shall inform each applicant of the applicant's right to request a fair hearing if the applicant disagrees with an action taken by the department. The applicant may choose to receive the notice by mail or in electronic format.

(2) The notice shall inform the applicant of the procedure by which a fair hearing may be requested and that the claimant's case may be presented by the claimant or an authorized representative.

(3) The department shall remind

the household of its right to request a fair hearing any time the household expresses disagreement with an action taken on its case by the department.

(4) Each county office shall post a notice of the right to request a fair hearing and an ARC, and a copy shall be given, upon request, to any person that has requested a hearing.

(5) Each notice provided to a claimant pursuant to this section shall include a statement that free legal assistance, by an individual or organization outside of the department, may be available to assist with the fair hearing process.

(6) A claimant may request special accommodations for a disability or a language or speech interpreter be available during a fair hearing or ARC. An interpreter or special accommodations shall be provided by the department at no cost to the claimant. A request for a language interpreter, a speech interpreter or other disability accommodation must be made within ten (10) days of the date of the fair hearing. If an interpreter or disability accommodations are not requested timely, the claimant can request postponement of the hearing in accordance with Subsection B of 8.100.970.10 NMAC.

**F. Special provisions pertaining to mass changes:** Special provisions apply in situations involving mass changes. These provisions are contained at 8.100.180.12 and 15 NMAC, 8.139.120.13 NMAC, 8.139.500.8 and 9 NMAC, 8.106.630.10 and 11 NMAC, 8.102.501.9 NMAC and 8.102.630.10 NMAC.

**G. Continuing benefit for cash assistance:** If a claimant who is a cash assistance recipient requests a fair hearing before the close of business of the thirteenth (13th) day immediately following the date of the notice of adverse action, the claimant may elect to waive or continue receiving the same amount of cash assistance and services issued immediately prior to the notice of adverse action until a final decision is issued. If there is no indication that the claimant has waived a continuation of benefits, the department will assume a continuation of benefits is desired. The household is required to comply with the reporting and renewal provisions at 8.102.120 NMAC and 8.106.120 NMAC. Cash assistance recipients are to continue compliance with the NMW compliance requirements at 8.102.460 NMAC.

**H. Continuing SNAP benefits:** If a claimant who is a SNAP recipient requests a fair hearing before the close of business of the thirteenth (13th) day immediately following the date of the notice of adverse action, the claimant may elect to waive or continue receiving the same amount of SNAP benefits issued immediately prior to the adverse action until a final decision is issued. If there is

no indication that the claimant has waived a continuation of benefits, the department will assume a continuation of benefits is desired. The claimant is required to comply with the reporting and renewal provisions at 8.139.120 NMAC.

**I. Continuing eligibility for a medical assistance program:** If a claimant who is a recipient of a medical assistance program requests a fair hearing before the close of business of the thirteenth (13th) day immediately following the date of the notice of adverse action, the claimant may elect to waive or continue receiving the same medical assistance benefit issued immediately prior to the adverse action until a final decision is issued. If there is no indication that the claimant has waived a continuation of benefits, the department will assume a continuation of benefits is desired. If the hearing is regarding the termination, modification, reduction or suspension of medical assistance program services, a continuation of services is governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq. [8.100.970.8 NMAC - Rp, 8.100.970.8 NMAC, 11/27/2013]

## **8.100.970.9 THE HEARING PROCESS**

### **A. Initiation of the hearing process:**

(1) A request for a fair hearing can be made by the claimant or an authorized representative orally or in writing.

(2) If a claimant requests a fair hearing orally, the department shall take such actions as are necessary to initiate the fair hearing process.

(3) The fair hearings bureau shall promptly send written acknowledgement to the claimant and the authorized representative upon its receipt of a written or oral hearing request.

### **B. Time limits:**

(1) A household or its authorized representative shall request a fair hearing no later than close of business on the ninetieth (90th) day following the date of the notice of adverse action. If the ninetieth (90th) day falls on a weekend, holiday or other day the department is closed, a request received the next business day will be considered timely.

(2) The department shall assure that the fair hearing is conducted, a fair hearing decision is reached and the claimant and the authorized representative are notified of the decision within the specified program time limit set forth below, except in instances where the time limit may be extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(a) **SNAP program:** The final fair hearing decision shall be issued to the claimant and the authorized representative

within sixty (60) days from the date the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

### **(b) Cash assistance programs:**

The final fair hearing decision shall be issued to the claimant and the authorized representative within ninety (90) days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(c) **LIHEAP:** The final fair hearing decision shall be issued to the claimant and the authorized representative within sixty (60) days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

### **(d) Medical assistance programs:**

The final fair hearing decision shall be issued to the claimant and the authorized representative within ninety (90) days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC. Fair hearing decisions regarding the termination, modification, reduction or suspension of services is governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

### **C. Jurisdiction of the fair hearings bureau:**

(1) An applicant for, or recipient of, a department administered public assistance program may request a fair hearing, and the department's fair hearings bureau shall have jurisdiction over the matter, if:

(a) an application for benefits or services is denied in whole or in part, or not processed timely;

(b) assistance or services are reduced, modified, terminated, suspended or not provided, or the form of payment is changed;

(c) a good cause request for not participating in the work program or CSED is denied in whole or in part;

(d) the department refuses or fails to approve a work program participation plan, or the supportive services related to it, that have been developed by a participant; or

(e) the claimant is aggrieved by any other action affecting benefit level or participation in an assistance program administered by HSD.

(2) Fair hearing requests submitted to the local county office shall be immediately forwarded to the fair hearings bureau for scheduling. The fair hearings bureau shall promptly inform the applicable local county office upon its receipt of a written or oral fair hearing request submitted directly to the fair hearings bureau to ensure

timely scheduling of an ARC.

**D. Denial or dismissal of request for hearing:** The fair hearings bureau shall deny or dismiss, as applicable, a request for a fair hearing when:

(1) the request is not received by the close of business on the ninetieth (90th) day following the date of the notice of adverse action; in instances where the fair hearings bureau schedules a hearing prior to becoming aware of the lateness of the fair hearing request, the fair hearings bureau shall, upon learning of the late request, promptly dismiss the matter and provide notice thereof to all parties;

(2) the request for a fair hearing is withdrawn or canceled, either orally or in writing, by the claimant or claimant's authorized representative; if withdrawn orally, the claimant and the authorized representative shall be provided written verification of the withdrawal and given ten (10) calendar days from the date of the notification to request reinstatement of the hearing;

(3) the sole issue presented concerns a federal or state law requiring an adjustment of assistance for all or certain classes of clients, including but not necessarily limited to a reduction, suspension or cancellation of benefits, unless the reason for the hearing request involves alleged error in the computation of benefits (e.g. mass changes);

(4) the claimant fails to appear, without good cause, at a scheduled fair hearing;

(5) the same issue has already been appealed and a hearing decision made;

(6) there is no adverse action or delay of benefits or services for which a fair hearing may be requested; or

(7) the issue is one that the fair hearings bureau does not have jurisdiction as provided by federal or state laws and regulations.

(8) Requests for fair hearings for medical assistance cases involving the termination, modification, reduction or suspension of services are governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

### **E. Good cause for failing to appear:**

(1) If the claimant or the claimant's authorized representative fails to appear for a fair hearing at the scheduled time and place, the claimant's appeal will be considered abandoned and the fair hearings bureau shall dismiss the matter, unless the claimant or authorized representative presents good cause. A claimant or authorized representative may present good cause for failing to appear to the scheduled fair hearing at any time no later than close of business on the tenth (10th) calendar day immediately following the scheduled hearing date. If the



tenth (10th) calendar day falls on a weekend, holiday or other day that the department is closed, a request received the next business day will be considered timely. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the hearing or, where appropriate, reinstate a matter previously dismissed.

(2) If the department fails to appear due to circumstances beyond its control, the department may present good cause within ten (10) calendar days after the scheduled hearing. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the fair hearing.

(3) Good cause includes, but is not limited to, a death in the family, disabling personal illness, or other significant emergencies. At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.

[8.100.970.9 NMAC - Rp, 8.100.970.9 NMAC, 11/27/2013]

### **8.100.970.10 PRE - HEARING PROCEDURE**

#### **A. Notice of hearing:**

Unless the claimant or authorized representative requests an expedited scheduling of a fair hearing, the fair hearings bureau shall provide written notice of the scheduling of a fair hearing to all parties not less than ten (10) calendar days prior to date of the fair hearing. The notice of hearing shall include:

(1) the date, time and place of the hearing;

(2) the name, address and phone number of the hearing officer;

(3) information regarding the fair hearing process and the procedures to be followed by the respective parties;

(4) the right of the claimant and the authorized representative to receive a copy of the SOE and any document, not specifically prohibited by federal and state law and regulation, contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC;

(5) notice that the appeal will be dismissed if the claimant or the authorized representative fails to appear without good cause;

(6) information about resources in the community that may provide free legal assistance with the fair hearing process; and

(7) notice that the department will not pay for any costs of the claimant or authorized representative, including legal counsel, that are incurred in the preparation for, or attendance at, an ARC, fair hearing or judicial appeal.

**B. Postponement:** A claimant or authorized representative is entitled to, and the fair hearings bureau shall grant, at least one postponement of a

scheduled fair hearing. The department may request and be approved for one postponement at the discretion of the fair hearings bureau due to the unavailability of any department witness to appear at the scheduled fair hearing. Requests for more than one postponement are considered at the discretion of the fair hearings bureau, on a case-by-case basis. A request for postponement must be submitted not less than one (1) business day prior to the scheduled fair hearing, unless otherwise allowed by the fair hearings bureau, and is subject to the following limitations:

#### **(1) SNAP and LIHEAP cases:**

A postponement may not exceed thirty (30) days and the time limit for action on the decision is extended for as many days as the fair hearing is postponed.

**(2) Cash assistance cases:** The fair hearing may be postponed, but must be rescheduled to assure a final decision is made no more than ninety (90) days from the date of the request for fair hearing.

**(3) Medical assistance cases:** The fair hearing may be postponed, but must be rescheduled to assure a final decision is made no more than ninety (90) days from the date of the request for fair hearing. Fair hearings for medical assistance cases involving the termination, modification, reduction or suspension of services are governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

**(4) The fair hearings bureau** shall issue notice of the rescheduling of a postponed fair hearing not less than ten (10) calendar days before the rescheduled date, unless oral agreements are obtained from all parties to reschedule the fair hearing with less notice in an effort to meet the required timeframes. Documentation of the oral agreement shall be maintained in the fair hearing record.

#### **C. Expedited hearing:**

Hearing requests from SNAP households, such as migrant farm workers that plan to move out of the state before the hearing decision would normally be made should be scheduled on an expedited basis.

**D. Group hearings:** A hearing officer may respond to a series of individual requests for hearings by conducting a single group hearing. Group hearing procedures apply only to cases in which individual issues of fact are not disputed and where related issues of state or federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations governing individual hearings are followed. Each individual claimant is permitted to present the claimant's own case or to be represented by an authorized representative. If a group hearing is scheduled, any individual claimant may withdraw from the group hearing and request

an individual hearing. The confidentiality of client records is to be maintained in accordance with federal and state laws and regulations.

**E. Agency review conference (ARC):** The department and the claimant are encouraged to meet for an ARC before the scheduled fair hearing to discuss the department's action(s) that the claimant has appealed. The ARC is optional and does not delay or replace the fair hearing process. An ARC will be held within ten (10) calendar days from the date of the fair hearing request. If the claimant submits a hearing request to the field office, in person or by telephone, the ARC may, at the claimant's option, be conducted at that time. An appeal may not be dismissed by the department for failure of the claimant or authorized representative to appear at a scheduled ARC.

(1) The department shall send a written notice of the scheduled ARC to the claimant and authorized representative. The claimant may choose to receive the notice by mail or in electronic format.

(2) An ARC may be attended by all parties responsible for and affected by the adverse action taken by the department, including but not limited to, the ISD field office staff, the CSED, a NMW representative and the claimant or its authorized representative.

(3) The purpose of the ARC is to informally review the adverse action taken by the department and to determine whether the dispute can be resolved in accordance with federal and state law and regulation. The ARC is optional and shall in no way delay or replace the fair hearing process, unless the outcome of the ARC is the claimant withdrawing the fair hearing request.

(4) For cases in which the household appeals a denial of expedited SNAP service, the ARC shall be scheduled within two (2) business days, unless the household requests that it be scheduled at a later date or does not wish to have an ARC.

(5) A household may request an ARC in order to discuss an adverse action taken by the department against the household, regardless of whether or not a fair hearing is requested.

**F. Summary of evidence (SOE):** An SOE shall be prepared by the department and submitted to the fair hearings bureau and the claimant and authorized representative no less than ten (10) calendar days prior to the date of the fair hearing. Failure to provide the SOE within the prescribed timeframe may result in its exclusion or a postponement or continuance of the hearing at the discretion of the hearing officer pursuant to Subsection B of 8.100.970.10 NMAC and Subsection D of 8.100.970.12 NMAC. Unless the hearing request is withdrawn by the claimant or

authorized representative, an SOE shall be prepared and submitted in accordance with this paragraph, regardless of the results of an ARC. The SOE shall contain at least the following information:

(1) identifying information, including but not limited to, claimant's name, at least the last four digits of the claimant's social security number, the claimant's individual identification number or case identification number, the claimant's last known address, and the type of assistance involved;

(2) the issue(s) on appeal that outlines the adverse action taken by the department against the household;

(3) documentation in support of the department's adverse action, including any facts, information and department findings related to the fair hearing issue(s);

(4) applicable federal and state laws and regulations, internal department policy documents, and any additional supportive legal documentation; and

(5) results of the ARC, if completed at the time of submission of the SOE.

**G. Availability of information:** The department staff shall:

(1) allow the claimant and the authorized representative to examine the case record and provide the claimant and the authorized representative a copy of the SOE and any document, not specifically prohibited by federal and state laws and regulations, contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC; and

(2) provide accommodations for a disability or a language or speech interpreter in accordance with Paragraph (6) of Subsection E of 8.100.970.8 NMAC. [8.100.970.10 NMAC - Rp, 8.100.970.10 NMAC, 11/27/2013]

## 8.100.970.11 H E A R I N G STANDARDS

**A. Rights during the fair hearing:** The claimant or authorized representative shall be given an opportunity to:

(1) examine the SOE and case record prior to, and during, the hearing in accordance with subsection B of 8.100.970.8 NMAC;

(2) present his or her case or have it presented by an authorized representative;

(3) introduce witnesses;

(4) establish all pertinent facts and circumstances;

(5) advance any arguments without undue interference; and

(6) question or refute any testimony or evidence, including an opportunity to confront and cross-examine the department's witnesses.

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

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

(2) was not directly involved in the initial determination of the action which is being contested;

(3) was not the immediate supervisor of the worker who took the action that is being contested; and

(4) may not discuss the merits of any pending fair hearing with anyone outside the fair hearings bureau, unless all parties or their authorized representatives are present.

**C. Disqualification and withdrawal:** If the appointed hearing officer had any involvement with the department action(s) being appealed, including giving advice or consulting on the issue(s) presented, or is related in any relevant degree to the claimant, the claimant's authorized representative, or ISD worker that took the action being appealed, the appointed hearing officer shall be disqualified as the hearing officer for that case. In addition, an appointed hearing officer shall, prior to the date of the fair hearing, withdraw from participation in any proceedings that the hearing officer determines that he cannot afford a fair and impartial hearing or where allegations of bias have arisen and have not been resolved prior to the deadline for a fair hearing decision to be issued pursuant to Paragraph (2) of Subsection B of 8.100.970.9 NMAC.

**D. Authority and duties of the hearing officer:** The authority and duties of the hearing officer are to:

(1) explain how the fair hearing will be conducted to participants at the start of the hearing;

(2) administer oaths and affirmations;

(3) insure that all relevant issues are considered during the fair hearing;

(4) request, receive and make part of the fair hearing record all evidence necessary to decide the issues being raised;

(5) regulate the content, conduct and the course of the hearing to ensure an orderly hearing; if a claimant, the claimant's authorized representative, any witness or other participant in the fair hearing refuses to cooperate or comply with rulings on the procedures and issues as determined by the hearing officer, or acts in such a manner that an orderly fair hearing is not possible, the hearing officer may take appropriate measures to ensure that order is fully restored so that the claimant's opportunity to fairly present his or her case is safeguarded; such measures shall include, but not be limited to, excluding or otherwise limiting the presentation of irrelevant evidence, or terminating the fair hearing and making the recommendation based on the record that

has been made up to the point that the fair hearing was terminated;

(6) limit cross-examination that is repetitive or harassing;

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

(8) provide a fair hearing record and report and recommendation for review and final decision by the appropriate division director.

**E. Appointment of hearing officer:** A hearing officer is appointed by the fair hearings bureau upon receipt of the request for hearing.

**F. Process:** Formal rules of evidence and civil procedure do not apply to the fair hearing process. All relevant evidence is admissible, subject to the hearing officer's authority to limit evidence that is repetitive or unduly cumulative. Evidence that is not available to the claimant may not be presented to the hearing officer or used in making the final fair hearing decision, unless the unavailability of evidence was in accordance with federal and state laws and regulations.

(1) **Confidentiality:** The confidentiality of client records is to be maintained in accordance with federal and state laws and regulations. Confidential information that is protected from release and other documents or records that the claimant will not otherwise have an opportunity to contest or challenge shall not be introduced at the fair hearing or affect the hearing officer's recommendation.

(2) **Administrative notice:** The hearing officer may take administrative notice of any matter for which judges of this state may take judicial notice.

(3) **Privilege:** The rules of privilege apply to the extent that they are requested and recognized in civil actions in New Mexico.

(4) **Medical issues:** In a case involving medical care or a medical condition, the claimant waives confidentiality and both parties shall have the right to examine any medical documents that are admitted into evidence.

(5) When the evidence presented at the fair hearing does not adequately address the relevant medical issues, additional medical information may be obtained at the discretion of the hearing officer. The additional medical information may include, but is not limited to, a medical evaluation or analysis obtained at the department's expense, from a source satisfactory to the claimant.

**G. Motions:** Motions shall be decided by the hearing officer without a hearing, unless permitted by the hearing officer upon written request of the

department, the claimant or the authorized representative.

**H. Burden of proof:** The department has the burden of proving the basis for its action, proposed action or inaction by a preponderance of the evidence.

**I. Record of the fair hearing:** A record of each fair hearing shall be made by the hearing officer, in accordance with the following.

(1) The fair hearing proceedings, including testimony and exhibits, shall be recorded electronically.

(2) The hearing officer's electronic recording shall be the official transcript of the fair hearing, and shall be retained by the fair hearings bureau in accordance with all federal and state laws and regulations.

(3) The record of the fair hearing includes: the recorded fair hearing, including testimony and exhibits, any pleadings filed in the proceeding, any and all papers and requests filed in the proceeding, the report and recommendation of the hearing officer; and, the final fair hearing decision made by the division director. The fair hearing record will be maintained in the department's secure electronic data management system, but may be made available to the claimant or the authorized representative for copying and inspection at a reasonable time.

(4) If a final fair hearing decision is appealed, a written verbatim transcript of the fair hearing shall be prepared by the department and a copy of the transcript shall be provided to the claimant or authorized representative, free of charge.

[8.100.970.11 NMAC - Rp, 8.100.970.11 NMAC, 11/27/2013]

**8.100.970.12 CONDUCTING THE FAIR HEARING:** A fair hearing is conducted in an orderly manner and in an informal atmosphere. The fair hearing is not open to the public. The fair hearing is conducted by telephone, unless the claimant or the authorized representative makes a special request for the fair hearing to be held in person and the request is justified by special circumstances, as determined by the hearing officer on a case-by-case basis.

**A. Opening the fair hearing:** The fair hearing is opened by the hearing officer who will explain the telephonic fair hearing procedures to all present at the fair hearing. The hearing officer will then explain his or her role in the proceedings, and that the final fair hearing decision on the issue(s) appealed will be made by the appropriate department division director after review of the hearing officer's report and recommendation, including the fair hearing record. On the record, the individuals present are asked to identify themselves, the order of testimony is explained, the oath is administered to all witnesses who will testify during the hearing,

the issue is identified, and all pleadings, papers, and requests, including but not limited to, the SOE and any evidence being presented, will be identified and entered into the record with any objections handled in accordance with applicable federal and state laws and regulations.

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

(1) **Presentation of the department's case:** The department will present its case and the evidence, including testimony and exhibits, in support of the adverse action taken against the household, and:

(a) the claimant or authorized representative may cross-examine the department representative;

(b) the hearing officer may ask further clarifying questions; and

(c) if the department calls other witnesses, the order of examination of each witness is as follows:

(i) direct testimony by the witness(es);

(ii) cross-examination by the claimant or the authorized representative; and

(iii) examination or further clarifying questions by the hearing officer or, if requested, follow up questions from the department representative.

(2) **Presentation of the claimant's case:** The claimant or the authorized representative will present its case and the evidence, including testimony and exhibits, in support of its position, and:

(a) the department may cross-examine the claimant or the authorized representative;

(b) the hearing officer may ask further clarifying questions; and,

(c) if the claimant calls other witnesses, the order of examination of each witness is as follows:

(i) direct testimony by the witness(es);

(ii) cross-examination by the department representative; and

(iii) examination or further clarifying questions by the hearing officer or, if requested, follow up questions from the claimant or the authorized representative.

(3) The claimant may offer evidence on the points at issue without undue interference, may request proof or verification of evidence or statements submitted by the department or its witnesses, and may present evidence in rebuttal.

(4) The hearing officer may ask the parties to summarize and present closing arguments.

**C. Written closing argument:** If the claimant or the department is represented by legal counsel, the hearing officer may request that the closing argument

be submitted in writing to the fair hearings bureau.

**D. Continuance:** The hearing officer may continue the hearing upon the request of either party, or on the hearing officer's own motion, for admission of additional testimony or evidence. A party seeking a continuance in order to obtain additional evidence must make a showing that the evidence was not available at the time of the hearing despite a reasonable attempt having been made to obtain it. The granting of a continuance is at the discretion of the hearing officer is subject to the same limitations set forth in Subsection B of 8.100.970.10 NMAC. The reason(s) for the continuance and if any oral agreements were reached in regards to the continuance shall be stated for the hearing record. The fair hearings bureau shall issue notice of the rescheduling of a continued fair hearing not less than ten (10) calendar days before the rescheduled date, unless oral agreements are obtained from all parties to reschedule the fair hearing with less notice in an effort to meet the required timeframes.

**E. Additional documentary evidence:** If the hearing officer requests additional documentary evidence based on testimony heard during the fair hearing, the hearing officer may close the fair hearing but keep the record open subject to production of the additional evidence being submitted by a party or parties.

(1) The hearing officer shall set a date and time for production of the requested evidence, not to exceed ten (10) calendar days; the party producing the additional evidence shall submit copies to the hearing officer and each party.

(2) Within ten (10) calendar days of its receipt of the additional evidence, the non-producing party may submit a written response to the hearing officer and each party that will become part of the fair hearing record; or, the hearing officer may continue the hearing until such a date and time that the non-producing party may respond to the additional evidence on the record.

(3) The hearing officer shall close the record at the close of business on the tenth (10th) calendar day following its receipt of the additional evidence.

(4) The hearing officer may only request additional evidence pursuant to this paragraph if it will not result in a violation of the limitations set forth in Subsection B of 8.100.970.10 NMAC.

**F. Re-opening a fair hearing:** The hearing officer, at the hearing officer's discretion, may re-open a fair hearing when the evidentiary record fails to address an issue that is relevant to resolution of a fair hearing request. The fair hearing can only be re-opened if the parties have agreed to an extension of the timeframes in



accordance with Paragraph (2) of Subsection B of 8.100.970.9 NMAC and the limitations set forth in Subsection B of 8.100.970.10 NMAC. Written notice of the date, time and place of the re-opened fair hearing is sent to the parties, not less than ten (10) days before the date of the re-opened hearing, unless oral agreements are obtained from all parties to reschedule the fair hearing with less notice in an effort to meet the required timeframes. [8.100.970.12 NMAC - Rp, 8.100.970.12 NMAC, 11/27/2013]

#### **8.100.970.13 FAIR HEARING DECISION:**

The final fair hearing decision shall be made by the appropriate department division director after review of the fair hearing record and the hearing officer's report and recommendation.

**A. Hearing officer recommendation:** The hearing officer reviews the record of the fair hearing and all appropriate regulations, and evaluates the testimony and evidence admitted during the hearing. The hearing officer submits the complete record of the fair hearing, along with the hearing officer's report and recommendation, in a standard format to the appropriate division director(s) within fifteen (15) days of the hearing, or sooner, to ensure the timeframes set forth in Paragraph (2) of Subsection B of 8.100.970.9 NMAC are met.

**B. Content of recommendation:** The hearing officer specifies the reason(s) for all factual conclusions, identifies the supporting evidence, references the relevant federal and state laws and regulations, along with appropriate department policy and procedural guidance, and responds to the arguments of the parties in a written report and recommendation. The hearing officer shall submit a recommendation:

(1) in favor of the claimant when the adverse action taken by the department is not supported by a preponderance of the evidence available as a result of the fair hearing;

(2) in favor of the department when the preponderance of the evidence, available as a result of the fair hearing, supports the adverse action taken by the department in accordance with federal and state laws and regulations; or

(3) any other result supported by the fair hearing record.

**C. Review of recommendation:** The fair hearing record and report and recommendation are reviewed by the appropriate department division director(s) or designee to ensure conformity with applicable federal and state laws and regulations.

**D. Final decision:** The hearing officer's recommendation may be adopted or rejected, in whole or in part, in

a final written decision by the appropriate department division director. The final fair hearing decision shall be based solely on the fair hearing record as defined in Paragraph (3) of Subsection I of 8.100.970.11 NMAC. The final fair hearing decision must summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and relevant federal and state laws and regulations. No person who participated in the original action under appeal may participate in arriving at the final fair hearing decision. The final fair hearing decision becomes part of the fair hearing record.

#### **E. Notice to claimant:**

The claimant, the authorized representative and the department shall be notified in writing of the final fair hearing decision and its effect on the benefits. If a claimant has an authorized representative, the authorized representative is mailed a copy of the final fair hearing decision. When a final fair hearing decision is adverse to the claimant, the decision shall include:

(1) a statement that the claimant has exhausted all administrative remedies available;

(2) the claimant's right to pursue judicial review of the final fair hearing decision; and

(3) information on how to file an appeal of the final fair hearing decision, the timeframe for filing an appeal and where the appeal may be filed.

[8.100.970.13 NMAC - Rp, 8.100.970.13 NMAC, 11/27/2013]

#### **8.100.970.14 IMPLEMENTATION OF DECISION:**

Unless stayed by court order, the department's final fair hearing decision is binding on all issues that have been the subject of the fair hearing as to that claimant. The local county office is responsible for assuring that decisions are implemented within the timeframes specified below. The final fair hearing decision serves as advanced notice for changes in benefits or services.

**A. Decision favorable to the department:** If assistance or benefits have been continued pending the outcome of the fair hearing and the decision is favorable to the department, the department shall take immediate action to adjust the payment and submit a claim for the excess benefit amount(s) paid pending the outcome of the fair hearing.

**B. Decision favorable to the claimant:**

(1) **Cash assistance programs:** When a fair hearing decision is favorable to the claimant, the department authorizes corrective payment. For incorrectly denied cases, corrected benefits are issued retroactively in the following manner:

(a) to the date of adverse action

or to the thirtieth (30th) day from the application date, whichever is earlier; or

(b) to the first day of the month that the case is actually eligible for benefits.

(c) For ongoing cases, the corrected cash assistance payments are retroactive to the first day of the month that the incorrect action became effective.

(2) **SNAP:** Decisions that result in an increased benefit shall be reflected in the claimant's next authorized allotment. The final fair hearing decision serves as verification for increased benefits.

(3) **Medical assistance programs:** When a fair hearing decision is favorable to the claimant and a case was incorrectly denied, corrected benefits are issued retroactively in the following manner:

(a) to the date of adverse action or to the thirtieth (30th) day from the application date, whichever is earlier; or

(b) to the first day of the month that the case is actually eligible for benefits;

(c) for ongoing cases, the corrected benefit is retroactive to the first day of the month that the incorrect action became effective;

(d) fair hearings for medical assistance programs involving the termination, modification, reduction or suspension of services are governed by applicable federal and state law and regulations, including 8.352 NMAC, et seq. [8.100.970.14 NMAC - Rp, 8.100.970.14 NMAC, 11/27/2013]

#### **8.100.970.15 JUDICIAL REVIEW**

**A. Right of appeal:** If a final fair hearing decision upholds the department's original action, the claimant has the right to pursue judicial review of the final fair hearing decision and is notified of that right in the department's final fair hearing decision.

#### **B. Timeliness:**

(1) **SNAP, LIHEAP, general assistance (GA), and medical assistance programs:** Unless otherwise provided by law, within thirty (30) days of the issuance of the department's final fair hearing decision, the claimant may appeal the final fair hearing decision by filing a notice of appeal with the appropriate district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

(2) **NMW:** Unless otherwise provided by law, within thirty (30) days of the issuance of the department's final fair hearing decision, the claimant may appeal the final fair hearing decision by filing a notice of appeal with the court of appeals pursuant to the provisions of Section 27-2B-13 NMSA 1978.

#### **C. Jurisdiction and standard of review:**

(1) The district court's jurisdiction is defined by statute at Section 27-3-3 NMSA 1978 and Section 39-3-1.1 NMSA 1978.

The court of appeals jurisdiction is defined by statute at Section 27-2B-13 NMSA 1978.

(2) The court of appeals or district court may set aside, reverse or remand the department's final fair hearing decision if it determines that:

(a) the department acted fraudulently, arbitrarily or capriciously;

(b) the final fair hearing decision was not supported by substantial evidence; or,

(c) the department did not act in accordance with federal and state laws and regulations.

**D. Benefits pending an appeal:** If the court decides in favor of the claimant, the department must immediately act in accordance with the court's final hearing decision. If the decision is in favor of the department, the department shall take any and all appropriate actions in accordance with Subsection A of 8.100.970.14 NMAC and 8.100.640 NMAC.

**E. Effect of appeal:** If the court of appeals decides in favor of the claimant, the HSD office of general counsel immediately notifies the county office as to the appropriate benefit issuance and adjustments, if any. If the decision is in favor of HSD, and a reduction has been pending the decision on appeal, an overpayment claim retroactive to the date the change should have been made is filed.

**F. Appealing the appellant court's decision:**

(1) **SNAP, LIHEAP, GA and medical assistance programs:** A party to the appeal to district court may appeal the district court's decision by filing a petition for writ of certiorari with the court of appeals, which may exercise its discretion to grant review. A party may seek further review by filing a petition for writ of certiorari with the supreme court. Section 39-3-1.1 NMSA 1978.

(2) **NMW:** A party may seek further review by filing a petition for writ of certiorari with the supreme court. [8.100.970.15 NMAC - Rp, 8.100.970.15 NMAC, 11/27/2013]

**History of 8.100.970 NMAC:**

**History of Repealed Material:** 8 NMAC 3.ISD General Provisions, filed 12/30/1994 - Repealed effective 7/1/1997

8.100.970 NMAC Oversight - Program Participation Hearings, filed 3/26/2001 - Repealed effective 11/27/2013

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

### TITLE 8 SOCIAL SERVICES CHAPTER 106 STATE FUNDED ASSISTANCE PART 431 PRE CERTIFIED VICTIMS OF HUMAN TRAFFICKING

**8.106.431.1 ISSUING AGENCY:** New Mexico Human Services Department. [8.106.431.1 NMAC - N, 12/01/2013]

**8.106.431.2 SCOPE:** The rule applies to the general public. [8.106.431.2 NMAC - N, 12/01/2013]

**8.106.431.3 STATUTORY AUTHORITY:** New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2 along with Chapter 30, Article 52, Section 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare function as may be assumed by the state. [8.106.431.3 NMAC - N, 12/01/2013]

**8.106.431.4 DURATION:** Permanent. [8.106.431.4 NMAC - N, 12/01/2013]

**8.106.431.5 EFFECTIVE DATE:** December 1, 2013, unless a later date is cited at the end of a section. [8.106.431.5 NMAC - N, 12/01/2013]

**8.106.431.6 OBJECTIVE:** The objective of the pre-certified victim of human trafficking assistance program is to provide financial assistance to non-citizen victims of human trafficking that are not eligible for existing federal assistance pending the federal certification under the Trafficking Victims' Protection Reauthorization Act of 2003. [8.106.431.6 NMAC - N, 12/01/2013]

**8.106.431.7 DEFINITIONS:**  
**A. Pre-certified victim of human trafficking (PCVHT):** means an alien who is a victim of human trafficking, who has not received the federal certification of a victim of human trafficking.

**B. Cooperating:** means is willing to assist in every reasonable way in the investigation and prosecution of the person charged with the crime of human trafficking, unless the identified victim is unable to cooperate with such a request due to physical or psychological trauma.

**C. Institutionalized:** means to be in the care of an institution, including but not limited to:

(1) a medical or mental health treatment facility; or

(2) a public non-medical institution, including facilities in the state prison system, jails and detention centers, as well as juvenile correction facilities. [8.106.431.7 NMAC - N, 12/01/2013]

### 8.106.431.8 CONSTRUCTING THE BENEFIT GROUP:

**A.** To be eligible for inclusion in the PCVHT benefit group, the individual must not be eligible for any other federal or state cash assistance program. The benefit group consists of the individual and their non-citizen dependents.

**B.** An individual shall not be eligible for inclusion in the benefit group if the individual is institutionalized. [8.106.431.8 NMAC - N, 12/01/2013]

### 8.106.431.9 APPLICATION SUBMITTAL:

**A.** The application shall be submitted on a form designated by the department either electronically or in writing and shall be made under oath by an applicant or by an applicant on behalf of a dependent child who resides in the home. The application must contain:

(1) a statement of the age of the applicant or dependent child;

(2) a statement of residence in New Mexico;

(3) all property in which the applicant has an interest;

(4) the income of the applicant or other benefit group members at the time the application is filed;

(5) the signature of the applicant; and

(6) other information required by the department.

**B.** Applications submitted for the pre-certified victims of human trafficking cash assistance will be referred to the service provider. [8.106.431.9 NMAC - N, 12/01/2013]

### 8.106.431.10 APPLICATION PROCESSING TIME LIMITS:

Pre certified victims of human trafficking cash assistance program applications shall be processed no later than 30 calendar days after receipt by the department or its designee. [8.106.431.10 NMAC - N, 12/01/2013]

### 8.106.431.11 APPROVAL

**EFFECTIVE DATE:** Pre certified victims of human trafficking cash assistance for approved applications shall be effective the first day of the month the application was submitted to the department or its designee, for a full month benefit. [8.106.431.11 NMAC - N, 12/01/2013]

### 8.106.431.12 REPORTING



**REQUIREMENTS:**

**A. Department responsibilities:** The department or its designee shall inform the benefit group of its responsibility to report changes. Appropriate action shall be taken to determine if the change affects eligibility or benefit amount. The date the change is reported and the action taken shall be documented. In some circumstances the department shall request clarification during a certification period whenever information becomes known to the department indicating a possible change in a benefit group's circumstances that may affect eligibility or benefit amount. Circumstances that may require follow-up review include, but are not limited to:

(1) cooperation with law enforcement or prosecution of the person charged with the crime of human trafficking; and

(2) verification and status of application for federal certification of victim of human trafficking.

**B. Benefit group responsibilities at application:** A benefit group must report all changes affecting eligibility and benefit amount that may have occurred since the date the application was filed and before the date of the interview. Changes occurring after the interview, but before the date of the approval notice, must be reported by the benefit group within 10 days of the date the change becomes known to the benefit group.

**C. Responsibility to report:** Within 10 days of the date the change becomes known to the benefit group, a recipient of the pre-certified victims of human trafficking cash assistance is required to report the following changes:

(1) a benefit group's income in excess of 85 percent of federal poverty guidelines for the size of the benefit group;

(2) a benefit group, or the department receives evidence that the eligible recipient has received the federal certification of a victim of human trafficking by the federal office of refugee resettlement;

(3) the victim of human trafficking is no longer cooperating with law enforcement or the prosecution of the person charged with the crime of human trafficking;

(4) the benefit group has moved from the state or intends to move from the state on a specific date;

(5) a benefit group requests closure; or

(6) the department receives documented evidence that the head of benefit group has died.

**D. Effective date of change:** Changes to eligibility based on reported changes shall be effective pursuant to 8.106.630.9 NMAC.

[8.106.431.12 NMAC - N, 12/01/2013]

**8.106.431.13 CERTIFICATION**

**PERIODS:** The certification period will be one year with semiannual reporting requirements.

[8.106.431.13 NMAC - N, 12/01/2013]

**8.106.431.14 ELIGIBILITY RECERTIFICATION:**

**A. Recertification of eligibility:** The department shall provide notice of recertification 45 days prior to the end of the certification and make a prospective determination of eligibility beginning the month following the month the certification period expires. The recertification shall consist of a determination of eligibility for an additional period of time, redetermination of the amount of cash assistance payment and a complete review of all conditions of eligibility. Current financial eligibility must be reviewed at the end of the certification period for the specific program to determine continued eligibility for a new period of time.

**B. Interview:** A face-to-face interview shall take place at the end of the certification period, unless the recipient's physical or mental condition makes the interview impossible or inadvisable. The interview may be waived on a case-by-case basis for hardship reasons found in 8.106.110.11 NMAC. During the interview the department shall review with the recipient the possible changes in circumstances that must be reported and may affect the client's eligibility or benefit amount.

**C. Recertification timeliness:**

(1) **Timely recertification:** Recertification forms submitted before the 15th of the expiration month will be considered timely.

(2) **Untimely reapplication:** Recertification forms submitted after the 15th but before the end of a benefit group's certification period expires have lost the right to uninterrupted benefits.

**D. Verification:** A benefit group that has recertified timely, completed an interview and provided required verification specific to eligibility, will be given 10 days to provide the verification or until the certification period expires, whichever is longer. If the certification period expires before the 10-day deadline for submitting the required verification, the benefit group will be entitled to a full month's benefits, if eligible, within five days after verification is submitted.

**E. Agency failure to act:** A benefit group that has made a timely recertification, but due to agency error, is not determined eligible in sufficient time to provide for issuance by the benefit group's normal issuance date in the following month, will be entitled to restoration of lost benefits. [8.106.431.14 NMAC - N, 12/01/2013]

**8.106.431.15 RESOURCE**

**STANDARDS:** Refer to 8.106.510 NMAC [8.106.431.15 NMAC - N, 12/01/2013]

**8.106.431.16 INCOME:** Refer to 8.106.520 NMAC

[8.106.431.16 NMAC - N, 12/01/2013]

**HISTORY OF 8.106.431 NMAC:** [RESERVED]

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

**This is an amendment to 8.100.100 NMAC, Sections 14 and 15, effective 11/27/2013**

**8.100.100.14 CLIENT INFORMATION****A. ISD case record**

(1) ISD case records, consisting of forms, records, narrative material, correspondence and documents, are [maintained in the ISD county offices] scanned into electronic format and maintained in the department's secure electronic data management system. Documents submitted in person will be electronically scanned and returned to the individual. Original documents mailed to or left with the office will be photocopied and the originals mailed back to the client at his/her last known address known to the department. The copied documents will be electronically scanned and destroyed once successful completion of a scan into electronic format is confirmed. The [purpose of the record is to document] case record documents the current and historical eligibility of a recipient group and thereby to establish the validity of decisions to [provide] approve or deny assistance.

(2) Case records are the property of [HSD] the department and are established and maintained solely for use in the [administration of HSD's] public assistance programs administered by the department. Information contained in the [records] case record(s) is confidential and is released only under the limited circumstances and conditions [described in 8.100.100.13-15 NMAC] as provided in federal and state laws and regulations, including 8.100.100 NMAC, Sections 13 through 15. Case records and their contents must remain in the possession of [HSD;] the department, its contractors, or approved federal employees [-unless a court orders its release]. Copies of case records may be released in accordance with federal and state laws and regulations or pursuant to a court order.

(3) **[HSD] Electronic eligibility system information:** [Automated] Client information stored on [HSD] (the

department's automated system for client eligibility] the department's electronic eligibility system is subject to the same guidelines for release of information as the [HSD county] department's case record.

**B. Persons with access to confidential information**

(1) **Client:** The name of an [individual] individual(s) providing confidential information to the department regarding a client is not released to a client or his or her authorized representative. The release of all other case information is subject to the following conditions:

(a) A client or his or her authorized representative must complete a request for access to a case record [form;] each time [he/ she] he or she wishes to have access to the case record. If the client wishes to have [a] his or her authorized representative review the record in [his/her] his or her absence, the client must [complete the proper form and indicate the representative's name] provide formal documentation authorizing the named individual(s) to access the identified case information for a specified purpose and time frame. This includes [individuals] an individual(s) acting as the client's authorized representative in a fair hearing. [No one may sign the form on the client's behalf.] Only the client or the client's authorized representative may authorize another individual(s) to review the record.

(b) The record must be reviewed in the presence of the county director or designee.

(c) If a client disagrees with information contained in the case record, [he/ she] he or she may make a written rebuttal which is made part of the case record. [No contested] Contested material may not be removed from the case record.

(2) **Inquiries on client's behalf:** Inquiries made [as the result of a client's complaint regarding his/her] on behalf of a client regarding eligibility for or amount of assistance received are treated as coming from private individuals, regardless of whether they come from a private citizen, elected official, or public or private agency. [The letter of complaint, or a signed form permitting HSD to release information, must be received before the inquiry can be answered.] The department must receive formal documentation from the client or his or her authorized representative permitting the release of information.

(3) **Department employees:** Confidential information is available to [HSD] employees or agents of [HSD] the department who need it in connection with the [administration of HSD and its] various services and public assistance programs administered by the department. This includes field and central office staff, representatives of the [HSD] child support enforcement [bureau] division

[CSED] and medical assistance division [as well as] [MAD], and private firms or other agencies under contract with [HSD who] the department that perform work or provide services related to [financial] public assistance programs. Confidential information is also available to employees of the federal government concerned with the [administration of HSD] public assistance programs administered by the department.

(4) **[Non-HSD] Non-department employees:** Confidential information about applicants for and recipients of [financial] public assistance may be released to other agencies or individuals including law enforcement officers [who] that meet all of the following standards:

(a) agency or individual is involved in the administration of a federal or a federally-assisted program [which] that provides assistance in cash, in kind or in services, directly to individuals on the basis of need;

(b) information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients;

(c) agency or individual is subject to standards of confidentiality comparable to those of [HSD] the department; and,

(d) agency or individual has actual or implied consent of the applicant or recipient to release the information; in an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter; consent may be considered as implied if a recipient or member of the assistance group has made application to the inquiring agency for a benefit or service.

(5) **Funding agencies/auditors:** [HSD] The department's public assistance programs' funding agencies and auditors may have access to and use of client information and is subject to the confidentiality requirements specified above and [to all other relevant statutes and restrictions] in accordance with federal and state laws and regulations.

(6) **Employers:** To claim a tax credit on wages paid to [financial] cash assistance recipients, as provided under the Revenue Act of 1978, an employer may request and receive information from [HSD] the department as to whether an employee is a recipient who meets the criteria for either [(1)] (a) the welfare tax credit (NMW recipient during the three (3) month period consisting of the month hired and the two (2) months immediately preceding the date of hire); or [(2)] (b) the targeted jobs tax credit (recipient of [general assistance] GA who received GA for at least [30] thirty (30) days, ending within the [60-day] sixty (60) day period which ends on the hiring date). Such releases are to be made on a case by case

basis and must be accompanied by a consent to release information signed by the client.

**C. Medical records:**

Medical reports and medical information in [HSD's] the department's possession, regardless of how they were obtained, may not be shown to a client, unless they are [relevant to] released as part of a fair hearing. Because of the potentially upsetting nature of the facts contained in some reports and because a physician's knowledge is frequently necessary to interpret those facts, a client [is always] shall be referred to his/ her physician regarding any questions.

**D. Court proceedings**

**(1) Program-related court cases**

(a) Criminal or civil court proceedings involving the establishment of paternity and enforcement of child and medical support for recipients, prosecution for fraud, suits for recovery of fraudulently obtained public assistance benefits, third-party recovery, and custody hearings regarding custody of children for whom [financial] public assistance is being provided are considered part of [HSD's administration of financial] the public assistance programs administered by the department. [HSD and/ or] The department or its interests may be represented in such cases by an attorney from the office of general counsel (OGC), CSED, CYFD, by a local district attorney, by a representative of the attorney general's office or by a federal prosecutor.

(b) If information contained in a case record or known to [an HSD] a department employee is needed in preparation for or as part of a court proceeding, [HSD employees] the department employee(s) will cooperate in making sure that needed information is supplied. Although employees may receive a subpoena to testify in such a court proceeding, a subpoena is not needed if the court proceeding relates to the [administration of the program] public assistance programs administered by the department. To the extent possible, attorneys responsible for a case, or other persons helping in preparing the case for court action, will notify [a worker] the department, or other custodian of a case record, in advance and in writing, of the need for court testimony, whether the record should be brought, and of the time, date and place of hearing. If there is not enough time before the hearing to provide written notice, a phone call, [which the worker] that the department logs in the narrative section of the case record, is sufficient. If it is not clear whether a court proceeding relates to the [administration of financial] public assistance programs administered by the department, the [field] local county office may contact the [office of general counsel] OGC or the [income support division] appropriate division director's office for help.

**(2) [External] Non-program related court cases:**

~~(a) On occasion, an HSD employee may be contacted regarding clients about whom he/she has information which may be pertinent to a court proceeding, but which is not connected with the administration of HSD programs. While HSD's regulations would prohibit giving testimony in such cases, a refusal on the part of an employee who is expected to testify could result in his/her being jailed or fined. No employee is expected to do this. The following section clarifies the procedures for release of information in court proceedings not related to the administration of assistance programs. It also provides instructions for documenting the appropriate steps to avoid a breach of confidentiality.~~

~~(b) Disclosure of confidential information in connection with court proceedings may be requested in one of three ways: (1) the employee may be requested, without a subpoena, to appear as a witness and to testify to matters that include confidential information; (2) the employee may be subpoenaed to appear as a witness; or (3) a subpoena may be issued directing the employee both to appear as a witness and to produce the ISD records in court (subpoena duces tecum).~~

~~(c) Request to appear: A request to appear may come from the client or his/her attorney or from some third party. An HSD employee complies only if such an appearance is approved through appropriate HSD procedures. A request must be made by the client or his/her attorney, and must relate directly to that recipient. The written request must contain a statement that the client waives his/her right to confidentiality in making the request.~~

~~(d) Subpoena as witness: A subpoena is a written court order directing an individual to appear in court for the purpose of giving testimony.~~

~~(i) Upon receiving a subpoena to testify regarding confidential information, an HSD employee must immediately contact, in writing if time permits, the office of general counsel (OGC) and explains the particulars of the case.~~

~~(ii) OGC prepares a letter from the HSD secretary for the employee to present to the court. The letter requests that the employee be excused from testifying regarding confidential information.~~

~~(iii) The employee presents the letter to the court, with copies to all parties involved in the proceeding.~~

~~(iv) The employee follows the instructions of the court regarding the necessity for his/her testimony.~~

~~(v) The subpoena and a copy of the secretary's letter are kept in the case record as proof of HSD's actions to maintain confidentiality.~~

~~(vi) If time allows, the contacts with OGC are made in writing. If this is not possible, the contact may be made by telephone, to be followed up in writing.~~

~~(vii) Note: In cases where the OGC cooperates with state or federal law enforcement officials in the development of a court case connected with the administration of an HSD program, it is not appropriate to introduce the secretary's letter into the proceedings. In these cases, OGC notifies the employee that the letter is not necessary. The notification is retained in the record.~~

~~(e) Subpoena duces tecum: A subpoena duces tecum is an order directing the appearance of the custodian of records and the production of specified records in court. By law, the official custodian of all departmental records is the HSD secretary; however, custodianship of all county records is expressly delegated to each county director or the person in charge of the office in his/her absence. Other than situations where the court hearing is considered part of program administration, division records are not produced in court without a subpoena duces tecum. If such a subpoena is issued, the procedures explained below should be followed.~~

~~(i) A letter is sent to the employee who has been summoned to testify regarding confidential information. When the letter is received, a copy is sent to each attorney involved in the proceeding. (Attorneys' names are provided by the OGC staff).~~

~~(ii) At the time of the hearing, the employee should have with him/her the original of the letter and three copies; as well as the case record and/or other documents which have been subpoenaed (by subpoena duces tecum).~~

~~(iii) Following the oath or affirmation, the employee should give his/her name and make a statement similar to the following: "I am an employee of the New Mexico human services department and as such I would like to make a statement to the court. Under state and federal laws and regulations, employees of HSD are required to safeguard information to which they are a party as a result of their position. I would like to present the following letter to the court regarding the requirement to maintain confidentiality regarding our clients."~~

~~(iv) The employee should at this point give the original to the judge. The extra copies may be given to the attorneys if they have not received them. The judge then decides whether the employee may testify. The employee follows the instructions of the court regarding the necessity for his/her testimony.]~~

~~Any person or attorney seeking confidential information from a case record for a non-program related court case should direct a~~

properly issued subpoena to the appropriate local county office with a copy also sent to the department's OGC. The department will seek to preserve the confidentiality of the case record unless the release of the information is expressly authorized by federal and state laws and regulations or is otherwise ordered by a court of competent jurisdiction.

[07/01/97, 04/01/98; 8.100.100.14 NMAC - Rn, 8 NMAC 3.ISD.031, 04/13/2001; A, 11/27/2013]

**8.100.100.15 P U B L I C INFORMATION ACT****A. Policy and procedures manual;**

~~(1) Issuing manual to public custodians: This manual is issued without charge to public custodians who make it available to a substantial number of the recipient population.~~

~~(2) Issuing manual to private custodians: This manual is available to private groups or individuals who request it. A nominal fee is charged to cover the cost of printing.~~

~~(3) Accessibility to applicants or recipients of assistance: This manual is available for inspection at the ISD central and county offices, during regular office hours, to individuals either applying for or receiving assistance. On request, the central or county office reproduces, without charge, limited specific policy material for an applicant or recipient, or representative, to decide whether a fair hearing should be requested or to prepare for a fair hearing.] The regulations for the public assistance programs administered by the department are located on the official website of the New Mexico administrative code located at <http://www.nmcp.state.nm.us/nmac/>. Procedures and policy guidance is located at the official department website under the specified division at <http://www.hsd.state.nm.us/>. Copies of appropriate regulations and procedures and policy guidance will be provided to the claimant as part of the summary of evidence in a fair hearing pursuant to Subsection F of 8.100.970.10 NMAC.~~

**B. State program and plan materials:** [HSD handbooks are available for inspection on request at each local ISD office as well as at the central office. State plan documents may be reviewed at the office of the director of the division having responsibility for the plan.] The department state plans are available at the official department website under the specified division at <http://www.hsd.state.nm.us/>.

**C. Other printed materials:** Additional printed materials, such as brochures and pamphlets describing basic financial and nonfinancial eligibility



criteria, the application process, and participant rights and responsibilities, are available at the local [HSD] county offices, social security [and] administration offices, state employment services offices, [and] other agencies providing [human services] public assistance services, and the official department website at <http://www.hsd.state.nm.us/>.

**D. Federal laws, regulations and other materials:** Federal materials should be obtained by contacting the responsible federal agency directly. The university of New Mexico is a federal repository. Many federal agencies post regulations, planning documents and requirements as well as program instructions on the internet.

[04/01/98; 8.100.100.15 NMAC - Rn, 8 NMAC 3.ISD.035, 04/13/2001; A, 11/27/2013]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.100.110 NMAC, Sections 8, 9 and 11, effective 11/27/2013

**8.100.110.8 RIGHT TO APPLY:** Each individual [wishing to do so] shall have the opportunity to apply for public assistance [from] programs administered by the [HSD] department or to have an authorized representative do so on [his/her] his or her behalf. An application may be made whether or not it appears as if the applicant is eligible. [Application is on a form] Applications are made in a format prescribed by the department to include paper forms or electronic submissions.

**A. Screening:** Every applicant shall have the opportunity to meet, face to face or telephonically, with [an HSD] a department employee [on the same day an application is submitted] when an application is submitted during regular business hours. The employee will review the application, assist the applicant in completing the application, if it is incomplete or assistance is otherwise necessary, and will assist in identifying the public assistance [programs for which] program(s) that the applicant wishes to apply.

**[B:] (1) Screening for [food stamp] supplemental nutrition assistance program (SNAP) expedited service:** The employee will screen [food-stamp] SNAP applicants for entitlement to expedited [food-stamp] processing, using [a standard form and stamp] the standard formula and documenting the application, as appropriate.

**[4+] (a)** If the applicant is eligible for expedited service, the employee will process the [food-stamp] SNAP application within [twenty-four hours of determining

the household is expedited] the specified timeframes outlined in federal and state laws and regulations.

**[2+] (b)** If [entitlement to] expedited [food-stamp] SNAP processing is denied, the applicant will be informed of the right to request an [informal] agency review conference to be held within two (2) days of the request unless the household [asks for] requests a later date pursuant to Paragraph (4) of Subsection E of 8.100.970.10 NMAC.

**[E:] (2) Proof checklist:** The employee will provide the applicant with [a standard form,] the proof checklist [; which] on a standard department form that identifies the [eligibility factors] verification requirements needed for each public assistance program and the various methods [by which] that each factor may be verified or established. The employee will explain why the [information] verification is needed, how to obtain the [information] verification, provide examples of the types of verification, the period of time the verification should cover, and offer to help the applicant obtain the [information] verification.

**[D:] (3) Scheduling the appointment:** The employee will schedule an application interview to be held within [40] ten (10) working days of the date the application was submitted [and which] that is, to the extent possible, convenient for both the applicant and the [worker] department. The employee will provide the applicant with a written appointment letter [which] that will include: [notice of] the date, time and place of the appointment, the name and telephone number of the [ISS assigned to the application] local county office, the consequences of missing an appointment, how to reschedule an appointment, the possibility of a waiver of the [office] in-office interview, [(financial assistance and medicaid) or face-to-face interview (food stamps)] and that the spouse, any [another] other responsible person in the household, or an authorized representative may attend the interview with the applicant or in the applicant's place.

**[E:] Requesting a waiver:** Upon request, the employee will provide a standard form on which the applicant may request a waiver of the face-to-face interview (food stamps) or of the office interview (financial assistance and medicaid) or designate an authorized representative.

**B. Alternative interviews:** Specific requirements for telephone and out of office interviews are outlined in each program's chapter on this topic.

**[F:] C. Screening by mail or drop box:** If an applicant mails in the application, leaves the application in a drop box, or is unwilling or unable to be screened in person, [HSD] the department will screen the application for all public assistance programs and for expedited [food

stamp] SNAP eligibility upon receipt. An appointment letter and the proof checklist, with appropriate boxes marked, will be mailed to the applicant on the same day as the date of application.

**[G:] D. Resource planning session:** No later than [45] forty-five (45) days after [an application is filed, the recipient, or applicant if the application has not yet been approved,] the date of application, the individual applying for benefits shall be provided a resource planning session. The session shall ascertain the immediate needs of the individual or family, shall help the individual to assess his or her financial and non-financial options and shall result in referrals to such other agencies or programs as the individual deems appropriate to his or her specific needs.

[07/01/97, 04/01/98; 8.100.110.8 NMAC - Rn, 8 NMAC 3.ISD.111, 04/13/2001; A, 11/27/2013]

**8.100.110.9 SUBMISSION OF FORMS:** Applicants may submit forms to a local county office in person [; or] through an authorized representative, through the approved department web portal, by fax or by mail.

**A. Incomplete application:** An applicant has the right to file an incomplete form as long as the form contains the applicant's name, address and the signature of a responsible household or benefit group member or the household or benefit group's authorized representative, if one is designated.

**B. Requesting application forms:** [An applicant may request an application form by mail or by telephone. In either case, the ISD staff must mail the requested form to the applicant within 24 hours.] When the department receives a request for an application for assistance, the department will mail, fax or hand deliver a paper application and provide the approved department web portal address (for online applications), as indicated by the requestor, on the same day the request is received by the department.

[07/01/97; 8.100.110.9 NMAC - Rn, 8 NMAC 3.ISD.112, 04/13/2001; A, 11/27/2013]

**8.100.110.11 PROCESSING APPLICATIONS**

**A. [FA/FS] Financial assistance (FA)/SNAP combined cases:** To facilitate participation in [the food stamp program] SNAP, the Food Stamp Act requires that individuals applying for [financial assistance (FA)] FA be able to apply for [food-stamp benefits (FS)] SNAP benefits at the same time.

**(1) Application:** A household applying jointly for FA and [FS] SNAP is required to file only one application on a

form prescribed by the department. The [form] application contains the information necessary to complete the application process whether it was submitted by paper format or electronically online. If it is unclear to the department whether the applicant intends to apply for [FS further information may be provided at the] SNAP, the department will ask the applicant during the FA interview[;] or other contact may be made with the applicant. An application for [FS] SNAP will be processed in accordance with time standards and procedures set forth in federal and state laws and regulations governing [the food stamp program] SNAP, including expedited processing provisions.

**(2) Single interview:** Whenever possible, a single interview will be held with an applicant who applies jointly for FA and [FS] SNAP benefits.

**(3) Categorical eligibility:** A [FS] SNAP household [which] that meets criteria set forth in 8.139.420.8 NMAC is categorically eligible. If a household does not meet [FS] SNAP eligibility criteria, but is potentially categorically eligible, the [caseworker] department must postpone denying the [FS] SNAP application until the [30th] thirtieth (30th) day.

**(4) Application processing:** As a result of differences in FA and [FS] SNAP application processing procedures and timeliness standards, eligibility for [FS] SNAP benefits may be determined prior to FA eligibility determination. Action on a [FS] SNAP application may be postponed until categorical eligibility is established to afford the household any benefits of this provision. However, [FS] SNAP approval may not exceed the applicable SNAP expedited or regular application processing timeliness standards.

**(5) Application is denied:** If an FA application is denied, an applicant is not required to file a new [FS] SNAP application. [FS] SNAP eligibility will be determined on the basis of the original application filed jointly for FA and [FS] SNAP, as well as any other documentation and information obtained in the course of the FA determination [which] that is relevant to [FS] SNAP eligibility and benefit amount. A [FS] SNAP application may not be denied based on an FA denial reason, but based on the SNAP eligibility criteria.

**(6) Denial retrieval:** A [FS] SNAP application [which] that is denied on the [30th] thirtieth (30th) day must be readily retrievable if the household is later determined eligible for [financial assistance or SSI] FA or supplemental security income (SSI) benefits. When this occurs, the [ISS] department will use the original [FS] SNAP application, update any information and approve the [FS] SNAP case with prorated benefits as of the date of [financial assistance] FA or SSI approval or payment effective

date, whichever is later. A second interview is not necessary, however, the applicant or authorized representative should initial all changes and [re-date and re-sign the original FS application] sign and date the verification of the changes.

#### **B. Reporting changes:**

All participants in [ISD] public assistance programs administered by the department are required to report any changed circumstances [which] that relate to their eligibility for assistance or level of benefits. Each participant is provided with a list of the specific information he/she is required to report and the reporting time limits. Clients who report a change for FA are considered to have reported the change for [food stamp] SNAP purposes. When a change is reported, [ISD] the department must ensure that adjustments are made in the client's eligibility status or allotment for those months [in which] that the reported change is in effect, in accordance with each program's chapter on this topic.

**(1) Notice:** Whenever a client's benefits are altered as a result of changes, or whenever a certification period is shortened to reflect changes in the household's circumstances, the client is notified of the action by [ISD] the department in accordance with the notice requirements. If the certification period is shortened, the household's certification period may not end any earlier than the second month following the month the [ISS] department determines the certification period should end. This allows adequate time to send a notice of expiration and for the household to timely reapply. If FA benefits are terminated, but the household is still eligible for [food stamp] SNAP benefits, members of the household must be informed about [food stamp work registration and participation] SNAP employment & training and ABAWD requirements, if applicable.

**(2) FA reduction or termination within [FS] SNAP certification period:** Whenever a reported change results in the reduction or termination of a client's FA benefits within the [food stamp] SNAP certification period, action will be taken to determine how the change affects the client's [food stamp] SNAP eligibility and benefit levels.

**(a) Sufficient information:** When there is sufficient information to determine how the change affects [food stamp] SNAP eligibility and benefit levels, the following actions will be taken:

**(i) Reduction/termination of [food stamp] SNAP benefits:** [If the change requires a reduction or termination in either or both the FA, FS payment, a single notice of adverse action will be issued for both the FA and food stamp actions. If the client requests a fair hearing within the period provided by the

notice, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. If a fair hearing is requested for both programs' benefits, the hearing is conducted according to FA procedures and time standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change is made effective in accordance with the procedures specified in the food stamp program chapter on reporting and recertification.] A change that reduces or terminates SNAP, FA or both benefits will generate a notice of adverse action for each category of assistance that is sent to the household and authorized representative. The notice(s) of adverse action will inform the household of its fair hearing rights and method for requesting continuation of benefits.

**(ii) Increase in [food stamp] SNAP benefits:** If the reduction/termination of FA benefits results in the increase of [food stamp] SNAP benefits, the increase in [food stamps] SNAP benefits occurs after the FA notice period expires and the FA grant is actually reduced or terminated.

**(b) Insufficient information:** Whenever there is insufficient information to determine how the FA change affects the client's [food stamp] SNAP eligibility and benefit level, the following actions shall be taken:

**(i) FA notice of adverse action required:** Where an FA notice of adverse action has been sent and the client requests a fair hearing and FA benefits are continued pending the appeal, the household's [food stamp] SNAP benefits will be continued on the same basis. However, the household must [reapply for food stamp program] recertify for SNAP benefits if the [food stamp program] SNAP certification period expires before the fair hearing process is completed.

**(ii) FA notice of adverse action not required:** If an FA notice of adverse action is not required, or the client decides not to request a fair hearing and continuation of FA benefits, the household must be notified that its certification period will expire at the end of the month following the month the notice of expiration is sent, and that it must reapply if it wishes to continue to participate in the [the food stamp program] SNAP. The notice of expiration will also explain to the household that the certification period is expiring because of changes in its circumstances that may affect its [food stamp program] SNAP eligibility and benefit level.

**(3) Certification periods:** The [ISS] department will assign FA and [FS] SNAP certification periods that expire at the

same time. In no event are FA [food-stamp] and SNAP benefits to be continued beyond the end of a certification period.

(4) **Recertification:** Households in which all members are contained in a single [financial-assistance] FA grant or in a single [GA] general assistance (GA) grant will have their [food-stamp] SNAP interviews for recertification, to the extent possible, at the same time they are redetermined for FA.

(5) **Reopened cases:** If the FA and [FS] SNAP cases are closed or the [FS] SNAP certification expires, and the former recipient reapplies for one or both programs for the month following closure or expiration, benefits are prorated from the date of application for [food-stamps] SNAP. If reapplication is made for FA or [food-stamps] SNAP or both, following a break of one full month or more, [food-stamp and financial-assistance] SNAP and FA benefits for the month of application will be determined prospectively under beginning month provisions.

#### C. Other processing standards

(1) **SSI Households:** Households in which all members are applying for SSI benefits are handled in the same manner as [financial-assistance] FA households with respect to the postponement of [FS] SNAP approval or denial and the retrieval of denied [food-stamp] SNAP applications.

(a) Since the [ISS does not have first-hand knowledge of the] department cannot monitor the progress of the SSI application, and if the [food-stamp] SNAP application is denied on the [30th] thirtieth (30th) day, the household must be advised to reapply for [food-stamps] SNAP when it has been notified of SSI approval.

(b) SSI households are also entitled to apply for [food-stamps] SNAP and be recertified at [SSA] the social security administration (SSA) offices. SSA will accept the application and forward the completed application, transmittal form, and any available verification to the designated [food-stamp] local ISD field office. When SSA accepts and refers the application, the household is not required to appear at a second office interview, although the [ISS] department may request additional verification or information needed to make an eligibility determination. Processing time limits begin when the [food-stamp] SNAP application is registered at the SSA office.

(2) **GA households:** Households in which all members are applying for state administered [general-assistance-(GA)] GA are to be processed jointly for GA and [food-stamp] SNAP benefits. However, since these households are not, nor will they become categorically eligible, the provisions to postpone approval or denial and to retrieve denied [food-stamp] SNAP applications do not apply.

#### (3) Mixed households:

Households in which some but not all of the household members are applying for NMW benefits will file separate applications for FA and [food-stamp] SNAP benefits. Applications will be handled under the same processing provisions required for nonfinancial assistance households. However, if those not applying for [financial-assistance] FA benefits are recipients of SSI, the [food-stamp] SNAP application would be jointly processed, because SSI recipients are already considered FA recipients.

[07/01/97, 04/01/98; 8.100.110.11 NMAC - Rn, 8 NMAC 3.ISD.114, 04/13/2001; A, 04/01/2010; A, 11/27/2013]

### NEW MEXICO REAL ESTATE COMMISSION

The New Mexico Real Estate Commission repeals its rule entitled **Foreign Brokers, 16.61.27 NMAC (filed 11-30-2001), effective 1-1-2014.**

### NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.1 NMAC, Section 7, effective 1-1-2014.

#### 16.61.17 DEFINITIONS:

A. Acceptable financial institution: is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

B. Agency: the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

C. Agent: the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker.

D. Approved education course: a commission approved course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

E. Approved training course: A commission approved course offering in personal and property protection

for the broker and clients; offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

F. Associate broker: a person holding a New Mexico associate broker's license who is affiliated with a New Mexico qualifying broker.

G. Broker: any person holding a current New Mexico associate broker's or qualifying broker's real estate license.

H. Brokerage: a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.

I. Brokerage relationship: the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.

J. Brokerage trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.

K. Broker duties: the duties that brokers owe to their clients and customers in the course of a real estate transaction.

L. Broker in charge: a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.

M. Client: a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

N. Credit hours(s): credits toward education requirements as assigned by the real estate commission for each commission-approved course.

O. Custodial trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner's name with the qualifying broker as trustee. This account may be interest bearing.

P. Customer: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

Q. Designated agent: a broker who is designated in writing by their



qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

R. Designated agency: a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another as agent of the seller in the same transaction.

S. Distance education: distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

T. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

U. Dual agent: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

V. Employee: for the purposes of Section 61-29-2 C (1) of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following:

(1) does the employer withhold income tax from the person's wages, salary, or commission;

(2) does the employer pay a portion of the person's FICA tax;

(3) is the person covered by workers' compensation insurance;

(4) does the employer make unemployment insurance contributions on behalf of the person.

W. Errors and omissions insurance: a type of professional liability insurance that provides

insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of the specific insurance policy or policies in place.

X. Exclusive agency: an

express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

Y. Expired license: an associate broker's or qualifying broker's license that has not been renewed as of the last day of the month following the broker's birth month at the end of the broker's three-year licensing cycle.

Z. Express written agreement: any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

AA. Facilitator: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

~~[BB.] Foreign broker: a real estate brokerage licensed by a jurisdiction other than New Mexico engaged in real estate-related activities in New Mexico.~~

~~[CC.] BB. Inactive broker: a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.~~

~~[DD.] CC. In house transaction: a transaction that occurs under the supervision of one qualifying broker in the same brokerage.~~

~~[EE.] DD. Land title trust account: a pooled interest-bearing account subject to the land title trust fund act.~~

~~[FF.] EE. Mandatory course: the commission-approved course required of all brokers, except exempt brokers, as a condition of license renewal.~~

~~FF. Military service member: a person, or the spouse of a person, who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the National Guard.~~

~~GG. Owner or Property Owner: a person who is recognized and held responsible by law as the owner of real property, including real property held by any legally recognized entity in which the owner has an interest of ten (10) percent or more.~~

~~[GG.] HH. Party to the transaction: a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an~~

obligation.

~~[HH.] II. Person: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.~~

~~[H.] JJ. Post-licensing course: the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.~~

~~[H.] KK. Principal: any person who authorizes or employs another to do certain acts on behalf of that person.~~

~~[KK:] LL. Property ledger: a record of deposits and disbursements within a trust account that are associated with the same property or owner.~~

~~[L:] MM. Property management: real estate services as specified by a management agreement which include, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports and other documents. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management.~~

~~[MM:] NN. Property management trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.~~

~~[NN:] OO. Property manager: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others.~~

~~[OO:] PP. Qualifying broker: a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.~~

~~OO. Recent veteran: a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for a real estate broker's license.~~

~~[PP:] RR. Reconciliation: the process by which the property ledgers within a trust account are balanced with the trust account and the trust account is balanced with the bank statement.~~

~~[QQ:] SS. Referral: the communication by one broker or brokerage~~

to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

[RR:] TT. Responsible person: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Section 61-29-12 A (7) NMSA 1978.

[SS:] UU. Scope of authority: the range of authority granted by the principal to act on behalf of that principal.

[FF:] VV. Short-term/vacation rental: with the exception of hotels and motels, the rental of real property for a period of 29 days or less.

[UU:] WW. Special trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

[VV:] XX. Sponsor: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

[WW:] YY. Subagent: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

[XX:] ZZ. Transaction: any real estate activity subject to the jurisdiction of the commission.

[YY:] AAA. Transaction broker: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

[ZZ:] BBB. Trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account, custodial trust account or special trust account.

[AAA:] CCC. Unlicensed assistant: a person who does not hold an active New Mexico broker's license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2012; A 1-1-2014]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.3 NMAC, Section 9, effective 1-1-2014.

### 16.61.3.9 EXAMINATION AND LICENSING REQUIREMENTS:

A. Associate broker's license: prior to applying for an associate broker's license, an applicant must pass the real estate broker's examination prescribed by the commission.

B. Examination application.

(1) Applications to take the broker's examination are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30 hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application.

(2) Exam candidates currently licensed as real estate salespersons or brokers in other states or jurisdictions will be exempted from completing the real estate principles and practice and real estate law courses in New Mexico if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30 hour broker basics course.

(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30 hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one 30 hour pre-

licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examinations six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that he/she has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

E. License application.

(1) Before being issued a qualifying broker's license, an applicant must document that their associate broker's or equivalent license has been on active status with a real estate brokerage for two of the last five years immediately preceding their application to become a qualifying broker, and must provide a certificate of completion of the commission-approved 30 hour brokerage office administration course. Applicants with current licenses who can document that they were New Mexico



qualifying broker's on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

(2) Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the associate broker's examination prior to being issued a qualifying broker's license.

(3) An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied with documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

F. Military service members.

(1) The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker's or qualifying broker's license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.

(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal.

[16.61.3.9 NMAC - Rp, 16.61.3.8 NMAC, 1-1-2012; A, 1-1-2014]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.7 NMAC, Section 8, effective 1-1-2014.

### 16.61.7.8 REQUIREMENTS:

A. All persons applying for or renewing a New Mexico real estate broker's license or upgrading an associate broker's license to a qualifying broker's license must [submit to the New Mexico department of public safety two completed fingerprint cards, a completed company or law enforcement agency fingerprint certification form, and a check or money order for the applicable fee payable to the department of public safety] be fingerprinted as a condition of licensure or license renewal.

B. [Applicants for licensure or license renewal shall submit to the commission along with their license or renewal application a copy of the fingerprint certification form completed by the company or law enforcement agency that fingerprints the applicant. The commission will not issue a new license prior to receiving a report from the federal bureau of investigation of the results of the match of the applicant's fingerprints with state and national arrest record databases. However, license renewal applications will be processed upon receipt of a copy of the fingerprint certification form.] Applicant fingerprints and processing fees are submitted electronically to the New Mexico department of public safety from approved live scan vendor sites for the purpose of matching applicant fingerprints with fingerprints in state and national arrest record databases. Applicants must register on the vendor web site prior to being fingerprinted. The vendor web site address and a list of approved live scan sites are available on the real estate commission web site at [www.rld.state.nm.us](http://www.rld.state.nm.us).

C. [Fingerprint cards will be submitted to the New Mexico department of public safety for purposes of matching with fingerprints in state and national arrest record databases. Fingerprint cards shall be provided to license applicant's by the commission. Fingerprints shall be taken:

(1) under the supervision of and certified by a certified law enforcement officer; or

(2) by a private agency or company qualified to take and certify fingerprints.] To verify compliance with the fingerprinting requirement, applicants for licensure or license renewal shall submit to the commission along with their license or renewal application a copy of the commission-approved fingerprint certification form completed by the vendor. To ensure that the commission is receiving the most current information available,

fingerprinting should be done no earlier than six months prior to applying for or renewing a license.

D. [The frequency with which a license applicant will be required to submit a new set of fingerprints will be determined by the commission's authority under state law to re-submit an existing set of fingerprints for an arrest record update.] License or license renewal applicants who do not have access to approved live scan vendor sites may be fingerprinted by other vendors using hardcopy fingerprint cards provided by the commission. Such applicants will be responsible for mailing the hardcopy cards and fees to vendor's headquarters at the address shown on the commission web site. [16.61.7.8 NMAC - Rp, 16.61.7.8 NMAC, 1-1-2012; A, 1-1-2014]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.12 NMAC, Section 9, effective 1-1-2014.

**16.61.12.9 LICENSE SURRENDER:** [Upon delivery of a final order of suspension or revocation of a license(s), the qualifying broker or broker in charge shall surrender the license(s) of the associate broker(s) whose license has been suspended or revoked to the commission in person or by certified mail, and the associate broker whose license has been suspended or revoked shall cease all activities requiring a license:]

A. Any qualifying broker's or associate broker's license suspended or revoked by an order, stipulated agreement or settlement agreement approved by the commission shall be surrendered to the commission by the broker upon the delivery of the order to the broker by the commission, or on the effective date of the order.

B. All real-estate-related activity conducted under such license shall cease for the duration of the license suspension or revocation, and the license of any associate broker affiliated with a qualifying broker whose license is suspended or revoked shall be automatically placed on inactive status until a new qualifying broker or broker in charge is designated.

[16.61.12.9 NMAC - Rp, 16 NMAC 61.12.9, 1-1-2002; A, 1-1-2006; A, 1-1-2014]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.14 NMAC, Section 18, effective 1-1-2014.

**16.61.14.18 REVENUES:** The Real Estate Education and Training Fund shall consist of an initial transfer of the balance in

the Real Estate Recovery Fund in excess of the [\$250,000] \$150,000 statutory minimum balance; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses, and instructors; gifts, grants, donations, and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

[16.61.14.18 NMAC - N, 01/01/07; A, 1-1-2014]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.16 NMAC, Section 9, effective 1-1-2014.

### 16.61.16.9 RESPONSIBILITIES:

A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission;

B. prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office;

C. have in the brokerage office and available to all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual;

D. notify the commission in writing within ten days of a change of the brokerage office address or telephone number;

E. supervise all real estate related activities including advertising of real estate or real estate services conducted on behalf of others by associate brokers and qualifying brokers affiliated with the brokerage and execute and maintain current written employment or independent contractor agreements with them;

F. maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage; the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than six years; in the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

G. deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties to the transaction documents;

H. receive and disburse all commissions, referral fees, and other considerations to any broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at the time the transaction went under contract; the qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, [~~a partnership, corporation, or limited liability company~~] the deceased broker's surviving spouse, or any legally recognized entity wholly owned by an associate broker and their spouse. Such partnership, corporation, or limited liability company shall not be required to have a qualifying broker for purposes of this sub-part;

I. assure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, there be a transaction specific written co-brokerage or referral agreement signed by the qualifying broker;

J. designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation in writing. During this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

K. return the associate broker's license to the commission within 48 hours of termination or discharge;

L. ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and 16.61.5 NMAC of the commission rules;

M. successfully complete as a condition of license renewal or as a condition of reinstatement of qualifying broker status the commission-approved four hour qualifying broker refresher course;

N. ensure that associate broker's affiliated with their brokerage complete the commission-approved new broker business practice course within their first year of licensure.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1-1-2012; A, 1-1-2014]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.17 NMAC, Section 9, effective 1-1-2014.

### 16.61.17.9 RESPONSIBILITIES:

An active associate broker shall:

A. complete in the first year of licensure, the commission-approved new broker business practices course;

B. be affiliated with only one qualifying broker at a time;

C. not engage in any real estate activity for any other qualifying broker other than the qualifying broker with whom the broker is affiliated;

D. not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker;

E. not engage in any real estate activities on their own behalf outside the knowledge of the qualifying broker with whom the broker is affiliated;

F. not engage in any real estate activity under a trade name(s) other than the trade name(s) of the qualifying broker with whom the broker is affiliated;

G. not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom the broker was affiliated with at the time the transaction went under contract, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;

H. when advertising real estate or real estate services for others, include in the advertising the trade name and telephone number as registered with the commission of the qualifying broker with whom the broker is affiliated;

I. remit all funds received from others related to real estate transactions to the qualifying broker or their designee as soon as possible after receipt of those funds, and after securing signatures of all parties to the transaction;

J. deliver in a timely manner to their qualifying broker all records required to be maintained by their qualifying broker under 16.61.16 NMAC.

K. maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and part 16.61.5.8 of the commission rules, and provide documentation of such policy to their qualifying broker.

[1-1-2000, A, 2-14-2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012; A, 1-1-2014]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.19 NMAC, Section 8, effective 1-1-2014.

**16.61.19.8 BROKER DUTIES; DISCLOSURE:** Before the time a broker generates or presents any written document that has the potential to become an express written agreement, the broker shall disclose in writing to their prospective customer or client, and obtain a written acknowledgement from their prospective customer or client, showing the delivery of the disclosure of the following broker duties:

A. honesty and reasonable care as set forth in the provisions of this section;

B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, and other applicable local, state, and federal laws and regulations;

C. performance of any and all written agreements made with the customer or client;

D. assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

(1) presentation of all offers or counter-offers in a timely manner; and

(2) assistance in complying with the terms and conditions of the contract and with the closing of the transaction; if the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction;

E. acknowledgment by the broker that there may be matters related to the transaction that are outside the associate broker's or qualifying broker's knowledge or expertise and that the associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;

F. prompt accounting for all money or property received by the broker;

G. written disclosure to their client or customer and to other brokers involved in the transaction of any potential conflict of interest that the broker has in the transaction including but not limited to:

(1) any written brokerage relationship the broker has with any other parties to the transaction or;

(2) any material interest or relationship of a business, personal, or family

nature that the broker has in the transaction;  
(3) other brokerage relationship options available in New Mexico;

H. written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act;

I. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

J. unless otherwise authorized in writing, an associate broker or qualifying broker shall not disclose to their customer or client during the transaction that their seller client or customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their buyer client or customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their client or customer for selling or buying property; that their seller client or customer or their buyer client or customer will agree to financing terms other than those offered; or any other information requested in writing by the associate broker's or the qualifying broker's customer or client to remain confidential, unless disclosure is required by law.

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004; A, 3-27-2004; A, 1-1-2006; A, 1-1-2006, A, 1-1-2007; A, 12-31-2008; A, 1-1-2012; A, 1-1-2014]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.23 NMAC, Section 11, effective 1-1-2014.

### 16.61.23.11 DEPOSITS, DISBURSEMENTS AND COMMINGLING:

A. Deposits. All trust account deposits shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be deposited into the proper trust account per written agreement of the parties to the transaction.

(2) Receipt records. A detailed record of all funds received shall be maintained by the qualifying broker and shall clearly indicate the following:

- (a) date received;
- (b) date deposited;
- (c) from whom received;
- (d) amount of deposit;

(e) property address or legal description including unit number (if unit number is applicable); and

(f) category or purpose of receipt (e.g., earnest money, rent, security deposit, funds from owner, etc.).

(3) Wrongful deposits. The following actions involving any trust account shall be improper and shall constitute commingling:

(a) depositing a broker's own funds into a trust account without disclosure to the owner of a managed property;

(b) depositing funds in a trust account that are not directly related to a real estate transaction or a managed property; and

(c) depositing funds of others in an account that is not a properly designated trust account.

B. Disbursements. All trust account disbursements shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be disbursed as soon as reasonably possible after the conclusion of a transaction.

(2) Disbursement records. A detailed record of all funds disbursed shall be maintained by the qualifying broker and shall clearly indicate the following:

(a) check number or unique transaction identification number;

(b) date of disbursement;

(c) payee;

(d) category or purpose of disbursement;

(e) amount of disbursement;

(f) property address or legal description including unit number (if unit number is applicable).

(3) Fees due broker. Fees as determined by written agreement may be disbursed as soon as the basis for calculation can be determined and funds are available.

(4) Wrongful disbursements. The following actions involving any trust account shall be improper and shall constitute commingling:

(a) disbursing trust funds for personal use of the qualifying broker or the broker's designee;

(b) disbursing commission or commission splits from any trust account to any entity other than the qualifying broker.

(c) disbursing New Mexico gross receipts tax or other non-property related business expenses directly from a trust account;

(d) disbursing funds before the completion of the related transaction, except upon court order; this provision does not prevent a broker from transferring funds from one properly designated trust account to another properly designated trust account within the same brokerage;



(e) disbursing funds in excess of the trust account balance or in excess of a specific property or client ledger balance; and

(f) trust account overages can only be disbursed in accordance with the Unclaimed Property Act with written notification to the commission.

C. Commingling. Commingling of trust account funds is not permitted. Commingling shall include, but is not limited to, the following actions:

(1) wrongful deposits as described in this section;

(2) wrongful disbursements as described in this section;

(3) allowing a property or client ledger within a trust account to be in deficit;

(4) placing funds derived from the management of the qualifying broker's personally owned properties, or properties owned by any legally recognized entity in which the qualifying broker has a ten (10) percent or more interest in a trust account containing funds of others;

(5) failing to withdraw from the trust account within a reasonable time, funds to which the qualifying broker is entitled;

(6) allowing money designated to one property or transaction to be used for the benefit of another property or transaction.

D. Exceptions to commingling. [~~The following are exceptions:~~]

(1) Non-trust funds may be placed in a trust account in an amount not to exceed the required minimum balance requirements of a financial institution necessary to maintain the account and avoid charges.

(2) Non-trust funds may be placed in a trust account in order to pay fees for credit card transactions and bank fees.

(3) Depositing a broker's own funds in a trust account with full disclosure to the owner of a managed property and with specific, prior written approval of the commission followed immediately by written documentation to the owner and to the commission of the deposit transaction.

(4) If a written sharing agreement specifies, funds of one property may be used for the benefit of another property owned by the same person or entity.

(5) Funds received from an owner for the benefit of all their managed properties may be credited to an owner's ledger.

[16.61.23.11 NMAC - Rp, 16.61.23.10 NMAC, 1-1-2012; A, 1-1-2014]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.24 NMAC, Sections 9, 11 and 12, effective 1-1-2014.

**16.61.24.9 DECLARATION OF INTENT:** At the time of initial licensure or renewal, brokers and associate brokers shall declare on the license application form their intent to offer property management services for others.

[16.61.24.9 NMAC - N, 1-1-2012; A, 1-1-2014]

**16.61.24.11 PROPERTY MANAGEMENT TRUST ACCOUNT:** In addition to the rules set forth in 16.61.23 NMAC, the following also apply to property management trust accounts.

A. This account shall only contain funds derived from the management of property for others and shall be clearly identified as a property management trust account.

B. All funds received by the qualifying broker shall be deposited into the property management trust account prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement.

C. Deposits from tenants shall be placed in a property management trust account. Deposits may be held in a property management trust account or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant.

D. Commingling of funds is not permitted. No funds may be deposited in a property management trust account that are not received in connection with a managed property except as provided for in 16.61.23 NMAC (Exceptions to commingling).

E. Property ledgers. When the property management trust account contains funds from the rental or lease of more than one property, separate accounting records shall be maintained on each property. [16.61.24.11 NMAC - Rp, 16.61.24.8 NMAC, 1-1-2012; A, 1-1-2014]

**16.61.24.12 REPORTS AND DOCUMENTS TO OWNERS:**

A. Owner statements. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:

- (1) previous balance;
- (2) funds deposited by category;
- (3) funds disbursed by category;

and

- (4) ending balance.

B. Additional reports may be provided as set forth in the property

management agreement.

C. Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Signed leases or other documents related to the management agreement shall be provided to the owner upon request, except for documents that the property manager is prohibited by law or contract from disclosing, including but not limited to criminal background checks and credit reports.

D. Final statement after termination. Final accounting of trust account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement.

[16.61.24.12 NMAC - Rp, 16.61.24.12 NMAC, 1-1-2012; A, 1-1-2014]

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**End of Adopted Rules Section**

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## Submittal Deadlines and Publication Dates 2013

Volume XXIV	Submittal Deadline	Publication Date
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

## Submittal Deadlines and Publication Dates 2014

Volume XXV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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