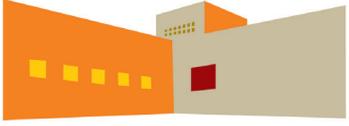


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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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New Mexico Register

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November 27, 2018

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Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

NOTICE OF PUBLIC HEARING

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing in Santa Fe on Tuesday, January 8, 2019 from 10:00am to 12:00pm at the PERA Building located at 1120 Paseo de Peralta, on the second floor in the large conference room 227, to take comments regarding revisions to the following policies: **8.10.2 NMAC - Protective Services Intake**, **8.10.8 NMAC - Permanency Planning**, and **8.26.2 NMAC - Placement Services**.

The revision requested is to create definitions for Foster Care Incident Reports. The proposed definition is: "Incidents in foster care can refer to a broad spectrum of events, which may include but is not limited to, reports of:

1. alleged policy or procedures violations by foster parents, including foster parent failure to comply with case plan
2. alleged violations of the New Mexico foster child and youth bill of rights or the New Mexico foster youth document of responsibilities;
3. illness or accidental injury of foster child;
4. foster parent reporting concerns related to parent-child or sibling visitation; or
5. foster child running away."

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation. Written comments are provided the same weight as comments received

during the public hearings. Written comments can be provided in person at the public hearing or via e-mail to Cynthia Chavers, cynthia.chavers@state.nm.us or by mail to: CYFD, Cynthia Chavers, Protective Services Division, PO Drawer 5160, Santa Fe, NM 87502. All written comments must be received no later than 5:00 pm on Friday, January 4, 2019.

The policy may also be reviewed between 8:00 a.m.-5:00 p.m. at the Director's office, Room 254, in the PERA building in Santa Fe. Copies of the report may be purchased (for the cost of copying); contact Cynthia Chavers, Federal Reporting Bureau Chief, at 505-467-9274.

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

Effective Date and Validity of Rule Filings

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

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION**

This is an amendment to 19.15.16 NMAC, amending Section 15, effective 11/27/2018.

19.15.16.15 HORIZONTAL WELLS:

A. General provisions.

(1) An operator shall not file an application for permit to drill nor commence the drilling of a horizontal oil or gas well until the operator has either:

(a) received the consent of at least one working interest owner or unleased mineral interest owner of each tract (in the target pool or formation) in which any part of the horizontal oil or gas well's completed interval will be located; or

(b) obtained a compulsory pooling order from the division for an appropriate horizontal spacing unit.

(2) Each horizontal well shall be dedicated to a standard horizontal spacing unit or an approved non-standard horizontal spacing unit, except for infill horizontal wells and multi-lateral horizontal wells described in Subparagraph (a) of Paragraph (7) of Subsection B of 19.15.16.15 NMAC, which may be dedicated to an existing or proposed horizontal spacing unit.

(3) A horizontal spacing unit that does not meet the following criteria for a standard horizontal spacing unit shall be considered a non-standard horizontal spacing unit and must be approved pursuant to the process described in Paragraph (5) of

Subsection B of 19.15.16.15 NMAC.

(4) Subject to Paragraph (9) of Subsection B of 19.15.16.15 NMAC, horizontal spacing units can overlap other horizontal spacing units or vertical well spacing units.

B. Well spacing.

(1) **Standard horizontal spacing units for horizontal oil wells.** In lieu of an oil spacing unit described in Subsection A of 19.15.15.9 NMAC, the operator shall dedicate to each horizontal oil well a standard horizontal spacing unit that meets the following criteria.

(a) The horizontal spacing unit shall comprise one or more contiguous tracts that the horizontal oil well's completed interval penetrates, each of which consists of a governmental quarter-quarter section or equivalent.

(b) In addition to tracts the horizontal oil well penetrates, the operator may include quarter-quarter sections or equivalent tracts in the standard horizontal spacing unit that are located within 330 feet of the proposed horizontal oil well's completed interval (measured along a line perpendicular to the proposed completed interval or its tangent).

(c) If, however, the perimeter of the area that includes all the tracts that the horizontal oil well penetrates encloses an area that is substantially rectangular, then the operator may not bring in additional tracts that would result in a non-rectangular horizontal spacing unit.

(d) The horizontal spacing unit shall contain at least the minimum acreage required by existing or subsequently adopted special pool orders for a spacing unit in any pool where all or part of the horizontal oil well's completed interval is located.

(2) **Exception for pools with larger spacing.** If the horizontal oil well is located entirely or partially in a pool for which existing or subsequently adopted special pool orders prescribe oil spacing units larger than 40 acres, then the horizontal spacing unit may, as an alternative to quarter-quarter sections, comprise one or more tracts of the size and configuration so prescribed, provided that the standard horizontal spacing unit shall include only such tracts that are oriented in the same direction. If a horizontal oil well's completed interval is located within two or more pools for the same formation, and the operator elects to construct a standard horizontal spacing unit utilizing tracts of the size and configuration prescribed by special pool orders, the operator shall use tracts of the maximum tract size prescribed for any of the included pools.

(3) **Standard horizontal spacing units for horizontal gas wells.** In lieu of a gas spacing unit described in 19.15.15.10 NMAC, the operator shall dedicate to each horizontal gas well a standard horizontal spacing unit that meets all the following criteria.

(a) The horizontal spacing unit shall comprise one or more contiguous tracts that the horizontal gas well's completed interval penetrates, each of which consists of a governmental quarter section or equivalent.

(b) In addition to tracts the well penetrates, the operator may include quarter sections or equivalent tracts in the standard horizontal spacing unit that are located within 330 feet of the proposed horizontal gas well's completed interval (measured along a line perpendicular to the proposed completed interval or its tangent).

(c)

If, however, the perimeter of the area that includes all the tracts that the horizontal gas well penetrates encloses an area that is substantially rectangular, then the operator may not bring in additional tracts that would result in a non-rectangular horizontal spacing unit.

(d)

The horizontal spacing unit shall contain at least the minimum acreage required by 19.15.15.10 NMAC or by existing or subsequently adopted special pool orders for a spacing unit in any pool where all or part of the horizontal gas well's completed interval is located.

(4) **Exception**

for pools with larger spacing. If the horizontal gas well is located entirely or partially in an area or pool for which 19.15.15.10 NMAC or existing or subsequently adopted special pool orders prescribe gas spacing units larger than 160 acres, then the horizontal spacing unit may, as an alternative to quarter sections, comprise one or more tracts of the size and configuration so prescribed, provided that the standard horizontal spacing unit shall include only such tracts that are oriented in the same direction. If a horizontal gas well's completed interval is located within two or more pools for the same formation, and the operator elects to construct a standard horizontal spacing unit utilizing tracts of the size and configurations prescribed by 19.15.15.10 NMAC or special pool orders, the operator shall use the maximum tract size prescribed for any of the included pools.

(5) **Non-standard horizontal spacing units.**

(a)

Administrative approval. The division may approve non-standard horizontal spacing units for horizontal oil or gas wells after notice and opportunity for hearing, if necessary to prevent waste or protect correlative rights, in accordance with the procedures provided for director approval of non-standard spacing units in Paragraphs (3) through (5) of Subsection B of 19.15.15.11 NMAC.

(b)

Notice. The operator shall give notice of any application for approval of a non-standard horizontal spacing unit, by certified mail, return receipt requested, to affected persons in all tracts that:

(i)

are excluded from the horizontal spacing unit, if the horizontal spacing unit would be a standard horizontal spacing unit except for the exclusion of such tracts; or

(ii)

adjoin the non-standard horizontal spacing unit, in all other cases.

(c)

Form of notice. The notice shall comply with Paragraph (4) of Subsection B of 19.15.15.11 NMAC.

(d)

Unless otherwise authorized by the division, the operator shall not commence drilling in the proposed non-standard spacing unit until the division issues a final order granting the application.

(6) **State,**

federal or tribal lands. If the horizontal spacing unit includes state, federal or tribal minerals, the operator shall send a copy of form C-102 to the applicable affected persons identified in Subparagraphs (d) and (e) of Paragraph (8) of Subsection A of 19.15.2.7 NMAC. No horizontal spacing unit may be designated that lies partly within, and partly outside of, a state exploratory unit, or a federal exploratory unit or participating area if the horizontal spacing unit includes state trust lands, without the written consent of the commissioner of public lands.

(7) **Multi-**

lateral horizontal wells.

(a)

Multiple laterals in the same pool or formation and oriented such that the completed interval of each lateral is located entirely within the boundaries of a horizontal spacing unit for the longest lateral may be dedicated to the same horizontal spacing unit.

(b)

Except as provided in Subparagraph (a) of Paragraph (7) of Subsection B of 19.15.16.15 NMAC, the operator

of a multi-lateral horizontal well shall dedicate a separate horizontal spacing unit to each lateral.

(c)

The division may grant exceptions to the requirements of Subparagraphs (a) and (b) of Paragraph (7) of Subsection B of 19.15.16.15 NMAC pursuant to Paragraph (5) of Subsection B of 19.15.16.15 NMAC.

(8) **Unitized**

areas. For a horizontal well the completed interval of which is located wholly within a unitized area or an area with uniform ownership as to the mineral estate in the objective formation, the horizontal spacing unit configuration requirements of [~~Subparagraphs (c) and (d) of Paragraph (1), and Subparagraph (e) of Paragraph (2)] Subparagraph (c) of Paragraph (1) and Subparagraph (c) of Paragraph (3) of Subsection B of 19.15.16.15 NMAC do not apply.~~

(9) **Existing**

and subsequent wells in horizontal spacing units.

(a)

Existing wells. Existing wells in spacing units, horizontal or otherwise, that are wholly or partially included in a new horizontal spacing unit remain dedicated to their existing spacing units and are not part of the new horizontal spacing unit unless otherwise agreed by all working interest owners in the existing and new spacing units. If all owners (and BLM or state land office, if federal or state minerals are included, and the appropriate governmental authority if tribal minerals are included, in the old or new spacing unit) agree to re-dedicate the existing well to the new horizontal spacing unit, the operator shall file an amended form C-102 reflecting the re-dedication, and shall attach a certificate to the effect that all owners have agreed in writing thereto.

(b)

Subsequent wells in existing spacing units. Subject to the terms of any applicable operating agreement, or to 19.15.13 NMAC or any applicable compulsory pooling order as to any compulsory pooled interests:

(i)

a horizontal well that will have a

completed interval partially in an existing well's spacing unit, and in the same pool or formation, may be drilled only with the approval of, or, in the absence of approval, after notice to, all operators and working interest owners of record or known to the applicant in the existing and new well's spacing units;

(ii)

any subsequent well, horizontal or otherwise, with a completed interval located wholly within an existing well's horizontal spacing unit, and in the same pool or formation, if not designated as an infill horizontal well, may be drilled only with the approval of, or, in the absence of approval, after notice to, all operators and working interest owners of record or known to the applicant in the existing and new well's spacing units; and

(iii)

the notice procedures of Subsection B of 19.15.15.12 NMAC shall apply to notices required pursuant to Items (i) or (ii) of Subparagraph (b) of Paragraph (9) of Subsection B of 19.15.16.15 NMAC.

(c)

The provisions of 19.15.13.10 NMAC and 19.15.13.11 NMAC shall apply to any proposal to drill an infill horizontal well in a horizontal spacing unit subject to a compulsory pooling order unless the order includes specific ~~[provision]~~ provisions for such additional well.

(10) Pooling of horizontal spacing units. Whenever the operator of any horizontal well shall dedicate thereto lands comprising a standard or approved non-standard horizontal spacing unit in which there are two or more separately owned parcels of land, or royalty interests or undivided interests in oil or gas minerals which are separately owned, or any combination thereof, that have not been previously pooled for oil and gas production from the horizontal spacing unit, the operator shall obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands before producing the horizontal well.

(11) Protests.

Without limitation of any other right or remedy, an owner of a tract that adjoins a proposed or existing horizontal spacing unit but is not included therein who contends that a horizontal well in the adjoining horizontal spacing unit is impairing, or will impair, the owner's correlative rights may file a protest with the division. The division, after notice and hearing, may grant such relief as it determines to be necessary and appropriate, including, but not limited to, imposing a limitation on the rate or amount of production from the adjoining horizontal spacing unit.

C. Setbacks.

(1) Generally.

The following setback distances shall apply to each horizontal well.

(a)

The distance in the horizontal plane from any point in the completed interval to any outer boundary of the horizontal spacing unit, measured along a line perpendicular to the completed interval or to the tangent thereof, shall be a minimum of 330 feet for an oil well or 660 feet for a gas well.

(b)

The first and last take point of a horizontal well shall be no closer than 100 feet for an oil well or 330 feet for a gas well, in the horizontal plane, to any outer boundary of the horizontal spacing unit.

(2) District

office to approve. The appropriate division district office may grant a permit for a horizontal well provided every point in the well's completed interval complies with the setback requirements described above or is located at an unorthodox well location the division has approved.

(3) Surface

location. A horizontal well's surface location may be located anywhere inside or outside the boundaries of the horizontal spacing unit, provided the completed interval is located at an orthodox, or division-approved unorthodox, well location within the horizontal spacing unit.

(4) Internal

setbacks. No internal setbacks are applicable within the horizontal spacing unit.

(5)

Unorthodox well locations.

The horizontal well's location is considered unorthodox if:

(a)

any part of the horizontal well's completed interval is projected to be closer to an outer boundary of the horizontal spacing unit than allowed by Paragraph (1) of Subsection C of 19.15.16.15 NMAC, or other applicable rule or special pool order;

(b)

a directional survey shows that the horizontal well's first or last take point, as drilled, is located closer to the outer boundary of the horizontal spacing unit than allowed by Subparagraph (b) of Paragraph (1) of Subsection C of 19.15.16.15 NMAC;

(c) a

directional survey shows that any part of the horizontal well's completed interval, as drilled, is more than 50 feet from its projected location and closer to the outer boundary of the horizontal spacing unit than allowed by Subparagraph (a) of Paragraph (1) of Subsection C of 19.15.16.15 NMAC or other applicable rule or special pool order; or

(d)

for previously approved unorthodox well locations, if a directional survey shows that any part of the completed interval is located more than 50 feet (or, if less, twenty-five percent of the previously authorized distance) closer to the outer boundary of the horizontal spacing unit than the approved location.

(6) Approval

of unorthodox well locations. To obtain approval for the unorthodox well location, the operator shall file an application in the division's Santa Fe office in accordance with the procedures described in Subsections B, C and D of 19.15.15.13 NMAC. For Subparagraph (a) of Paragraph (5) of Subsection C of 19.15.16.15 NMAC, the operator shall obtain approval for the location before drilling the well. For Subparagraphs (b), (c) and (d) of Paragraph (5) of Subsection C of 19.15.16.15 NMAC, the operator shall obtain approval for the as-drilled location before producing the horizontal well.

(7) Unitized areas. For a horizontal well the completed interval of which is located wholly within in a unitized area or an area with uniform ownership as to the mineral estate in the objective formation, the setbacks prescribed in Subsection C of 19.15.16.15 NMAC apply only to the outer boundaries of the unitized area, area of uniform ownership or of any uncommitted tract or partially committed tract, instead of the outer boundaries of the horizontal spacing unit.

D. Allowables.

(1) Oil allowables and gas-oil ratios. Unless the division determines, after notice and hearing, that to prevent waste a reduced allowable must be assigned to a pool, the division shall assign to a horizontal oil well in an oil pool an oil allowable equal to the amount of oil that the horizontal oil well can produce. If any non-marginal proration unit exists in the same pool as a horizontal oil well, the division shall assign to each oil well located in the unit an allowable equal to its productive capacity. Production of gas or oil from any horizontal oil well shall not be limited by a limiting gas-oil ratio as provided in Subsection A of 19.15.20.13 NMAC.

(2) Gas

allowables. The division shall assign to a horizontal gas well completed in a prorated gas pool an allowable equal to the amount of gas the horizontal gas well can produce. If any non-marginal gas proration unit exists in the same pool as a horizontal gas well, the division shall assign a top proration unit allowable for gas to such unit that is equal to the amount of gas than the unit can produce.

(3) Effective

dates. Paragraphs (1) and (2) of Subsection D of 19.15.16.15 NMAC shall apply to all pools and areas of the state commencing on the first day of the first month after June 26, 2018 but shall cease to apply to any particular pool on the date of any order, hereafter issued following notice and hearing, whereby the division or commission determines that reduced allowables for such pool are necessary to prevent waste.

E. Other matters.

(1)

Directional survey requirements.

The operator of each horizontal well shall run a directional survey and file the directional survey, in a division-approved format, upon the well's completion. Directional surveys shall have shot points no more than 200 feet apart and shall be run by competent surveying companies. The division shall allow exceptions to the minimum shot point spacing provided the survey's accuracy is still within acceptable limits. The division shall not approve a form C-104 for the well until the operator has filed the required directional survey.

(2) Downhole

commingling.

(a)

Pools or laterals in the same formation. Provisions of 19.15.12.11 NMAC requiring approval for downhole commingling do not apply to commingling of oil or gas within a single lateral of a horizontal well bore that is produced from adjacent pools within the same formation, or from multiple laterals of a single well bore that are completed in the same pool or formation and dedicated to the same horizontal spacing unit.

(b)

Other multi-lateral wells. Except as provided in Subparagraph (a) of Paragraph (2) of Subsection [D] E of 19.15.16.15 NMAC, horizontal wells with multiple laterals shall only be produced pursuant to division-approved downhole commingling authority obtained pursuant to 19.15.12.11 NMAC, unless pool segregation is maintained until the fluids reach the wellhead.

(3) Conflicts

with existing rules or special pool orders. Provisions of statewide rules or special pool orders in effect on February 15, 2012 that limit the number of wells that may simultaneously produce from the portion of a pool or area underlying a spacing unit, or a particular portion of a spacing unit, do not apply to horizontal wells. Provisions of statewide rules or special pool rules in effect on June 26, 2018, save and

except the special provisions for the Purple Sage; Wolfcamp (Gas) Pool in ordering paragraphs (1) through (7) of division order R-14262, that conflict with any of any provisions in 19.15.16.15 NMAC do not apply to horizontal wells. Special pool orders or amendments thereto adopted after June 26, 2018 shall prevail over rules as provided in 19.15.2.9 NMAC.

(4)

Transitional provisions. Any horizontal well drilled, commenced or permitted prior to June 26, 2018 shall retain as its horizontal spacing unit the standard or non-standard spacing unit or project area originally dedicated thereto. If that area is not a standard horizontal spacing unit as provided in Subsection B of 19.15.16.15 NMAC, that area is hereby approved as a non-standard horizontal spacing unit for the horizontal well so drilled, commenced or permitted. [19.15.16.15 NMAC - Rp, 19.15.3.112 NMAC, 12/1/2008; 19.15.16.15 NMAC - N, 2/15/2012; A, 6/26/2018; A, 11/27/2018]

**ENVIRONMENT
DEPARTMENT
AIR QUALITY BUREAU**

**TITLE
20 ENVIRONMENTAL
PROTECTION
CHAPTER 2 AIR QUALITY
(STATEWIDE)
PART 23 FUGITIVE DUST
CONTROL**

20.2.23.1 ISSUING
AGENCY: Environmental Improvement Board.
[20.2.23.1 NMAC - N, 01/01/2019]

20.2.23.2 SCOPE: All geographic areas within the jurisdiction of the Environmental Improvement Board.
[20.2.23.2 NMAC - N, 01/01/2019]

20.2.23.3 STATUTORY
AUTHORITY: Environmental Improvement Act, Section 74-1-1 to 74-1-16 NMSA 1978, including specifically Paragraph (4) and (7)

of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to 74-2-22 NMSA 1978, including specifically Subsections A, B and C of Section 74-2-5 NMSA 1978.

[20.2.23.3 NMAC - N, 01/01/2019]

20.2.23.4 DURATION:

Permanent.

[20.2.23.4 NMAC - N, 01/01/2019]

20.2.23.5 EFFECTIVE

DATE: January 01, 2019.

[20.2.23.5 NMAC - N, 01/01/2019]

20.2.23.6 OBJECTIVE:

The objective of this part is to limit human-caused emissions of fugitive dust into the ambient air by ensuring that control measures are utilized to protect human health and welfare.

[20.2.23.6 NMAC - N, 01/01/2019]

20.2.23.7 DEFINITIONS:

In addition to the terms defined in 20.2.2 NMAC, as used in this part, the following definitions apply.

A. "Agricultural facility" means any land, building, structure, pond, impoundment, appurtenance, machinery or equipment that is used for the production of crops or livestock.

B. "Bulk material" means sand, gravel, soil, aggregate, pumice or any other inorganic or organic solid material capable of creating fugitive dust.

C. "Construction" or "construction activity" means any activity preparatory to, or related to building or demolishing a structure, road construction or maintenance, or altering, rehabilitating or improving land, including grading, excavation, loading, crushing, pavement milling, cutting, clearing, grubbing, topsoil removal, blading, shaping, dry sweeping, blasting and ground breaking.

D. "Control measure" means a technique, process, practice or procedure used to prevent or minimize the generation, emission, entrainment, suspension or airborne transport of fugitive dust, including those more fully described in 20.2.23.111 NMAC.

E. "Disturbed surface area" means an area of the earth's surface that may become a fugitive dust source or track-out due to construction or other activity.

F. "Dust suppressant" or "suppressant" means water, hygroscopic material, solution of water and chemical surfactant, foam, non-toxic chemical stabilizer or any other material, which is not prohibited for ground surface application by the U.S. environmental protection agency or the New Mexico environment department, or any applicable law, rule or regulation, as a treatment material for reducing fugitive dust emissions.

G. "Fugitive dust" means particulate matter emissions which may become entrained in the atmosphere due to mechanical or wind forces, or both; construction activity; materials handling, transfer or storage; disturbed surface areas; or similar commercial or industrial activities, and; which are not ducted through exhaust systems.

H. "Inactive disturbed surface area" means any disturbed surface area on which construction or other activity is not presently occurring, but which continues to be a potential fugitive dust source or track-out.

I. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the environmental improvement board.

J. "Paved" or "paving" means asphalt, recycled asphalt, concrete or asphaltic concrete, routinely maintained asphalt millings or combinations thereof, that covers a surface traveled or used by motor vehicles.

K. "Roadway" or "road" means any public or private paved or unpaved surface that can be entered or used with the primary purpose of public or private travel by motor vehicles or is used for maintenance of electrical or other transmission lines. This definition does not include roadways under

construction or easements, rights of way, or access roads used in association with construction activity, bulk material handling and transport, disturbed surface areas or inactive disturbed surface areas.

L. "Source" or "fugitive dust source" means the origin of fugitive dust emissions.

M. "Stockpile" means the depositing of bulk material by mechanical means for the purpose of creating a pile formation on top of an existing or man-made surface.

N. "Track-out" means bulk material deposited by a motor vehicle or vehicles upon an unpaved or paved publicly or privately owned roadway if the bulk material can become airborne due to mechanical or wind action.

[20.2.23.7 NMAC - N, 01/01/2019]

20.2.23.8

CONSTRUCTION: This part shall be liberally construed to carry out its purpose.

[20.2.23.8 NMAC - N, 01/01/2019]

20.2.23.9 SAVINGS

CLAUSE: Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.23.9 NMAC - N, 01/01/2019]

20.2.23.10 COMPLIANCE WITH OTHER REGULATIONS:

Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local laws, rules or regulations, including more stringent controls on fugitive dust emissions.

[20.2.23.10 NMAC - N, 01/01/2019]

20.2.23.11-20.2.23.107 [RESERVED]

20.2.23.108 APPLICABILITY:

A. This part shall apply to persons owning or operating the following fugitive dust sources in areas requiring a mitigation plan in accordance with 40 CFR Part 51.930:

(1) disturbed surface areas or inactive disturbed surface areas, or a combination thereof, encompassing an area equal to or greater than one acre;

(2) any commercial or industrial bulk material processing, handling, transport or storage operations.

B. The following fugitive dust sources are exempt from this part:

(1) agricultural facilities, as defined in this part;

(2) roadways, as defined in this part;

(3) operations issued permits pursuant to the state of New Mexico Air Quality Control Act, Mining Act or Surface Mining Act; and

(4) lands used for state or federal military activities. [20.2.23.108 NMAC - N, 01/01/2019]

20.2.23.109 GENERAL

PROVISIONS: No person subject to this part, shall cause or allow visible emissions from fugitive dust sources that:

A. pose a threat to public health;

B. interfere with public welfare, including animal or plant injury or damage, visibility or the reasonable use of property.

[20.2.23.109 NMAC - N, 01/01/2019]

20.2.23.110 EMISSION

LIMITATIONS:

A. No person shall cause or allow visible emissions from the following fugitive dust sources subject to this part to traverse any exterior property line of the property on which the source is located for more than a total of five minutes in any consecutive 60 minutes:

(1) construction or other activity, disturbed surface areas and inactive disturbed surface areas;

(2) bulk material handling; or

(3) bulk material storage.

B. Compliance with this condition shall be determined by

a visible emissions test conducted in accordance with reference method 22 in 40 CFR Subpart 60, Appendix A.

C. Alternative test methods to determine compliance including opacity observations, visible crust determinations and vegetation cover determinations, may be approved by the department on a case-by-case basis.

[20.2.23.110 NMAC - N, 01/01/2019]

20.2.23.111 CONTROL MEASURES FOR FUGITIVE DUST SOURCES AND IMPLEMENTATION:

Every person subject to this part shall utilize one or more control measures included in 20.2.23.111 NMAC or one or more other control measure(s) for fugitive dust sources under their control as necessary to meet the requirements of 20.2.23.110 NMAC.

A. Implementation.

Control measures must be implemented before, after, and during any dust-generating operation, including during weekends, after work hours and on holidays.

B. Disturbed surface areas and inactive disturbed surface areas. Control measures include:

(1) scheduling or phasing of active operations to include consideration of such factors as time of year and prevailing wind direction;

(2) limiting disturbance of natural vegetation;

(3) application and maintenance of mulch, dust suppressants or other control measures in accordance with manufacturer's specifications;

(4) geotextiles, plastic covers, or erosion control mats or blankets;

(5) wind fencing;

(6) landscaping to include xeriscaping, reseeding and conventional techniques;

(7) installing permanent perimeter and interior walls;

(8) restricting public access and use by fencing and signage;

(9) paving or application of gravel sufficient to prevent fugitive dust emissions;

(10) prevention, clean up and removal of track-out material;

(11) restricting vehicle speed;

(12) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion; and

(13) cessation of operations.

C. Bulk material handling. Control measures include:

(1) use of spray bars;

(2) application of dust suppressants in accordance with manufacturer's specifications;

(3) reduced process rates;

(4) reduced drop heights; and

(5) cessation of operations.

D. Bulk material storage. Control measures include:

(1) use of enclosures with at least three sides;

(2) application of dust suppressants in accordance with manufacturer's specifications;

(3) use of wind breaks; and

(4) limit stockpile height to no higher than 15 feet and limit surface area.

[20.2.23.111 NMAC - N, 01/01/2019]

20.2.23.112 DUST CONTROL

PLAN: The owner or operator of a fugitive dust source shall develop and maintain a dust control plan. This plan shall be kept by the owner or operator and shall be available upon request to the department. A dust control plan shall, at a minimum, contain all of the following information:

A. Name(s), address(es) and telephone numbers of person(s) responsible for the development and implementation of the dust control plan and responsible for the dust-generating operation.

B. A drawing, on eight

and one-half inch by eleven inch paper, that shows:

- (1) the entire project site including property lines;
- (2) the acreage to be disturbed with linear dimensions;
- (3) the nearest public road(s);
- (4) private roads within the project site; and
- (5) the planned exit locations onto paved areas accessible to the public.

C. Documentation of the control measure(s), as described in Section 20.2.23.111 NMAC, utilized to meet the requirements of 20.2.23.110 NMAC for every actual and potential dust-generating source or operation, including, as applicable, the specific dust suppressants to be applied, together with the product specifications or label instructions for approved usage. The control measure(s) shall be documented in the dust control plan on a department approved form. The dust control plan shall include the following record keeping requirements for the use of control measure(s):

(1) for persons that utilize a control measure(s) requiring recurring application, operation or maintenance activities, including the use of dust suppressants or cleanup of track out, the date, time, frequency, quantity and location(s) of the actions taken to implement the control measure(s) shall be recorded on a weekly basis; and

(2) for persons that utilize a control measure(s) requiring a single action, including changes in operating procedure, cessation of operations, or installation of landscaping or fencing, the date, time and length of activities or changes in operations to implement the control measure(s) shall be recorded.

D. Specific surface treatment(s) or control measures implemented for material track-out and sedimentation where unpaved roadways or access points join paved areas accessible to the public.

E. The records required by this subpart shall be

maintained for a period of two years after the date of collection.

F. The dust control plan shall be enforceable to the same extent as the provisions of this part. [20.2.23.112 NMAC-N, 01/01/2019]

20.2.23.113 DUST CONTROL PLAN REVISIONS:

A. If the department determines that a dust control plan does not contain the minimum requirements of 20.2.23.112 NMAC, then the department may issue a written notice to the person identified in Subsection A of 20.2.23.112 NMAC explaining such determination.

B. If the department determines that a dust control plan meeting the requirements of 20.2.23.112 NMAC has been followed, yet fugitive dust emissions from any fugitive dust source still exceed the standards of 20.2.23.110 NMAC, then the department may issue a written notice to the person identified in the dust control plan explaining this determination.

C. Once notified that a dust control plan does not meet minimum requirements or that fugitive dust emissions still exceed the standards despite a dust control plan being in place, the owner or operator of a fugitive dust source shall make written revisions to the fugitive dust plan and submit such revised dust control plan to the department within 14 days of receipt of the department's written notice, unless such time period is extended by the department, upon request, for good cause. During the time that the owner or operator is preparing revisions to the dust control plan, such owner or operator shall still comply with all requirements of this part.

[20.2.23.113 NMAC-N, 01/01/2019]

**HISTORY OF 20.2.23 NMAC:
[RESERVED]**

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.100.110 NMAC, Sections, 5 and 8, effective 12/1/2018.

8.100.110.5 EFFECTIVE DATE: July 1, 1997, unless a later date is cited at the end of a section. [07/01/97; 8.100.1105 NMAC - Rn, 8 NMAC 3.ISD.000.5, 04/13/2001; A, 12/1/2018]

8.100.110.8 RIGHT TO APPLY: Each individual shall have the opportunity to apply for public assistance programs administered by the department or to have an authorized representative do so on his or her behalf. Paper application forms must be readily accessible in the ISD local office lobby and provided to any person who requests the form. Applications are made in a format prescribed by the department to include paper forms or electronic submissions. All forms and notices will be accessible to individuals with limited-English proficiency or disabilities. ISD will post signs in local field offices which explain the application processing standards and the right to file an application on the day of initial contact.

A. Screening: Every applicant shall have the opportunity to meet, face to face or telephonically, with ISD when an application is submitted during regular business hours. ISD 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 program(s) for which the applicant wishes to apply.

(1) **Screening for supplemental nutrition assistance program (SNAP) expedited service:** ISD will screen SNAP applicants for entitlement to expedited processing, using the standard formula and documenting the application, [~~the same day the~~

application is received by ISD] at the time the household requests assistance.

(a) If the applicant is eligible for expedited service, the SNAP application will be processed in accordance with 8.139.110.16 NMAC.

(b) If expedited SNAP processing is denied, the applicant will be informed of the right to request an agency review conference to be held within two (2) days of the request unless the household requests a later date pursuant to Paragraph (4) of Subsection E of 8.100.970.10 NMAC.

(2) **Proof checklist:** ISD shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of ISD's responsibility to assist the household in obtaining required verification provided the household is cooperating with ISD as specified in 7 C.F.R. 273.2(d)(1) and Section F of 8.139.110.11 NMAC. The notice shall be written in clear and simple language and shall meet the bilingual requirements designated in 7 C.F.R. 272.4(b). At a minimum, the notice shall contain examples of the types of documents the household should provide and explain the period of time the documents should cover.

(3) **Scheduling the appointment:** ISD must schedule an interview for all applicant households who are not interviewed on the day their application is received by ISD. An interview should be held within 10 working days from the date the application is received by ISD and, to the extent possible, convenient for both the applicant and ISD. To the extent practicable, ISD must schedule the interview to accommodate the needs of groups with special circumstances, including working households. ISD must schedule all interviews as promptly as possible to ensure eligible households receive

an opportunity to participate within 30 days after the application is filed. ISD will send an appointment letter for an interview that includes contact information for ISD, date, time and place of the appointment. ISD must notify each household that misses its interview appointment that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts ISD within the 30-day application processing period, ISD must schedule a second interview. ISD may not deny a household's application prior to the 30th day after application if the household fails to appear for the first scheduled interview. If the household requests a second interview during the 30-day application processing period and is determined eligible, ISD must issue prorated benefits from the date of application.

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

C. Screening applications received by alternative means: ISD will screen applications for all public assistance programs and for expedited SNAP eligibility which includes applications received by alternative means. Alternative means include mail, fax, online, electronic transmission, or through an authorized representative.

[07/01/97, 04/01/98; 8.100.110.8 NMAC - Rn, 8 NMAC 3.ISD.111, 04/13/2001; A, 11/27/2013; A, 03/01/2017; A, 12/1/2018]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.100.130, Sections 3, 11, 12, 13, 16 and 22, effective 12/1/2018.

8.100.130.3 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 [Paragraph (3) of Subsection B of Section 9-8-6 NMSA-1978] Chapter 9, Article 8 NMSA 1978 (Repl. 1983). [8.100.130.3 NMAC - Rp, 8.100.130.3 NMAC, 8/1/2008; A, 12/1/2018]

8.100.130.11 TIMEFRAME FOR PROVISION OF

VERIFICATION: An applicant/recipient is always allowed the complete time processing deadline for the program to provide necessary verification. The minimum amount of time allowed is specific to the program. This requirement pertains to requests for verification for initial applications as well as for verification for ongoing eligibility. Below are the time frames for provision of verification by type of assistance. ISD shall make an eligibility decision within three work days of the receipt of all necessary verification.

A. Food assistance and NMW/EWP cash assistance programs: The application disposition deadline for SNAP and cash assistance programs is 30 calendar days.

(1) **Expedited (emergency) SNAP:** If applicant is eligible for expedited SNAP processing, issue benefits no later than the sixth day following the date of application to be available to the applicant/recipient on the seventh day or the preceding work day if the sixth day falls on a weekend or holiday.

(2) **Day 1:** Calendar day following date of application.

(3) **Approvals:** If verification provided establishes eligibility and the 30th calendar day after the application is: (a) Monday by the preceding Friday, the 27th day;

(b)
Tuesday by the preceding Monday,
the 29th day;

(c)
Wednesday by the preceding Tuesday,
the 29th day;

(d)
Thursday by the preceding
Wednesday, the 29th day;

(e)
Friday by the preceding Thursday,
the 29th day;

(f)
Saturday by the preceding Friday, the
29th day;

(g)
Sunday by the preceding Friday, the
28th day;

(h)
Monday holiday by the preceding
Friday, the 27th day;

(i) if
necessary verification is not received
by these deadlines but is received on
or before the end of the processing
period, approve on the day that full
verification is provided.

(4) **Need-based determination:** ISD must make a need-based eligibility determination for SNAP within 30 days of the date of the application or by the preceding work day if the 30th day falls on a weekend or holiday, if all mandatory verification has been received, with the following specific provisions. If one or more household members have failed to turn in mandatory individual verification that is not required for all the mandatory members of a household, ISD will deny those members missing verification, and will determine eligibility for the remaining members.

(5) **Procedural denials:**

(a) **Lack of verification:** [If verification needed to determine eligibility is not provided and no extension of time is requested, deny on the 30th day after the application date or by next work day if 30th day falls on weekend or holiday.] In cases where ISD was able to conduct an interview and request all necessary verification on the same day or any day before the 30th day after the application was

filed, and no subsequent requests for verification have been made, ISD may deny the application on the 30th day.

Following the day of application, if ISD provided assistance to the household in obtaining the verification in accordance with 7 CFR 273.2(f)(5), but the household failed to provide the requested verification, ISD may deny the application on the 30th day after the application was filed.

(b) **Missed interview:** [Make eligibility decision on the 30th day after the application date or by next work day if 30th day falls on weekend or holiday if applicant missed interview and did not reschedule interview.] If the household failed to appear for a scheduled interview and made no subsequent contact with ISD to express interest in pursuing the application, the application shall be denied on the 30th day following the day of application. The household must file a new application if it wishes to participate in the program.

(6) **Extension of time beyond the 30th day:** [Make eligibility decision no later than the 60th day after the application date if the applicant requests one or more 10-day extensions of time to provide needed verification. There may only be three 10-day extensions.] If ISD does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, ISD shall take action in accordance with 7 CFR 273.2(h).

(a) **Household caused:** If by the 30th day ISD cannot take any further action due to the fault of the household, the household shall lose its entitlement to benefits for the month of application and a notice of denial shall be issued. The household will be given an additional 30 days to take the required action.

(i) If the household takes the required action within 60 days following the date of application, the case shall be reopened without requiring a new application. If the household is found eligible during the second 30 day

period, benefits shall be provided only from the month following the month of application. The household is not entitled to benefits for the month of application when the delay was the fault of the household.

(ii) If the household is at fault for not completing the application process within 60 days following the date of initial application, ISD shall deny the application and require the household to file a new application if it wishes to participate.

(b) **ISD caused:**

(i)

Whenever a delay in the initial 30 day period is the fault of ISD, immediate corrective action shall be taken. If the household is found to be eligible during the second 30 day period, the household shall be entitled to benefits retroactive to the date of application. If, however, the household is found to be ineligible, ISD shall deny the application.

(ii) If ISD is at fault for not completing the application process by the end of the second 30-day period, and the case is otherwise complete, ISD shall continue to process the original application until an eligibility determination is reached.

(iii) If ISD is at fault for not completing the application process by the end of the second 30-day period, but the case is not complete enough to reach an eligibility determination, ISD may continue to process the original application. If ISD was also at fault for the delay in the initial 30 days, the amount of benefits lost would be calculated from the month following the month of application.

(7) **Reconsidering denials for refusal to provide verification or to complete application process:** If an applicant/recipient has been denied benefits for refusal to provide needed verification or to complete the application process, but takes the required action within 30 days after the date of denial, ISD shall then make a needs-based decision.]

B. Medical

assistance: [The application-disposition deadline for medical assistance programs is 45 days from the date of application. Medicaid eligibility must be determined within 90 days for applicants who apply based on age, blind or disability status.] As per 42 CFR 435.912 (c)(3), the determination of eligibility for any medicaid applicant may not exceed:

(1) 90 days for applicants who apply for medicaid on the basis of disability; and

(2) 45 days for all other medicaid applicants.

C. The 45-day processing timeframe is the following:

(1) **Day 1:**

The date of application is the first day.

(2) **No later than day 44**

by the preceding work day if day 44 falls on a weekend or holiday:

(a)

if verification provided establishes eligibility or ineligibility; or

(b)

if the day following day 44 is not a work day, then decision must be made earlier than day 44 to allow for mailing on or before the deadline.

(3) **No later than day 45**

by the next work day if day 45 falls on a weekend or holiday, if needed verification is not provided until day 42 - 44.

(4) **Day 45**

by the next work day if day 45 falls on a weekend or holiday, if needed verification is provided on day 45, or is not provided.

(5) **After day 45:**

(a)

When an applicant/recipient requests one or more 10-day extensions of time to provide needed verification. An applicant/recipient is entitled to receive up to three 10-day extensions of time upon request. [Any individual missing necessary verification of citizenship, national status or eligible-immigration status is allowed a reasonable opportunity period in accordance with 8.200.410.11-NMAC.]

(b)

The eligibility decision must be made as soon as possible and within three work days of receipt of all necessary verification.

(c)

HSD provides a reasonable opportunity period to individuals who have made a declaration of citizenship or satisfactory immigration status in accordance with 8.200.410.13 NMAC.

D. The 90-day processing timeframe is the following:

An application for medicaid shall be processed no later than 90 days from the date the application is filed.

(1) **No later than day 89:**

by the previous work day if day 89 falls on a weekend or holiday:

(a)

if verification provided establishes eligibility or ineligibility; or

(b)

if day following day 89 is not a work day, then decision must be made earlier than day 89 to allow for mailing on or before deadline.

(2) **No later than day 90**

by the next work day if day 90 falls on a weekend or holiday, if needed verification is not provided until day 87 - 89.

(3) **Day 90**

by the next work day if day 90 falls on a weekend or holiday, if needed verification is provided on day 90, or is not provided. The eligibility decision must be made as soon as possible and within three-work days of receipt of all necessary verification.

~~(C)~~ **E. General assistance:**

An application for general assistance shall be processed no later than 90 days from the date the application is filed.

(1) **No later than day 89:**

by the previous work day if day 89 falls on a weekend or holiday:

(a)

if verification provided establishes eligibility or ineligibility; or

(b)

if day following day 89 is not a work day, then decision must be

made earlier than day 89 to allow for mailing on or before deadline.

(2) **No later than day 90**

by the next work day if day 90 falls on a weekend or holiday, if needed verification is not provided until day 87 - 89. The only exceptions are days with system maintenance activities and network outage or down time.

(3) **Day 90**

by the next work day if day 90 falls on a weekend or holiday, if needed verification is provided on day 90 [or is not provided]. The eligibility decision must be made as soon as possible and within three-work days of receipt of all necessary verification.

(4) **[After day 90:**

(a)

When an applicant/recipient requests one or more 10-day extensions of time to provide needed verification. An applicant/recipient is entitled to receive up to three 10-day extensions of time upon request.

(b)

The eligibility decision must be made as soon as possible and within three-work days of receipt of all necessary verification.] If needed verification is not provided, case must be processed on day 90.

(5)

Reconsideration: [Disability may be re-evaluated based on additional medical evidence provided by the client during the reconsideration period, which shall not exceed 120 days from the date of receipt of the initial application.] A reconsideration of a disability determination may be requested, verbally or in writing, by a client within 15 days of the date of the denial for not meeting conditions of disability. The reconsideration period shall not exceed 30 days from the date of denial. Disability will be evaluated based on additional medical evidence provided by the client during the reconsideration period. Should no request be made or the client does not provide additional medical evidence during the reconsideration period the denial shall remain and the client may reapply.

(6) Tracking the application processing time limit: The application processing time limit begins on the day after the signed application is received in the ISD county office.

(7) Delayed determination: If an eligibility determination is not made within the required application processing time limit, the applicant/recipient shall be notified in writing of the reason for the delay and that the applicant/recipient has the right to request a fair hearing regarding ISD's failure to act within the time limits. Where applicable, NMAC subsections for specific programs detail how delays will be notified.

~~**(8) Extensions of time:** Up to three, 10-calendar-day extensions for providing verification shall be granted at the applicant/recipient's request. The extension begins at the end of the application processing time period or at the end of the previous extension.]~~
 [8.100.130.11 NMAC - Rp, 8.100.130.11 NMAC, 8/1/2008; A, 12/01/2009; A, 3/1/2017; A, 12/1/2018]

8.100.130.12 QUESTIONABLE INFORMATION/VERIFICATION:

A. To be considered questionable, incomplete or inadequate, the information or verification must be documented as one of the following:

- (1)** inconsistent with statements made by the applicant/recipient;
- (2)** inconsistent with other information on the application or previous applications;
- (3)** inconsistent with credible information received by ISD;
- (4)** questionable on its face.

B. Resolving questionable information: Upon receiving questionable, incomplete or inadequate verification needed to determine an applicant/recipient's eligibility or benefit amount, ISD shall promptly provide the applicant/

recipient a notice which shall include the following:

- (1)** advise the applicant/recipient of the receipt of the information;
- (2)** why it is questionable, incomplete or inadequate;
- (3)** the additional information that must be provided;
- (4)** the alternative methods of providing the information,
- (5)** the deadline for supplying the information (10 working days or the end of the applicable application processing time period, whichever is later);
- ~~**(6)** that the applicant/recipient will be allowed an extension of time to supply the information if requested;~~
- ~~**(7)** that the applicant/recipient should contact ISD if an extension is desired;]~~

~~**(8)** (6) that the applicant/recipient may discuss with ISD whether any other readily available verification is acceptable;~~
~~**(9)** (7) that ISD is available to assist the applicant/recipient if the information is not readily available; and~~

~~**(10)** (8) that a failure to supply the needed information or contact ISD by the deadline may result in a delay, a denial of eligibility, [or] a reduction in the amount of benefits or termination of benefits.~~

[8.100.130.12 NMAC - Rp, 8.100.130.12 NMAC, 8/1/2008; A, 3/1/2017; A, 12/1/2018]

8.100.130.13 NON-FINANCIAL VERIFICATION STANDARDS - IDENTITY:

A. SNAP and cash assistance programs: Verification of identity for the applicant is mandatory at application for the SNAP and cash assistance programs. Documents that can be used to verify identity for the SNAP and cash assistance programs include, but are not limited to:

- (1)** photo ID; including driver's license;

- (2)** birth certificate;
- (3)** school record;
- (4)** church record;
- (5)** hospital or insurance card;
- (6)** letter from community resources;
- (7)** voter registration card;
- (8)** work ID;
- (9)** ID for another assistance or social service program;
- (10)** wage stubs;
- (11)** additional items as listed in ISD 135, "proof checklist"; or
- (12)** if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

B. Medical assistance programs: Verification of citizenship and identity for the applicant/recipient is mandatory at initial application [and recertification on or after July 1, 2006. The applicant/recipient is required to submit an original or a copy certified by the issuing agency]. Acceptable documentary evidence of citizenship and identity is found at 8.200.410.12 NMAC in accordance with 42 CFR 435.407.

~~**(1)** Exemptions:~~ The following individuals are exempt from providing documentation of citizenship and identity:

- ~~**(a)** individuals receiving supplemental security income benefits under Title XVI of the Social Security Act;~~
- ~~**(b)** individuals entitled to or enrolled in any part of medicare;~~
- ~~**(c)** individuals receiving social security disability insurance benefits under Section 223 of the Social Security Act or monthly benefits under Section 202 of the act, based on the individual's disability, as defined in Section 223(d) of the act;~~

~~(d) individuals who are in foster care and who are assisted under Title IV-B of the Social Security Act; or~~

~~(e) individuals who are recipients of foster care maintenance or adoption assistance payment under Title IV-E of the act.~~

~~(2) Documents that verify both citizenship and identity:~~

~~(a) U.S. passport (active or expired);~~

~~(b) certificate of U.S. citizenship (DHS form N-560 or N-561); or~~

~~(c) certificate of naturalization (DHS form N-550 or N-570).~~

~~(3) Documents to verify identity. The following documents may be accepted as proof of identity and must accompany a document establishing citizenship from the second, third or fourth level documents. See Paragraphs (1) (2) and (3) of Subsection B of 8.100.130.16 NMAC:~~

~~(a) a current state driver's license from a state or territory with the individual's picture or other identifying information such as name, age, sex, race, height, weight, or eye color;~~

~~(b) school identification card with a picture of the individual;~~

~~(c) U.S. military card or draft record;~~

~~(d) identification card issued by the federal, state or local government with the same information included on the driver's license;~~

~~(e) military dependent's identification card;~~

~~(f) certificate of degree of Indian blood, or other American Indian/Alaska native tribal document with a picture or other personal identifying information, such as age, weight, height, race, sex, and eye color;~~

~~(g) Native American tribal document with a picture or other personal identifying~~

information, such as age, weight, height, race, sex and eye color;

~~(h) U.S. coast guard merchant mariner card;~~

~~(i) a cross match with federal or state governmental, public assistance, law enforcement or corrections agency's data systems, if the agency establishes and certifies the true identity of the individual;~~

~~(j) three or more corroborating documents, such as marriage licenses, divorce decrees, high school diplomas, and employer identification cards may be used to verify the identity of an individual when used in conjunction with level two or three citizen documentation listed at 8.100.130.16 NMAC; these documents must contain the applicant/recipient's name and additional information to establish identity; all documents must contain consistent identifying information.~~

~~(4) Special rules for verifying proof of identity for children 16 or younger:~~

~~(a) school records verified from the school, including report card, daycare or nursery school record;~~

~~(b) clinic, doctor or hospital record;~~

~~(c) an affidavit signed under penalty of perjury by a parent, guardian or relative caretaker stating the date and place of birth of the child:~~

~~(i) An affidavit can only be used if one of the preceding documents is not available.~~

~~(ii) An affidavit cannot be used if an affidavit for citizenship was used.~~

~~(5) An identity affidavit signed under penalty of perjury by a residential facility director or administrator on behalf of the institutionalized applicant/recipient.]~~

[8.100.130.13 NMAC - Rn, 8.100.130.13 NMAC, 8/1/2008; A, 3/1/2017; A, 12/1/2018]

8.100.130.16 NON-FINANCIAL VERIFICATION STANDARD-CITIZENSHIP AND ELIGIBLE [ALIEN]NON-CITIZENSTATUS:

This section details the specific types of information and documents to be used in establishing the citizenship and [alien] non-citizen status for individuals who are applying for food assistance, cash assistance and medical assistance programs for themselves.

A. Citizenship for SNAP and cash assistance:

Citizenship for SNAP and cash assistance programs will be verified only when questionable (as defined by section 8.100.130.12 NMAC). Information and documents that can be used to verify citizenship include:

(1) social security number;

(2) birth certificate;

(3) naturalization papers from the department of homeland security United States citizenship and immigration services (DHS) such as DHS Forms I-179 or I-197;

(4) U.S. passport;

(5) military service papers;

(6) hospital record of birth;

(7) baptismal record, when place of birth is shown;

(8) Indian census records;

(9) DHS 400 for alien children who can derive citizenship through citizen father or mother;

(10) additional items as listed on ISD 135, "proof checklist";

(11) any document listed in Subsection B of this section; or

(12) if electronic verification is not available, and documentary evidence is not readily available, use other acceptable methods of verification as described in 8.100.130.9 NMAC.

B. Medical assistance programs: After July 1, 2006,

an individual seeking medical assistance benefits for themselves must provide the income support division with a declaration signed under penalty of perjury that the applicant is a citizen, or a national of the United States, or is in an eligible immigration status. Applicants must present information allowing for verification of attested status. An alien applicant who declares to be in an eligible immigration status is required to present immigration status information that can be used to verify attested status (such as an "A-number" or an "I-94 number"). Verification of citizenship for the applicant/recipient is mandatory at initial application [and recertification on or after July 1, 2006. If a document is necessary, the applicant/recipient is required to submit original or a copy certified by the issuing agency]. Acceptable documentary evidence of citizenship and identity is found at 8.200.410.12 NMAC in accordance with 42 CFR 435.407.

(1) First level documents that verify both citizenship and identity:

- (a) U.S. passport (active or expired);
- (b) certificate of U.S. citizenship (DHS form N-560 or N-561); or
- (c) certificate of naturalization (DHS form N-550 or N-570).

(2) Second level information documents:

Second level should only be used when first level is unavailable. The following are second level information/documents of citizenship:

- (a) U.S. public birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (if born on or after 1941, Guam (if born on or after April 10, 1899), the Virgin Islands of the U.S. (if born on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (if born on or after November 4, 1986 NMI local time);
- (i) data matches with a state vital statistics agency may be used in place of a birth certificate;

(ii) the birth record may be issued by the state, commonwealth, territory or local jurisdiction and it must have been recorded before the person was five years of age; a birth record that is recorded at or after the person is five years of age is considered fourth level evidence of citizenship;

(b) a certification of report of birth (SD-1350) issued by the department of state to U.S. citizens who were born outside the U.S. and acquired U.S. citizenship at birth;

(c) a report of birth abroad of a U.S. citizen (FS-240);

(d) a certification of birth issued by the department of state (FS-545): in 1990, the FS-545 was replaced by the SD-1350;

(e) a U. S. citizen I.D. card (DHS Form I-179 and I-197);

(f) a Northern Mariana identification card (I-873) issued by DHS to a collectively naturalized citizen of the U. S. who was born in the Northern Mariana Islands before November 4, 1986;

(g) an American Indian card (I-872) issued by the DHS with the classification code "KIC," to identify U.S. citizen members of the Texas band of Kickapoos living near the U.S./ Mexican border;

(h) final adoption decree with the child's name and U.S. place of birth;

(i) evidence of civil service employment by the U.S. government before June 1, 1976;

(j) U.S. military record of service showing a U.S. place of birth;

(k) a data verification with the SAVE program for naturalized citizens if conducted consistent with a memorandum of understanding with DHS; or

(l) adopted or biological children born

outside of the U.S. may establish citizenship obtained automatically under section 320 of the Immigration and Nationality Act (8. U.S.C. 1431) as amended by the Child Citizenship Act of 2000; documentary evidence shall be obtained confirming on or after February 27, 2001, the following conditions were met:

(i) at least one parent of the child is a U.S. citizen by birth or naturalization;

(ii) the child is under the age of 18;

(iii) the child is residing in the U.S. in the legal and physical custody of the U.S. citizen parent;

(iv) the child was admitted to the U.S. for lawful permanent residence pursuant to 8 U.S.C. 1641; and

(v) if adopted, the child satisfies the requirements of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) pertaining to international adoptions.

(3) Third level documents: These documents should only be used when first and second levels are unavailable; the following documents are third level documents of citizenship:

(a) Extract of a hospital record on hospital letterhead established at the time of the person's birth that was created five years before the initial application date and shows a U.S. place of birth. For children under the age of 16, the document must have been created near the time of birth or five years before the date of application.

(b) Life, health or other insurance record showing a U.S. place of birth and was created at least five years before the initial application date. For children under the age of 16, the document must have been created near the time of birth or five years before the date of application.

(c) An official religious record recorded with the religious organization in the U.S. within three months of birth

showing the birth occurred in the U.S. and showing the date of birth or the individual's age at the time the record was made; if the place of birth is questionable, verification must be obtained that the mother was in the U.S. at the time of birth.

(d)

Early school record showing a U.S. place of birth, date of birth, the name of the child, the date of admission to the school and the name and place of birth of the applicant/recipient's parents:

(4) **Fourth-level documents:**

These documents should only be used when first, second and third level documents are not available. With the exception of the affidavit process described in this section, the applicant/recipient may only use fourth level of evidence of citizenship if alleging a U.S. place of birth. The following documents are fourth level documents of citizenship:

(a)

federal or state census record showing U.S. citizenship or a U.S. place of birth and the applicant/recipient's age; or

(b)

one of the following documents that shows a U.S. place of birth and that was created at least five years before the application for medicaid; for children under the age of 16, the document must have been created near the time of birth or five years before the date of application. These documents are:

(i)

Seneca Indian tribal census record;

(ii)

bureau of Indian affairs tribal census records of the Navajo Indians;

(iii)

U.S. state vital statistics official notification of birth registration;

(iv)

a delayed U.S. public birth record that is recorded more than five years after the person's birth;

(v)

a statement signed by a physician or midwife who was in attendance at the time of birth.

(vi)

the roll of Alaska natives maintained by the bureau of Indian affairs.

(e)

institutional admission papers from a nursing facility, skilled care facility or other institution created at least five years before the initial application date that indicates a U.S. place of birth.

(d)

medical (clinic, doctor, or hospital) record created at least five years before the initial application date that indicates U.S. place of birth; for children under the age of 16, the document must have been created near the time of birth or five years before the date of application; an immunization record is not considered a medical record for purposes of establishing citizenship.

(e)

written affidavits should only be used in rare circumstances and must contain the following information:

(i)

the applicant/recipient must provide at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant/recipient's claim of citizenship;

(ii)

at least one of the individuals making the affidavit cannot be related to the applicant/recipient and neither can be the applicant/recipient;

(iii)

individuals making the affidavit must prove their own citizenship and identity; and

(iv)

if available, the affidavit should contain why documentary evidence establishing the applicant/recipient's claim of citizenship does not exist or cannot be readily obtained;

(v)

the applicant/recipient or other knowledgeable individual (guardian or representative) must submit a separate affidavit explaining why the evidence does not exist or cannot be obtained; or

(vi)

the affidavits must be signed under penalty of perjury and need not be notarized.]

C. **[Alien] Non-citizen status:** [An alien] A non-citizen must have information allowing attested status to be verified.

D. **Systematic alien verification for entitlement (SAVE):**

(1) All

applicants who attest to eligible immigration status will be subject to verification through the United States department of homeland security's (USDHS) database (SAVE) system.

(2) Conflicting

information regarding the alien status provided by the applicant/recipient will require additional verification by the USDHS.

[8.100.130.16 - Rp, 8.100.130.13 NMAC, 8/1/2008; A, 3/1/2017; A, 12/1/2018]

8.100.130.22 NON-FINANCIAL VERIFICATION STANDARDS - OTHER:

A. **Fraud conviction for dual state receipt of benefits:**

The existence of a fraud conviction for simultaneous receipt of benefits from two states is determined based upon client statement on the application form. If ISD receives other information indicating the existence of a dual state benefit fraud conviction, ISD shall verify it by contacting the appropriate authorities.

B. **[Fleeing felon and probation or parole violator]:**

Whether an individual is a fleeing felon or a probation or parole violator is determined based upon a client statement on the application form. If ISD receives other information indicating that the individual is a fleeing felon, ISD shall verify it by contacting appropriate authorities. ISD need not notify the individual of the report, nor request his or her permission to verify the information with appropriate law enforcement agencies.] **Fleeing felon, probation or parole violator:**

(1) **Fleeing**

Felon: An individual determined to be a fleeing felon shall be an ineligible household member. To establish an individual as a fleeing felon ISD must verify that an individual is a fleeing felon. A federal, state, or local law enforcement officer acting

in his or her official capacity must present an outstanding felony arrest warrant that conforms to one of the following national crime information center uniform offense classification codes, to the department to obtain information on the location of and other information about the individual named in the warrant:

(a) escape (4901); or

(b) flight to avoid prosecution, confinement, etc (4902); or

(c) flight-escape (4999).

(2) Probation

or parole violator: An individual determined a parole or probation violator shall not be considered to be an eligible household member. To be considered a probation or parole violator, an impartial party, as designated by ISD, must determine that the individual violated a condition of his or her probation or parole imposed under federal or state law and that federal, state, or local law enforcement authorities are actively seeking the individual to enforce the conditions of the probation or parole. Actively seeking is defined as:

(a) a federal, state, or local law enforcement agency informs ISD that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 20 days of submitting a request for information about the individual to ISD; or

(b) a federal, state, or local law enforcement agency presents a felony arrest warrant as provided in Paragraph (1) of Subsection B of this section; or

(c) a federal, state, or local law enforcement agency states that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 30 days of the date of a request from ISD about a specific outstanding felony warrant or probation or parole violation.

(3)

Response time: ISD shall give the law enforcement agency 20 days to respond to a request for information about the conditions of a felony warrant or a probation or parole violation, and whether the law enforcement agency intends to actively pursue the individual. If the law enforcement agency does not indicate that it intends to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of ISD's request for information about the warrant, ISD shall determine that the individual is not a fleeing felon or a probation or parole violator and document the household's case file accordingly. If the law enforcement agency indicates that it does intend to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of ISD's request for information, ISD will postpone taking any action on the case until the 30-day period has expired. Once the 30-day period has expired, ISD shall verify with the law enforcement agency whether it has attempted to execute the felony warrant or arrest the probation or parole violator. If it has, ISD shall take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon or a probation or parole violator. If the law enforcement agency has not taken any action within 30 days, ISD shall not consider the individual a fleeing felon or probation or parole violator, shall document the case file accordingly, and take no further action.

(4)

Application processing: ISD shall continue to process the application while awaiting verification of fleeing felon or probation or parole violator status. If ISD is required to act on the case without being able to determine fleeing felon or probation or parole violator status in order to meet the time standards in 7 CFR 273.2(g) or 273.2(i)(3), ISD shall process the application without consideration of the individual's fleeing felon or probation or parole violator status.

[8.100.130.22 - Rp, 8.100.130.13 NMAC, 8/1/2008; A, 3/1/2017; A, 12/1/2018]

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.110 NMAC, Sections 13, 14, 15 and 16, effective 12/1/2018.

8.139.110.13 TIME LIMITS:

A. Opportunity to participate: [~~"Opportunity to participate" means having benefits authorized on or before the 27th day after the application is filed, so that the household will have benefits available by the 30th day after the application was filed.~~] ISD shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but no later than 30 calendar days following the date the application was filed, except for residents of public institutions who apply jointly for SSI and SNAP benefits prior to release from the institution in accordance with Paragraph (2) of Subsection C of 8.139.110.9 NMAC. Residents of institutions who apply for SNAP benefits prior to their release from the institution will be provided the opportunity to participate as soon as possible but no later than 30 calendar days from the date of the applicant's release from the institution.

B. Move during eligibility determination: When an office that is processing an application for assistance learns that the applicant has moved to another county, that office will immediately transfer the case in pending status. The application will be processed by the new office using the original registration date from the first office.

C. Withdrawing the application: An applicant may voluntarily withdraw [his/her] their application at any time prior to the determination of eligibility. A notice will be sent advising the household of the action taken. An applicant will

be advised that withdrawal of his/her application has no effect on his/her right to apply for assistance in the future. The agency will document the reason for withdrawal, if any was given.

D. Delayed eligibility determinations:

(1)

Establishing cause for delay:

When an application for SNAP is not processed by the end of the 30 day time limit, a determination as to whether the delay is the fault of the applicant or [HSD] ISD will be made.

(2) **Applicant**

delays: A delay is the fault of the applicant if [he/she has] they have failed to complete the application process. ISD will send the household a delay notice on the 30th day in accordance with 7 CFR 273.2(h), after the application is filed when the interview has not been held by the 30th day and the appointment has been rescheduled beyond the 30th day [and when the applicant has requested an extension of time to provide information]. The notice will inform the applicant that all changes in circumstances since the application was filed must be reported. ISD must have taken the following actions, as appropriate, before the delay can be considered the fault of the household:

(a)

For applicants who have failed to complete the application form, ISD must have offered, or attempted to offer, assistance in its completion.

(b)

For applicants who have failed to provide complete verification, ISD must have provided the household with a statement of required verification, offered assistance as required, and allowed the household sufficient time to provide the missing verification. Sufficient time is at least 10 days from the date of ISD's initial request for the particular verification that is missing.

(c)

[For applicants who have failed to appear for the initial interview and request another, ISD must have attempted to reschedule the interview, if feasible, within 30 days

following the date of application.

~~If the applicant has failed to appear for the first interview and a subsequent interview is postponed at the applicant's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date of application, the applicant must appear for the interview, bring verification, and register household members for work by the 30th day. Otherwise, the delay is the fault of the applicant.] For applicants who have failed to appear for an interview ISD must notify the applicant that it missed the scheduled interview and that the applicant is responsible for rescheduling a missed interview. If the applicant contacts ISD by the 30th day following the date of application, ISD must schedule a second interview. If the applicant fails to schedule a second interview or the subsequent interview is postponed at the applicant's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date the application was filed, the applicant must appear for the interview, bring verification, and register household members for work by the 30th day following date of application. Otherwise, the delay is the fault of the applicant.~~

(d) [If

the applicant has failed to appear for the first interview and a subsequent interview is postponed at the applicant's request until after the 30th day following the date of application, the delay is the fault of the applicant. If the applicant misses both scheduled interviews and requests another interview, any further delay is the fault of the applicant.] If the applicant has failed to appear for the first interview, fails to schedule a second interview, or the subsequent interview is postponed at the applicant's request until after the 30th day following the date the application is filed, the delay shall be the fault of the applicant. If the applicant has missed both scheduled interviews and requests another interview, any delay shall be the fault of the applicant.

(e)

If one or more members of the household have failed to register for work in accordance with 7 CFR 273.7, ISD must have informed the household of the need to register for work, determined if the household members are exempt from work registration, and given the household at least 10 days from the date of notification to register these members.

(3) **Denial of**

the household application: [If the delay is the fault of the applicant and eligibility cannot be determined, the applicant will be sent a denial notice on the 30th day after the application was filed, or on the following work day if the 30th day is on a weekend or holiday, unless the household has requested an extension. If an action by the applicant is needed to complete the application process, the denial notice will explain what verification the applicant failed to provide, what must be done to complete the application process, a statement that ISD took necessary steps to assist that applicant, and that an additional 30 days is granted to take the actions required to complete the original application before a new application must be filed. The notice will also state that if the applicant is found eligible benefits will be provided in the month following the month of application.] Applicants that are found to be ineligible shall be sent a denial notice as soon as possible but not later than 30 days following the date the application was filed. If the applicant has failed to appear for a scheduled interview and has made no subsequent contact with ISD, ISD shall send a denial notice on the 30th day following the date of application. The applicant must file a new application if they wish to participate in the program. In cases where ISD was able to conduct an interview and request all the necessary verification on the same day the application was filed, and no subsequent requests for verification were made, ISD may also deny the application on the 30th day, if ISD provided assistance to the applicant in obtaining verification, but the applicant failed to provide the requested verification.

~~_____~~ **(4) Benefits provided:** If the applicant was at fault for the delay during the first 30-day period but is found eligible during the second 30-day period, must ensure that benefits are provided only from the date that the applicant took the required action. The household is not entitled to benefits retroactive to the original date of application.]

~~(5)~~ **(4) [HSD]**

ISD delays: Delays that are the fault of [HSD] ISD include, but are not limited to, cases where ISD fails to provide the required assistance, fails to observe time limits, fails to schedule timely interviews, or fails to provide other proper procedural help to the applicant. [HSD] ISD is at fault when the applicant has met his obligations in a timely manner, but ISD fails to complete the application process in a timely manner.

(a)

Action on [HSD] ISD delays: If the delay in the initial 30-day period is caused by ISD, ISD will take immediate corrective action and the application will not be denied. The applicant will be notified that the application is pending and informed of any action to take to complete the application process, including reporting any changed circumstances since the application was filed. ISD will send the applicant a notice of delay in accordance with 7 CFR 273.2(h).

(b)

Retroactive benefit rights: [~~If the applicant's eligibility is determined~~] If the applicant is found to be eligible during the second 30-day period, the household is entitled to benefits retroactive to the date of application.

(c)

Denial of an application: If the household is determined ineligible, the application will be denied and a notice sent no later than the 60th day after the application was filed, or the following work day if the 60th day falls on a weekend or holiday.

(5) ISD action on applicant delays:

(a)

If by the 30th day ISD cannot take any further action on the application

due to the fault of the applicant, the applicant shall lose its entitlement to benefits for the month of application and a denial notice will be sent.

(b)

ISD shall give the applicant an additional 30 days to take the required action. If the applicant takes the required action within 60 days following the date the application was filed, ISD shall reopen the case without requiring a new application.

(c)

If the applicant fails to provide requested verification by the 60th day, no further action is required by ISD.

(d)

If the applicant was at fault for the delay in the first 30 day period, but is found to be eligible during the second 30 day period, benefits shall be provided only from the month following the month of application.

(6) Delays

beyond 60 days:

(a)

~~[HSD delays:]~~ ISD delays:

(i)

If [HSD] ISD is at fault for not completing the application process by the end of the second 30-day period, and the record is otherwise complete, the application process will be continued until an eligibility determination is accomplished.

(ii)

If the household is determined eligible, and ISD was at fault for the delay in the initial 30 days, the household shall receive SNAP benefits [it is entitled to benefits] retroactive to the date of original application, but only for those months that it is determined eligible.

(iii)

If ISD is at fault for not completing the application process by the end of the second 30-day period, but the case record is not complete enough to reach an eligibility determination, the application will be denied and the household advised to file a new application. The household shall be advised of possible entitlement to lost benefits caused by an ISD delay.

(iv)

If ISD was at fault for the delay in the initial 30-day period, the amount of

lost benefits will be calculated from the date of application.

(b)

Household delays:

(i)

If the household is at fault for not completing the application process by the end of the second 30-day period, the application will be denied and the household will be required to file a new application, if it still wishes to participate in the program. The household shall not be entitled to any lost benefits even if the delay in the initial 30 days was the fault of ISD.

(ii)

If the initial delay was the household's fault, the household will receive SNAP benefits retroactive only to the month following the month of application. [The household is not entitled to any lost benefits, even if HSD caused the delay in the initial 30-day period.]

(c)

Incomplete information:

(i)

~~If HSD is at fault for not completing the application process by the end of the second 30-day period, but the case record is not complete enough to reach an eligibility determination, the application will be denied and the household advised to file a new application. The household will also be informed that it may be entitled to lost benefits caused by an HSD delay.~~

(ii)

If HSD was at fault for the delay in the initial 30-day period, the amount of lost benefits will be calculated from the date of application.]

[2/1/1995, 6/1/1995; 8.139.110.13 NMAC - Rn, 8 NMAC 3.FSP.115, 5/15/2001; A, 3/1/2017; A, 12/1/2018]

8.139.110.14 DISPOSITION OF APPLICATION/NOTICES:

A. Approval of

SNAP: Notification of the final eligibility determination will be mailed via US postal service and or through approved electronic methods to the applicant in time to be received not later than the last day of the time limit that is, mailed by the 28th day after the date of application to be received by the 30th day.

B. Contents of the notice: The notice of approval provides the household with written notice, sent by mail or electronically, of the amount of the benefits and the beginning and ending dates of the certification period. If the initial benefit amount is prorated or contains benefit amounts for both the month of application and the current month, the notice will explain that the initial month's SNAP benefit amount differs from the benefit amount for the remainder of the certification period. The notice also states that if households that have applied jointly for financial assistance and SNAP begin to receive a financial assistance check, their SNAP benefit amount will be reduced or terminated without advance notice. The notice will contain a telephone number for the customer service call center which will accept calls throughout working hours.

C. Denial of SNAP: If the application is denied, a written or electronic notice will be sent to the applicant explaining the basis for the denial, the right to request a fair hearing, and the telephone number of the ISD office where the household can get information concerning an individual or organization that provides legal representation. Households determined to be ineligible will be sent a denial notice as soon as possible, but not later than 30 days following the date the application was filed [~~unless an extension was requested~~]. The household must file a new application if it wishes to have eligibility re-determined, subsequent to the initial denial.

[2/1/1995, 6/1/1995; 8.139.110.14 NMAC - Rn, 8 NMAC 3.FSP.116, 5/15/2001; A, 7/15/2013; A, 3/1/2017; A, 12/1/2018]

8.139.110.15 DESIGNATING THE HEAD OF HOUSEHOLD: A household has the right to select its head of household at each certification action or whenever there is a change in household composition reported in accordance with change reporting requirements.

A. No special requirements: The head of household designation will not be used to impose special requirements on the household, such as requiring the head of household, rather than another responsible member, to appear at the certification office to apply for benefits.

B. Households with children:

(1) When designating the head of household, the household is allowed to select:

(a) an adult parent of children (of any age) living in the household; or

(b) an adult with parental control over children (under age 18) living in the household.

(2) All the adult household members must agree to the selection.

(3) A household with children which fails to select an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the head of household loses the right to this designation option. In such a case, the household member with the most income will be the principal wage earner and will be treated as the head of household.

(4) If all adult household members cannot agree to the selection of, or decline to select, an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the head of household, [~~the ISS~~] ISD will permit the household to make another selection, or [~~the ISS~~] ISD will designate the head of household.

(5) No person of any age living with a parent or person fulfilling the role of a parent who is:

(a) registered for work; or

(b) exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in any work requirement under Title IV of the Social Security Act; or

(c) in receipt of unemployment compensation (or has registered for work as part of the application for or receipt of unemployment compensation); or

(d) is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the federal minimum wage multiplied by 30 hours; will be considered the head of household unless the person is an adult parent of children (of any age) and the household elects to designate the adult parent as its head of household.

C. Denial of benefits, delay of certification prohibited: In no event will a denial of benefits or delay of certification action result if an otherwise eligible household fails to select an adult parent of children (of any age) or an adult with parental control over children (under age 18) as its head of household.

D. Households with no adult parent or adult with parental control: If a household does not have an adult parent of children (of any age) or an adult with parental control over children (under age 18) living in the household, the household may designate another member as the head of household or [~~the ISS~~] ISD will do so.

E. Designation of head of household by [~~the ISS~~] ISD: [~~The ISS~~] ISD can designate the head of household only if:

(1) all the adult household members have not agreed to a selection; or

(2) the household declines to select an adult parent or adult with parental control as the head of household and declines to make another selection.

[2/1/1995, 6/1/1995; 8.139.110.15 NMAC - Rn, 8 NMAC 3.FSP.118, 5/15/2001; A, 12/1/2018]

8.139.110.16 EXPEDITED SNAP SERVICE:

A. Identifying eligible households: Households meeting the federal requirements of income and resources may be entitled to receive

SNAP benefits within seven days after an application is received by ISD, in accordance with 7 C.F.R 273.2(i). Applications will be screened to identify eligible households [~~within 24 hours in order to ensure that the seven-day limit is met~~] at the time the household requests assistance.

(1)

Entitlement to expedited service:

The following households will be expedited, provided that they are otherwise SNAP eligible:

(a)

households with less than \$150 in gross monthly income, and with liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, lump sum payments, and the like) not exceeding \$100;

(b)

households with combined gross monthly income and liquid resources less than the household's monthly rent, or mortgage, and utilities. The mandatory SUA may be used in making this determination, provided that the household qualifies for the SUA; or

(c)

migrant or seasonal farm worker households with \$100 or less in liquid resources and determined to be destitute as defined by the special income calculations in 8.139.400.14 NMAC, migrant and seasonal farm workers.

(2)

Verification requirements: All households entitled to expedited service must verify identity through readily available documentation or through a collateral contact. All other eligibility factors may be postponed. Reasonable efforts must be made by ISD to verify residence, income, liquid resources, and all other eligibility factors. Benefits will not be delayed because of an inability to verify such factors or any questionable information but for identity.

(3) **SSNs**

and work registration: Applicant households are specifically permitted to receive their first expedited SNAP benefit amount before providing social security numbers (SSN) or

applying for them. Such households are required to do so before their next benefit issuance, but will remain eligible for participation as long as good cause exists. Unless exempt, the household's work registration status will be established at the time of certification for expedited service. If an individual's work registration exemption status is in question, benefits will not be delayed solely to verify the exemption.

B. Time limits:

(1) **Expedited**

time limits: All households entitled to expedited service will receive their benefits no later than the seventh calendar day after the date the application is received by ISD.

(2) **Out-of-**

office interview: If a household is entitled to expedited service and waiver of the office interview, the interview will be conducted and the eligibility determination completed within the expedited service time limits, unless the household cannot be reached. The first day of this count is the first calendar day after the application is filed. If a telephone interview is conducted and the application must be mailed to the household for signature, the mailing time involved will not be calculated in the expedited service time limits.

(3) **Late**

identification: If screening fails to identify a household as being entitled to expedited service and it is subsequently determined that the household was so entitled, the household's application will be processed immediately; the time limits in such instances are calculated from the date that it is discovered that the household was entitled to expedited service.

(4)

Certification periods: Households entitled to expedited service which provide all necessary verification prior to certification may be assigned a certification period in accordance with 8.139.120.9 [~~and 8.139.120.12~~] NMAC. Households whose verification requirements are outstanding due to an inability to verify via electronic means and the

household not providing necessary documentation, will be certified for the month of application, and the following month, or for households whose circumstances warrant, an assigned certification period in accordance with 8.139.120.9 NMAC [~~and 8.139.120.12 NMAC~~]. When a certification period of more than one month is assigned, the written notification to the household will state that no further benefits will be issued until the verification requirement is completed. The notice also advises that if verification results in changes in eligibility or SNAP benefit amount, ISD will act on these changes without advance notice of adverse action.

(5)

Continuation of benefits:

Households providing verification by the 30th day after the application date will have their benefits continued. The second month's benefits will be issued within five working days from the date verification is received, or the first day of the second month, whichever is later.

(6)

Termination of benefits: Except for migrant farm workers needing out-of-state verification, when the verification requirement is not completed within 30 days of the date of application, the household's participation in the program will be terminated and no further benefits issued.

(7) **Denial**

of expedited service: Households determined ineligible for expedited service will have their applications processed according to normal standards. A household wishing to contest a denial of expedited service will be offered an agency conference to discuss the denial. The conference will be scheduled within two working days of the request for a conference, unless the household requests a later date or states that it no longer wishes to have an agency conference.

C. Number of

expedited issuances:

(1) **Limits:**

There is no limit to the number of times a household can be certified under expedited procedures, as long as prior to each expedited certification

the household either has completed the verification requirements outstanding from the last expedited certification or has been certified under normal processing standards since the last expedited certification.

(2) At every

application: Expedited services will be available at initial application based on the circumstances existing in the month of application. If a participating household applies for recertification before the end of its current certification period, the expedited service provision will not be applied.

[2/1/1995, 6/1/1995, 1/1/1997, 7/1/1998, 8/1/1999; 8.139.110.16 NMAC - Rn, 8 NMAC 3.FSP.119, 5/15/2001; A, 7/15/2013; A, 3/1/2017; A, 12/1/2018]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

The New Mexico Human Services Department-Medical Assistance Division, approved at its 9/13/2018 hearing, to repeal its rule 8.314.5 NMAC - Developmental Disabilities Home and Community-Based Services Waiver (filed 2/12/2016) and replace it with 8.314.5 NMAC - Developmental Disabilities Home and Community-Based Services Waiver, adopted on 10/31/2018 and effective 12/1/2018.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 314 LONG TERM
CARE SERVICES - WAIVERS
PART 5
DEVELOPMENTAL
DISABILITIES HOME AND
COMMUNITY-BASED
SERVICES WAIVER**

8.314.5.1 ISSUING AGENCY: New Mexico Human Services Department (HSD). [8.314.5.1 NMAC - Rp, 8.314.5.1 NMAC, 12/1/2018]

8.314.5.2 SCOPE: The rule applies to the general public. [8.314.5.2 NMAC - Rp, 8.314.5.2 NMAC, 12/1/2018]

8.314.5.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978. [8.314.5.3 NMAC - Rp, 8.314.5.3 NMAC, 12/1/2018]

8.314.5.4 DURATION: Permanent. [8.314.5.4 NMAC - Rp, 8.314.5.4 NMAC, 12/1/2018]

8.314.5.5 EFFECTIVE DATE: December 1, 2018, unless a later date is cited at the end of a section. [8.314.5.5 NMAC - Rp, 8.314.5.5 NMAC, 12/1/2018]

8.314.5.6 OBJECTIVE: The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance programs (MAP). [8.314.5.6 NMAC - Rp, 8.314.5.6 NMAC, 12/1/2018]

8.314.5.7 DEFINITIONS:
A. Activities of daily living (ADLs): Basic personal everyday activities that include bathing, dressing, transferring (e.g., from bed to chair), toileting, mobility and eating.

B. Adult: An individual who is 18 years of age or older.

C. Authorized representative: An individual designated by the eligible recipient or

his or her guardian, if applicable, to represent the eligible recipient and act on his or her behalf. The authorized representative must provide formal documentation authorizing him or her to access the identified case information for this specific purpose. An authorized representative may be, but need not be, the eligible recipient's guardian or attorney.

D. Child: An individual under the age of 18. For purpose of early periodic screening, diagnosis and treatment (EPSDT) services eligibility, "child" is defined as an individual under the age of 21.

E. Clinical Documentation: Sufficient information and documentation that demonstrates the request for developmental disabilities waiver (DDW) services is necessary and appropriate based on the service specific DDW clinical criteria established by the department of health (DOH) developmental disabilities support division (DDSD) for adult recipients excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990). Examples of clinical documentation include but are not limited to: the therapy service prior authorization request (TSPAR), behavioral support consultation prior authorization request (BSCPAR), intense medical living service (IMLS) parameter tool, electronic comprehensive health assessment tool (e-Chat), assessments, clinical notes, progress notes, interdisciplinary team (IDT) meeting minutes, letters from physicians or ancillary service providers that provide sufficient clinical information that demonstrates the need for requested services, etc. Any relevant supporting information and documentation is acceptable and will be considered by the outside reviewer.

F. Clinical justification: Information and documentation that justifies the need for services based on the eligible recipient's assessed need and the DDW clinical criteria. Based on assessed need, the justification must:

(1) meet the eligible recipient's clinical, functional, physical, behavioral or habilitative needs;

(2) promote and afford support to the eligible recipient for his or her greater independence; or

(3) contribute to and support the eligible recipient's efforts to remain in the community; to contribute and be engaged in his or her community, and to reduce his or her risk of institutionalization; and

(4) address the eligible recipient's physical, behavioral, social support needs (not including financial support) that arise as a result of his or her functional limitations or conditions, such as: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

(5) relate to an outcome in the eligible recipient's individual service plan (ISP).

G. DDW clinical criteria: A set of criteria established by the DOH/DDSD that is applied by an outside reviewer to each DDW service when a DDW service is requested for adult recipients excluding class members of *Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al*, (757 F. Supp. 1243 DNM 1990).

H. Individual service plan (ISP): A person-centered plan for an eligible recipient that includes his or her needs, functional levels, intermediate and long range outcomes for achieving his or her goals and specifies responsibilities for the eligible recipient's support needs. The ISP determines the services allocated to the eligible recipient.

I. Outside reviewer: An independent third party assessor who has a contract with the DOH to conduct clinical reviews of all requested DDW services. The outside reviewer will make a written determination on whether the requested supports are clinically justified and will recommend whether

the eligible recipient's requested ISP and budget should be approved or denied. The decision of the outside reviewer to approve any requested service is binding on the state. However, the state may agree to overturn a decision to deny requested services.

J. Person centered planning (PCP): Person centered planning is a process that places a person at the center of planning their life and supports. It is an ongoing process that is the foundation for all aspects of the DDW program and DDW service provider's work with individuals with I/DD. The process is designed to identify the strengths, capacities, preferences, needs, and desired outcomes of the recipient. The process may include other persons, freely chosen by the individual, who are able to serve as important contributors to the process. It involves person centered thinking, person centered service planning and person-centered practice. The PCP enables and assists the recipient to identify and access a personalized mix of paid and non-paid services and supports that assists him or her to achieve personally defined outcomes in the community.

K. Waiver: Permission from the centers for medicaid and medicare services (CMS) to cover a particular population or service not ordinarily allowed.

L. Young Adult: An individual between the ages of 18 through 20 years of age who is allocated to the DDW and is receiving specific services as identified in the DOH/DDSD standards and policies. An individual under age 21 is eligible for medical services funded by his or her medicaid providers under EPSDT. Upon the individual's 21st birthday, he or she is considered to be an adult recipient of DDW services. [8.314.5.7 NMAC - Rp. 8.314.5.7 NMAC, 12/1/2018]

8.314.5.8 [RESERVED]
[8.314.5.8 NMAC - Rp. 8.314.5.8 NMAC, 12/1/2018]

8.314.5.9 DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES WAIVER:

The New Mexico medical assistance division (MAD) has obtained a waiver from certain medicaid payment and benefit statutes (42 CFR 441.300) to provide home and community-based services (HCBS) to eligible recipients as an alternative to institutionalization. DDW services are intended to enhance, not replace, existing natural supports and other available community resources. Services will emphasize and promote the use of natural and generic supports to address the eligible recipient's assessed needs in addition to paid supports. Provider agencies are required to ensure the settings in which they provide services meet the below requirements. All providers have a responsibility to monitor settings for compliance; monitor that waiver recipients are given choices; and, ensure rights are respected. DDW services must be provided in a setting that:

A. is integrated in and facilitates full access to the greater community;

B. ensures the individual receives services in the community to the same degree of access as individuals not receiving medicaid HCBS;

C. maximizes independence in making life choices;

D. is chosen by the individual (in consultation with the guardian if applicable) from among residential and day options, including non-disability specific settings;

E. ensures the right to privacy, dignity, respect and freedom from coercion and restraint;

F. optimizes individual initiative, autonomy and independence in making life choices;

G. provides an opportunity to seek competitive employment;

H. provides individuals an option to choose a private unit in a residential setting; and

I. facilitates choice of services and who provides them. [8.314.5.9 NMAC - Rp. 8.314.5.9 NMAC, 12/1/2018]

8.314.5.10 ELIGIBLE PROVIDERS:

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

B. All DDW eligible providers must be approved by DOH or its designee and have an approved MAD PPA and a DOH provider agreement.

C. MAD through its designee, DOH/DDSD, follows a subcontractor model for certain DDW services. The agency, following the

DOH/DDSD model, must ensure that its subcontractors or employees meet all required qualifications.

The agency must provide oversight of subcontractors and supervision of employees to ensure that all required MAD and DOH/DDSD qualifications and service standards are met. In addition, the agency must provide oversight and supervision of subcontractors and employees to ensure that services are delivered in accordance with all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW services standards, applicable NMAC rules, MAD supplements, and as applicable, his or her New Mexico licensing board's scope of practice and licensure. Pursuant to federal regulations, an agency may not employ or subcontract with the spouse of an eligible recipient or the parent of an eligible recipient under 18 years of age to provide direct care services to the eligible recipient.

D. Qualifications of case management provider agency: A case management provider agency, its case managers, whether subcontractors or employees must comply with 8.314.5.10 NMAC. In addition, case management provider agency must ensure that a case manager meets the following qualifications:

- (1) one year of clinical experience, related to the target population; and
- (2) one or more of the following:
 - (a) hold a current social worker license as defined by the New Mexico regulation and licensing department (RLD); or
 - (b) hold a current registered nurse (RN) license as defined by the New Mexico board of nursing; or
 - (c) hold a bachelor's or master's degree in social work, psychology, sociology, counseling, nursing, special education, or a closely related field; and
- (3) comply with all training requirements as specified by DOH/DDSD; and

(4) have received written notification from DOH that he or she does not have a disqualifying conviction after submitting to the caregiver criminal history screening (CCHS);

(5) does not provide any direct support services through any other type of 1915 (c) HCBS waiver program; and

(6) any exception to the above must be approved by DOH/DDSD.

E. Qualifications of respite provider agency: A respite provider agency must comply and ensure that all direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. In addition, respite provider agencies and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current cardiopulmonary resuscitation (CPR) and first aid certification; and

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

F. Qualifications of adult nursing provider agencies: Adult nursing provider agencies must ensure all subcontractors or employees, including nurses, comply with DOH DDW service definitions, DDW service standards, applicable NMAC rules, MAD billing instructions, utilization review instructions, and supplements, and applicable federal and state laws, rules and statutes. Direct nursing services shall be provided by a New Mexico licensed RN or licensed practical nurse (LPN) and must comply with all aspects of the New Mexico Nursing Practice Act, including supervision and delegation requirements of specific nursing function and 8.314.5.10 NMAC.

G. Qualifications of therapy provider agency: A therapy provider agency must comply and ensure that each of its therapists

including physical therapists (PT), occupational therapists (OT), and speech therapists (SLP), physical therapy assistants (PTA), and certified occupational therapy assistants (COTA), whether a subcontractor or employee complies with 8.314.5.10 NMAC.

H. Qualifications for community living supports provider agency:

Living supports consist of family living, supported living, and intensive medical living services. A living supports provider agency must comply with the accreditation policy and all requirements set forth by the DOH, DDW service definitions, all requirements outlined in the DDW service standards and the applicable NMAC rules. A living supports provider agency must ensure that all direct support personnel meet all qualifications set forth by DOH, DDW service standards, and applicable NMAC rules.

(1) A living supports provider agency and direct support personnel must:

(a) comply with all training requirements as specified by DOH;

(b) have and maintain documentation of current CPR and first aid certification; and

(c) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

(2) A family living provider agency must ensure that all direct support personnel, whether a subcontractor or employee, meet all qualifications set forth by DOH and the DDW service standards and the applicable NMAC rules. The direct support personnel employed by or subcontracting with the provider agency must be approved through a home study completed prior to the initiation of services, revised with any change in family composition, move to a new home, and periodically thereafter as required of the provider agency.

(3) A supported living provider agency

must ensure that all direct support personnel meet all qualifications set forth by DOH and the applicable NMAC rules and the DDW service standards. A supported living provider agency must employ or subcontract with at least one licensed RN and comply with the New Mexico Nurse Practicing Act, including supervision and delegation requirements of specific nursing functions.

(4) An intensive medical living supports provider agency must employ or subcontract with at least one New Mexico licensed RN who must have a minimum of one year of supervised nursing experience and comply with the New Mexico Nursing Practice Act. An intensive medical living supports provider agency must comply with and ensure RNs, whether subcontractors or employees, comply with 8.314.5.10 NMAC. An intensive medical living supports provider agency and direct support personnel must:

(a) comply with all training requirements as specified by DOH;

(b) have and maintain documentation of current CPR and first aid certification; and

(c) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

I. Qualifications of a customized community supports provider agency:

A customized community supports provider agency must comply with and ensure that all direct support personnel comply with 8.314.5.10 NMAC. A customized community supports provider agency and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current CPR and first aid certification; and

(3) have written notification from DOH that he or she does not have a disqualifying

conviction after submitting to the CCHS.

J. Qualifications of a community integrated employment provider agency:

A community integrated employment provider agency must comply with and ensure that all direct support personnel comply with 8.314.5.10 NMAC. A community integrated employment provider agency and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current CPR and first aid certification; and

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

K. Qualifications of a behavioral support consultation provider agency:

A behavioral support consultation provider agency must comply with and ensure that all behavioral support consultants, whether subcontractors or employees, comply with 8.314.5.10 NMAC.

(1) A provider of behavioral support consultation services must be currently licensed in one of the following professions and maintain that licensure with the appropriate RLD board or licensing authority:

(a) a licensed mental health counselor (LMHC), or

(b) a licensed clinical psychologist; or

(c) a licensed psychologist associate, (masters or Ph.D. level); or

(d) a licensed independent social worker (LISW) or a licensed clinical social worker (LCSW); or

(e) a licensed master social worker (LMSW); or

(f) a licensed professional clinical counselor (LPCC); or

(g) a licensed marriage and family therapist (LMFT); or

(h) a licensed practicing art therapist (LPAT); or

(i) Other related licenses and qualifications may be considered with DOH's prior written approval.

(2) Providers of behavioral support consultation services must have a minimum of one year of experience working with individuals with intellectual or developmental disabilities.

(3) Behavioral support consultation providers must participate in training in accordance with the DOH/DDSD training policy.

L. Qualifications of a nutritional counseling provider agency: A nutritional counseling provider agency must comply with and ensure that all nutritional counseling providers, whether subcontractors or employees comply with 8.314.5.10 NMAC. In addition, a nutritional counseling provider must be registered as a dietitian by the commission on dietetic registration of the American dietetic association and be licensed by RLD as a nutrition counselor.

M. Qualifications of an environmental modification provider agency: An environmental modification contractor and his or her subcontractors and employees must be bonded, licensed by RLD, and authorized by DOH to complete the specified project. An environmental modification provider agency must comply with 8.314.5.10 NMAC. All services shall be provided in accordance with applicable federal, state and local building codes.

N. Qualifications of a crisis supports provider agency: A crisis supports provider agency must comply with and must ensure that direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. In addition, a crisis supports provider agency and direct support personnel must:

- (1) comply with all training requirements as specified by DOH;
- (2) have and maintain documentation of current CPR and first aid certification; and

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

O. Qualifications for a non-medical transportation provider agency: A non-medical transportation provider agency must comply with 8.314.5.10 NMAC. In addition, a non-medical transportation provider agency and direct support personnel must:

- (1) comply with all training requirements as specified by DOH;
- (2) have and maintain documentation of current CPR and first aid certification; and
- (3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

P. Qualifications of a supplemental dental care provider agency: A supplemental dental care provider agency must comply with 8.314.5.10 NMAC. A supplemental dental care provider must contract with a New Mexico licensed dentist and dental hygienist who are licensed by RLD. The supplemental dental care provider will ensure that a RLD licensed dentist provides the oral examination; ensure that a RLD licensed dental hygienist provides all routine dental cleaning services; demonstrate fiscal solvency; and function as a payee for the service.

Q. Qualifications of an assistive technology purchasing agent provider and agency: An assistive technology purchasing agent provider and agency must comply with 8.314.5.10 NMAC, demonstrate fiscal solvency and function as a payee for this service.

R. Qualifications of an independent living transition service provider agency: An independent living transition service provider agency must comply with 8.314.5.10 NMAC, demonstrate fiscal solvency and function as a payee for this service.

S. Qualifications of a personal support technology/on-site

response service provider agency: Personal support technology/on-site response service provider agencies must comply with 8.314.5.10 NMAC. In addition, personal support technology/on-site response service provider agencies must comply with all laws, rules, and regulations of the federal communications commission (FCC) for telecommunications.

T. Qualifications of a preliminary risk screening and consultation related to inappropriate sexual behavior (PRSC) provider agency: A PRSC provider agency must comply with 8.314.5.10 NMAC and all training requirements as specified by DOH. Additionally, the PRSC provider agency must subcontract with or employ the risk evaluator, who at a minimum must be:

- (1) an RLD independently licensed behavioral health practitioner, such as an LPCC, LCSW, LMFT, LISW, or a psychologist; or
- (2) a practitioner who holds a master's or doctoral degree in a behavior health related field from an accredited college or university.

U. Qualifications of a socialization and sexuality education provider agency: A socialization and sexuality education provider agency must comply with 8.314.5.10 NMAC. A provider agency must be approved by the DOH, bureau of behavioral support (BBS) as a socialization and sexuality education provider, and must meet training requirements as specified by DOH. In addition, a socialization and sexuality education provider agency must employ or contract with a provider who has one of the following qualifications for rendering the service:

- (1) a master's degree or higher in psychology;
- (2) a master's degree or higher in counseling;
- (3) a master's degree or higher in special education;
- (4) a master's degree or higher in social work;
- (5) a master's

degree or higher in a related field;
 (6) a RN or LPN;
 (7) a bachelor's degree in special education or a related field such as psychology or social work;
 (8) a certification in special education; or
 (9) a New Mexico level three recreational therapy instructional support provider certification.

V. Qualifications of a customized in-home supports provider agency: A customized in-home supports provider agency must comply with and ensure that direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. A customized in-home supports provider agency and direct support personnel must:

- (1) comply with all training requirements as specified by DOH;
- (2) have and maintain documentation of current CPR and first aid certification; and
- (3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.
 [8.314.5.10 NMAC - Rp, 8.314.5.10 NMAC, 12/1/2018]

8.314.5.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to an eligible recipient must comply with all federal and state laws, regulations, rules, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement and the DOH provider agreement. A provider also must meet and adhere to all applicable NMAC rules and instructions as specified in the MAD provider rules manual and its appendices, DDW service standards, DDW service definitions, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and the centers

for medicare and medicaid services (CMS) correct coding initiatives, including not improperly unbundling or upcoding services.

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

C. Provider agencies must mitigate any conflict of interest issues by adhering to at least the following:

(1) Any individual who operates or is an employee of a DDW provider shall not serve as guardian for a person served by that agency, except when related by affinity or consanguinity (45-5-31(1) A NMSA (1978)). Affinity which stems solely from the caregiver relationship is not sufficient to satisfy this requirement.

(2) DDW provider agencies may not employ or sub-contract with a direct support person who is an immediate family member to support the person in services, except when the person is in family living, respite, or customized in home supports (CIHS).

(3) DDW provider agencies may not employ or subcontract with the spouse to support the person in services.

D. Case management agencies are required to mitigate real or perceived conflict of interest issues by adhering to, at minimum the following requirements. Case managers who are contracted under the DDW are identified as agents who are responsible for the development of the ISP.

(1) Case management agency owners and individually employed or contracted case managers may not:

- (a) be related by blood or affinity to

the person supported, or to any paid caregiver of the individual supported. Following formal authorization from DDS, a case manager may provide family living services or respite to their own family member, or to an individual who receives case management services from another provider;

(b) have material financial interest in any entity that is paid to provide DDW or mi via services. A material financial interest is defined as anyone who has, directly or indirectly, any actual or potential ownership, investment, or compensation arrangement;

(c) be empowered to make financial or health related decisions for individuals on their caseload;

(d) be related by blood or affinity to any DDW service provider for individuals on their caseload. Providers are identified as providers of living care arrangements, community inclusion services, mi via consultants, mi via vendors, BSC's and therapist; and

(e) hold a caseload on mi via and DDW simultaneously.

(2) A case management provider agency may not:
 (a) be a provider agency for any other DDW service;

(b) provide guardianship services to an individual receiving case management services from that same agency;

(3) A case manager or director of a case management provider agency may not:

(a) serve on the board of directors of any DDW provider agency;

(b) provide training to staff of DDW provider agencies unless meeting criteria as outlined in the DDW service standards.

(4) Case management provider agencies must disclose to both DDS and to people supported by their agency any familial

relationships between employees/
subcontract case managers and
providers of other DDW services.

(5) Case

management provider agency staff
and subcontractors must maintain
independence and avoid all activity
which could be perceived as a
potential conflict of interest.

[8.314.5.11 NMAC - Rp, 8.314.5.11
NMAC, 12/1/2018]

8.314.5.12 ELIGIBLE

RECIPIENTS: The MAP category
of eligibility criteria for DDW
services is found in 8.290.400
NMAC.

[8.314.5.12 NMAC - Rp, 8.314.5.12
NMAC, 12/1/2018]

8.314.5.13 [RESERVED]

[8.314.5.13 NMAC - Rp, 8.314.5.13
NMAC, 12/1/2018]

**8.314.5.14 DDW COVERED
WAIVER SERVICES FOR
IDENTIFIED POPULATION
UNDER 18 YEARS OF AGE:**

The DDW program is limited to
the number of federally authorized
unduplicated eligible recipient (UDR)
positions and program funding. All
DDW covered services in an ISP
must be authorized. DDW services
must be provided in accordance with
all requirements set forth by DDW
service definitions, all requirements
outlined in the DDW service
standards, and the applicable NMAC
rules, supplements and guidance.
The DDW covers the following
services for a specified and limited
number of waiver eligible recipients
as a cost effective alternative to
institutionalization in an intermediate
care facilities for individuals with
intellectual disabilities (ICF-IID).

A. Eligible recipients

age birth to 18: The child's level of
care assessment is used to determine
the annual resource allotment (ARA)
within the under 18 years of age
category. The service options funded
within the ARA allow the family of
an eligible recipient, in conjunction
with the IDT, the flexibility to choose
any or all of these service options in
an amount that does not exceed the

eligible recipient's ARA. Services
funded within the ARA include:

- (1)** behavioral support consultation;
- (2)** customized community support;
- (3)** respite;
- (4)** non-medical transportation;
- (5)** case management; and
- (6)** nutritional counseling.

B. Services from the under 18 years of age category must be coordinated with and shall not duplicate other services such as the medicaid school-based services program, the MAD early periodic screening diagnosis and treatment (EPSDT) program, services offered through the New Mexico public education department (PED), or the DOH family infant toddler program (FIT).

C. Service options available outside of the ARA include:

- (1)** environmental modifications;
- (2)** assistive technology;
- (3)** personal support technology;
- (4)** preliminary risk screening and consultation; and
- (5)** socialization and sexuality education.

[8.314.5.14 NMAC - Rp, 8.314.5.14
NMAC, 12/1/2018]

**8.314.5.15 DDW COVERED
WAIVER SERVICES FOR
IDENTIFIED POPULATION 18
YEARS OF AGE AND OLDER:**

The DDW program is limited to
the number of federally authorized
unduplicated eligible recipient (UDR)
positions and program funding.
All DDW covered services in an
ISP must be authorized by DOH.
DDW services must be provided in
accordance with all requirements
set forth by DOH DDW service
definition, all requirements outlined in
the DDW service standards, and the
applicable NMAC rules, supplements
and guidance. DDW covers the

following services for a specified
and limited number of waiver
eligible recipients as a cost effective
alternative to institutionalization in an
ICF-IID.

A. There are seven
proposed budget levels (PBL)
which the IDT use for person
centered planning. They encompass
descriptions and characteristics
of seven levels of typical support
needs designed to meet the needs
of most individuals. Each PBL has
a corresponding suggested budget
dollar amount based on the type
of living care arrangement, typical
service options, intensity of staffing
needs, and support needs in each
level. The case manager guides
the IDT in the person-centered
planning process. The IDT makes
a determination of which proposed
budget level the person falls based
on history, current assessments, and
support needs, using both the PBL and
suggested dollar amount as a tool or
guide in the person-centered planning
process and in budget development.
The OR approves services based
on clinical justification. Approvals
may be over or under the suggested
amount. The OR does not verify or
approve the IDT's determination of a
PBL, nor does a PBL limit the request
for services or require that the budget
be developed within a set amount.

B. Exception

authorization process, formerly
known as the H authorization process
is the process that allows individuals
on the DDW, who have extenuating
circumstances, including extremely
complex clinical needs to receive
services beyond what is authorized
in their current ISP/budget level or
to allow individual exceptions to
DDW service standards. Exception
authorization process includes:

- (1)** an eligible recipient who is included in the class established in the matter of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990) is to receive a permanent NM DDW exception authorization approval. A Jackson class member may receive service types and amounts consistent

with those approved in his or her ISP.
 (2) Exception authorization packet includes: the completed individual supports needs review form with all attachments indicated on the form as relevant to the nature/type of exception authorization process request submitted.

C. When determining what services the eligible recipient needs, the IDT should consider the individual's proposed budget level and service options with the understanding that the focus must always be on the individual's DDW support needs that can be clinically justified. Services available:

(1) **Case management services:** Case management services assist an eligible recipient to access MAD covered services. A case manager also links the eligible recipient to needed medical, social, educational and other services, regardless of funding source. DDW services are intended to enhance, not replace existing natural supports and other available community resources. Services will emphasize and promote the use of natural and community supports to address the eligible recipient's assessed needs in addition to paid supports. Case managers facilitate and assist in assessment activities, as appropriate. Case management services are person-centered and intended to advocate for and support an eligible recipient in pursuing his or her desired life outcomes while gaining independence, and access to services and supports. Case management is a set of interrelated activities that are implemented in a collaborative manner involving the active participation of the eligible recipient, his or her authorized representative, and the entire IDT. The case manager is an advocate for the eligible recipient he or she serves, is responsible for developing the ISP and for ongoing monitoring of the provision of services included in the ISP. Case management services include but are not limited to activities such as:

- (a) assessing needs;
- (b) facilitating eligibility determination for persons with developmental disabilities;
- (c) directing the person-centered planning process;
- (d) advocating on behalf of the eligible recipient;
- (e) coordinating service delivery;
- (f) assuring services are delivered as described in the ISP;
- (g) maintaining a complete current central eligible recipient record (e.g. ISP, ISP budget, level of care documentation, assessments);
- (h) health care coordination;
- (i) assuring cost containment by preventing the expense of DDW services from exceeding a maximum cost established by DOH and by exploring other options to address expressed needs.
- (j) Case managers must:
 - (i) evaluate and monitor direct service through face-to-face visits with the eligible recipient to ensure the health and welfare of the eligible recipient, and to monitor the implementation of the ISP;
 - (ii) support informed choice;
 - (iii) support participant self-advocacy;
 - (iv) allow participants to lead their own meetings, program and plan development;
 - (v) increase an individual's experiences with other paid, unpaid, publicly-funded and community support options;
 - (vi) increase self-determination;
 - (vii) demonstrate that the approved budget

is not replacing other natural or non-disability specific resources available; and

(viii) document efforts demonstrating choice of non-waiver and non-disability specific options in the ISP, IDT meeting minutes or companion documents when an individual has only DDW funded supports.

(2) **Respite services:** Respite services are a flexible family support service for an eligible recipient. The primary purpose of respite services is to provide support to the eligible recipient and give the primary, unpaid caregiver relief and time away from his or her duties. Respite services include assistance with routine activities of daily living (e.g., bathing, toileting, preparing or assisting with meal preparation and eating), enhancing self-help skills and providing opportunities for play and other recreational activities; community and social awareness; providing opportunities for community and neighborhood integration and involvement; and providing opportunities for the eligible recipient to make his or her own choices with regard to daily activities. Respite services will be scheduled as determined by the primary caregiver. An eligible recipient receiving living supports or customized in-home supports (when an eligible recipient is not living with a family member), may not access respite services. Respite services may be provided in the eligible recipient's own home, in a provider's home, or in a community setting of the eligible recipient family's choice. Respite services must be provided in accordance with 8.314.5.10 NMAC.

(3) **Adult nursing services:** Adult nursing services (ANS) are provided by a licensed RN or LPN under the supervision of a RN to an eligible adult recipient. Adult nursing services are intended to support the highest practicable level of health, functioning and independence for an eligible recipient. They include direct

nursing services and activities related to the nursing oversight of unrelated direct support staff when assisting with health related needs in specific settings.

(a)

ANS is available to individuals ages 21 and over who reside in family living; those who receive customized in home supports and those who do not receive any living supports. It is available to any eligible recipient who has health related needs that require at least one of the following: nursing training, delegation or oversight of direct support staff during participation in customized community supports (individual or small group) or community integrated employment even if living supports or CCS-group are also provided.

(b)

ANS is available to individuals ages 18-20 who reside in family living and who are at aspiration risk and desire to have aspiration risk management services. It is also available to individuals who have health related needs that require nursing training, delegation or the oversight of non-related direct support staff during substitute care; customized community supports (individual or small group); community integrated employment or customized in home supports.

(c)

There are two categories of adult nursing services:

(i)

assessment and consultation services which includes a comprehensive health assessment (including assessment for medication delivery needs and aspiration risk) and consultation regarding available or mandatory services which requires only budgeting; and

(ii)

ongoing services, which requires prior authorization and are tied to the eligible recipient's specific health needs revealed in the comprehensive health assessment and prior authorization process.

(4) **Therapy**

services: Therapy services are to be delivered consistent with the

participatory approach philosophy and two models of therapy services (collaborative-consultative and direct treatment). These models support and emphasize increased participation, independence and community inclusion in combination with health and safety. Therapy services are designed to support achievement of ISP outcomes and prioritized areas of need identified through therapeutic assessment. PT, OT and SLP are skilled therapies that are recommended by an eligible recipient's IDT members and a clinical assessment that demonstrates the need for therapy services. All three therapy disciplines: PT, OT, and SLP will be available to all DDW recipients if they and their IDT members determine the therapy disciplines are necessary. Therapy services for an eligible adult recipient require a prior authorization except for his or her initial assessment. A RLD licensed practitioner, as specified by applicable state laws and standards, provides the skilled therapy services. Therapy services for eligible adult recipients must comply with 8.314.5.10 NMAC. All medically necessary therapy services for children under 21 years of age, are covered under the state plan through the early periodic screening, diagnostic and treatment (EPSDT) benefit. To the extent that any listed services are covered under the state plan, the services under the waiver are additional services not otherwise covered under the state plan, and consistent with DDW objectives to support the recipient to remain in the community and prevent institutionalization.

(a)

Physical therapy (PT): PT is a skilled, RLD licensed therapy service involving the diagnosis and management of movement dysfunction and the enhancement of physical and functional abilities. Physical therapy addresses the restoration, maintenance, and promotion of optimal physical function, wellness and quality of life related to movement and health. Physical therapy prevents the onset,

symptoms and progression of impairments, functional limitations, and disability that may result from diseases, disorders, conditions or injuries. A RLD licensed physical therapy assistant (PTA) may perform physical therapy procedures and related tasks pursuant to a plan of care/therapy intervention plan written by the supervising physical therapist. Therapy services for eligible recipients must comply with 8.314.5.10 NMAC.

(b)

Occupational therapy (OT): OT is a skilled, RLD licensed therapy service involving the use of everyday life activities (occupations) for the purpose of evaluation, treatment, and management of functional limitations. Therapy services for eligible recipients must comply with 8.314.5.10 NMAC. Occupational therapy addresses physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being and quality of life. COTAs may perform occupational therapy procedures and related tasks pursuant to a therapy intervention plan written by the supervising OT as allowed by RLD licensure. OT services typically include:

(i)

evaluation and customized treatment programs to improve the eligible recipient's ability to engage in daily activities;

(ii)

evaluation and treatment for enhancement of an eligible recipient's performance skills;

(iii)

health and wellness promotion to the eligible recipient;

(iv)

environmental access and assistive technology evaluation and treatment for use by the eligible recipient; and

(v)

training/consultation to eligible recipient's family members and direct support personnel.

(c)

Speech-language pathology: SLP service, also known as speech therapy,

is a skilled therapy service, provided by a speech-language pathologist that involves the non-medical application of principles, methods and procedures for the diagnosis, counseling, and instruction related to the development of and disorders of communication including speech, fluency, voice, verbal and written language, auditory comprehension, cognition, swallowing dysfunction and sensory-motor competencies. Therapy services for eligible recipients must comply with 8.314.5.10 NMAC. Speech-language pathology services are also used when an eligible recipient requires the use of an augmentative communication device. For example, SLP services are intended to:

- (i) improve or maintain the eligible recipient's capacity for successful communication or to lessen the effects of an eligible recipient's loss of communication skills; or
- (ii) treat a specific condition clinically related to an intellectual developmental disability of the eligible recipient; or
- (iii) improve or maintain the eligible recipient's ability to safely eat foods, drink liquids or manage oral secretions while minimizing the risk of aspiration or other potential injuries or illness related to swallowing disorders.

(5) Living

supports: Living supports are residential habilitation services, available up to 24 hours a day, that are individually tailored to assist an eligible recipient 18 year and older who is assessed to need daily support or supervision with the acquisition, retention, or improvement of skills related to living in the community to prevent institutionalization. Living supports include residential-type instruction intended to increase and promote independence and to support an eligible recipient to live as independently as possible in the community in a setting of his or her own choice. Living support services assist and encourage an eligible

recipient to grow and develop, to gain autonomy, self-direct and pursue his or her own interests and goals. Living support providers take positive steps to protect and promote the dignity, privacy, legal rights, autonomy and individuality of each eligible recipient who receives services. Services promote inclusion in the community and an eligible recipient is afforded the opportunity to be involved in the community and actively participate using the same resources and doing the same activities as other community members. Living supports will assist an eligible recipient to access generic and natural supports and opportunities to establish or maintain meaningful relationships throughout the community. Living supports providers are responsible for providing an appropriate level of services and supports up to 24 hours per day, seven days per week. Room and board costs are reimbursed through the eligible recipient's social security insurance (SSI) or other personal accounts and cannot be paid through the DDW. Living support services for eligible recipients must comply with 8.314.5.10 NMAC. Living supports consists of family living, supported living, and intensive medical living as follows.

(a)

Family living: Family living is intended for an eligible recipient who is assessed to need residential habilitation to ensure health and safety while providing the opportunity to live in a typical family setting. Family living is a residential habilitation service that is intended to increase and promote independence and to provide the skills necessary to prepare an eligible recipient to live on his or her own in a non-residential setting. Family living services are designed to address assessed needs and identified individual eligible recipient outcomes. Family living is direct support and assistance that is provided to no more than two eligible recipients with intellectual or developmental disabilities at a time furnished by a natural or host family member, or companion who meets

the requirements and is approved to provide family living services in the eligible recipient's home or the home of the family living direct support personnel. The eligible recipient lives with the paid direct support personnel. The provider agency is responsible for up to 750 hours of substitute coverage for the primary direct support personnel to receive sick leave and time off as needed. An exception may be granted by DOH if three eligible recipients are in the residence, but only two of the three are on the DDW and the arrangement is approved by DOH based on the home study documenting the ability of the family living services provider agency to serve more than two eligible recipients in the residence; or there is documentation that identifies the eligible recipients as siblings or there is documentation of the longevity of a relationship (e.g., copies of birth certificates or social history summary). Documentation shall include a statement of justification from a social worker, psychologist, and any other pertinent professionals working with the eligible recipients. Family living services cannot be provided in conjunction with any other living supports service, respite, or nutritional counseling. The family living services provider agency shall complete all DOH requirements for approval of each direct support personnel, including completion of an approved home study and training prior to placement. After the initial home study, an updated home study shall be completed annually. The home study must also be updated each time there is a change in family composition or when the family moves to a new home. The content and procedures used by the provider agency to conduct home studies shall be approved by DOH.

(b)

Supported living: Supported living is intended for an eligible recipient who is assessed to need residential-type habilitation support to ensure health and safety. Supported living is a living habilitation support service that is intended to increase

and promote independence and to provide the skills necessary to prepare an eligible recipient to live on his or her own in a non-residential setting. Supported living services are designed to address assessed needs and identified individual eligible recipient outcomes. The service is provided to two to four eligible recipients in a community residence. Prior authorization is required from DOH for an eligible recipient to receive this service when living alone. Supported living services cannot be provided in conjunction with any other living supports service, respite, or nutritional counseling.

(c)

Intensive medical living services:

An intensive medical living supports agency provides residential-type supports for an eligible recipient in a supported living environment who requires daily direct skilled nursing, in conjunction with community living supports that promote health and assist the eligible recipient to acquire, retain or improve skills necessary to live in the community and prevent institutionalization, consistent with his or her ISP. An eligible recipient must meet criteria for intensive medical living supports according to DDW service definitions and DDW standards for this service and he or she requires nursing care, ongoing assessment, clinical oversight and health management that must be provided directly by a MAD recognized RN or LPN, see 8.314.5.10 NMAC.

(i)

These medical needs include: skilled nursing interventions; delivery of treatment; monitoring for change of condition; and adjustment of interventions and revision of services and plans based on assessed clinical needs.

(ii)

In addition to providing support to an eligible recipient with chronic health conditions, intensive medical living supports are available to an eligible recipient who meets a high level of medical acuity and require short-term transitional support due to recent illness or hospitalization. This service will afford the core

living support provider the time to update health status information and health care plans, train staff on new or exacerbated conditions and assure that the home environment is appropriate to meet the needs of the eligible recipient. Short-term stay in this model may also be utilized by an eligible recipient who meets the criteria that is living in a family setting when the family needs a substantial break from providing direct service. Both types of short-term placements require prior approval from DOH. In order to accommodate referrals for short-term stays, each approved intensive medical living supports provider must maintain at least one bed available for such short-term placements. If the short-term stay bed is occupied, additional requests for short-term stay will be referred to other providers of this service.

(iii)

The intensive medical living supports provider will be responsible for providing the appropriate level of supports, 24 hours per day seven days a week, including necessary levels of skilled nursing based on assessed need of the eligible recipient. Daily nursing visits are required; however, a RN or a LPN under a RN's supervision is not required to be present in the home during periods of time when skilled nursing services are not required or when an eligible recipient is out in the community. An on-call RN or LPN, under the supervision of a RN must be available to staff during periods when a RN or a LPN under a RN's supervision is not present. Intensive medical living supports require supervision by a RN, and must comply with 8.314.5.10 NMAC.

(iv)

Direct support personnel will provide services that include training and assistance with ADLs such as bathing, dressing, grooming, oral care, eating, transferring, mobility and toileting. These services also include training and assistance with instrumental activities of daily living (IADL) including housework, meal preparation, medication assistance,

medication administration, shopping, and money management.

(v)

The intensive medical living supports provider will be responsible for providing access to customized community support and employment as outlined in the eligible recipient's ISP. This includes any skilled nursing needed by the eligible recipient to participate in customized community support and development and employment services. The intensive medical living provider must arrange transportation for all medical appointments, household functions and activities, and to-and-from day services and other meaningful community options.

(vi)

Intensive medical living supports providers must comply with 8.314.5.10 NMAC.

(6)

Customized community supports:

Customized community supports (CCS) consist of individualized services and supports that enable an eligible recipient to acquire, maintain, and improve opportunities for independence, community integration and employment. Customized community supports services are designed around the preferences and choices of each eligible recipient and offer skill training and supports to include: adaptive skill development; educational supports; citizenship skills; communication; social skills, socially appropriate behaviors; self-advocacy, informed choice; community integration and relationship building. This service provides the necessary support to develop social networks with community organizations to increase the eligible recipient's opportunity to expand valued social relationships and build connections within local communities. This service helps to promote self-determination, increases independence and enhances the eligible recipient's ability to interact with and contribute to his or her community.

(a)

Based on assessed needs, customized community supports services may

include personal support, nursing oversight, medication assistance or administration, and integration of strategies in the therapy and healthcare plans into the eligible recipient's daily activities.

(b)

The customized community supports provider may provide fiscal management for the payment of education opportunities as determined necessary for the eligible recipient.

(c)

Customized community supports services may be provided regularly or intermittently based on the needs of the eligible recipient and are provided during the day, evenings and weekends.

(d)

Customized community supports may be provided in a variety of settings to include the community, classroom, and site-based locations., depending on the ISP and the particular type of service chosen within CCS. Services provided in any location are required to provide opportunities that lead to participation and integration in the community or support the eligible recipient to increase his/her growth and development.

(e)

Pre-vocational and vocational services are not covered under customized community supports.

(f)

Customized community supports services must be provided in accordance with 8.314.5.10 NMAC.

(7) Community

integrated employment:

Community integrated employment provides supports that achieve employment in jobs of the eligible recipient's choice in his or her community to increase his or her economic independence, self-reliance, social connections and ability to grow within a career. Community integrated employment results in employment alongside non-disabled coworkers within the general workforce or in business ownership. This service may also include small group employment including mobile work crews or enclaves. An eligible recipient is supported to

explore and seek opportunity for career advancement through growth in wages, hours, experience or movement from group to individual employment. Each of these activities is reflected in individual career plans. Community integrated employment services must not duplicate services covered under the Rehabilitation Act or the Individuals with Disabilities Education Act (IDEA). Compensation shall comply with state and federal laws including the Fair Labor Standards Act. DDW funds (e.g., the provider agency's reimbursement) may not be used to pay the eligible recipient for work. Community integrated employment services must comply with 8.314.5.10 NMAC. Community integrated employment consists of job development, self-employment, individual community integrated employment and group community integrated employment models.

(a)

Self-employment: The community integrated employment provider provides the necessary assistance to develop a business plan, conduct a market analysis of the product or service and establish necessary infrastructure to support a successful business. Self-employment does not preclude employment in the other models. Self-employment may include but is not limited to the following:

(i)

completing a market analysis of product/business viability;

(ii)

creating a business plan or accessing community resources to develop a business plan including development of a business infrastructure to sustain the business over time, including marketing plans;

(iii)

referring and coordinating with the division of vocational rehabilitation (DVR) for possible funds for business start-up;

(iv)

assisting in obtaining required licenses, necessary tax identifications, incorporation documents and completing any other business

paperwork required by local and state codes;

(v)

supporting the eligible recipient in developing and implementing a system of bookkeeping and records management;

(vi)

providing effective job coaching and on-the-job training and skill development; and

(vii)

arranging transportation or public transportation during self-employment services.

(b)

Individual community integrated employment:

Individual community integrated employment is job development and job coaching for an eligible recipient in integrated community based settings. The amount and type of individual support needed will be determined through a person-centered assessment including on-the-job analysis. Individual community integrated employment may include, but is not limited to the following:

(i)

promoting career exploration based on interests within various careers through job sampling, job trials or other assessments;

(ii)

developing and identifying community based job opportunities that are in line with the individual's skills and interests;

(iii)

developing a résumé (written or visual) that identifies an individual's relevant vocational experiences;

(iv)

negotiating with employers for job customization, including facilitating job accommodations and the use of assistive technology such as communication devices;

(v)

supporting the individual in gaining the skills and knowledge to advocate for themselves in the workplace including the development of natural supports;

(vi)

educating the individual, the employer or other IDT members regarding

rights and responsibilities related to employment;

(vii) arranging for or providing benefits counseling;

(viii) linking the individual to employment resources in the community;

(ix) providing effective job coaching and on-the-job training as needed to assist the eligible recipient to maintain the job placement and enhance skill development; and

(x) arranging transportation or public transportation during individual community integrated employment services.

(c) **Group community integrated employment:** Group community integrated employment is when more than one eligible recipient works in an integrated setting with staff supports on site. Regular and daily contact with non-disabled coworkers or the public occurs. Group community integrated employment may include but is not limited to the following:

(i) participating with the IDT to develop a plan to assist an eligible recipient who desires to move from group employment to individual employment;

(ii) providing effective job coaching and on-the-job training as needed to assist the eligible recipient to maintain the job placement and enhance skill development;

(iii) negotiating with employers for job customization, including facilitating job accommodations and the use of assistive technology such as communication devices;

(iv) supporting individuals in gaining the skills and knowledge to advocate for themselves in the workplace including the development of natural supports; or

(v) educating individuals, the employer or other IDT members regarding

rights and responsibilities related to employment.

(8) **Behavioral support consultation services:** Behavioral support consultation services guide the IDT to enhance the eligible recipient's quality of life by providing positive behavioral supports for the development of functional and relational skills. Behavioral support consultation services also identify distracting, disruptive, or destructive behavior that could compromise quality of life and provide specific prevention and intervention strategies to manage and lessen the risks this behavior presents. Behavioral support consultation services do not include individual or group therapy, or any other behavioral services that would typically be provided through the behavioral health system.

(a) Behavioral support consultation services are intended to augment functional skills and positive behaviors that contribute to quality of life and reduce the impact of interfering behaviors that compromise quality of life. This service is provided by an authorized behavioral support consultant and includes an assessment and positive behavioral support plan development, IDT training and technical assistance, and monitoring of an eligible recipient's behavioral support services.

(b) Behavioral support consultation services must comply with 8.314.5.10 NMAC.

(9) **Nutritional counseling services:** Nutritional counseling services include the assessment, evaluation, collaboration, planning, teaching, consultation and implementation and monitoring of a nutritional plan that supports the eligible recipient to attain or maintain the highest practicable level of health. Nutritional counseling services are in addition to those nutritional or dietary services allowed in the eligible recipient's medicaid state plan benefit, or other funding source. This service does not include oral-motor skill development services, such as those services

provided by a speech pathologist. Because nutritional counseling is included in the reimbursement rate for living supports, nutritional counseling cannot be billed as a separate service during the hours of living supports. Nutritional counseling services must comply with 8.314.5.10 NMAC.

(10) **Environmental modification services:** Environmental modifications services include the purchasing and installing of equipment or making physical adaptations to an eligible recipient's residence that are necessary to ensure the health, welfare and safety of the eligible recipient or enhance his or her access to the home environment and increase his or her ability to act independently.

(a) Adaptations, instillations and modifications include:

(i) heating and cooling adaptations;

(ii) fire safety adaptations;

(iii) turnaround space adaptations;

(iv) specialized accessibility, safety adaptations or additions;

(v) installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;

(vi) installation of trapeze and mobility tracks for home ceilings;

(vii) installation of ramps and grab-bars;

(viii) widening of doorways or hallways;

(ix) modification of bathroom facilities (roll-in showers, sink, bathtub and toilet modification, water faucet controls, floor urinals and bidet adaptations and plumbing);

(x) purchase or installation of air filtering devices;

(xi) purchase or installation of lifts or elevators;

(xii) purchase and installation of glass

substitute for windows and doors;
 (xiii)
 purchase and installation of modified switches, outlets or environmental controls for home devices; and

(xiv)
 purchase and installation of alarm and alert systems or signaling devices.

(b)
 Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the eligible recipient. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation (e.g., in order to improve entrance/egress to an eligible recipient's residence or to configure a bathroom to accommodate a wheelchair).

(c)
 Environmental modification services must be provided in accordance with applicable federal, state and local building codes.

(d)
 Environmental modification services must comply with 8.314.5.10 NMAC.

(11) Crisis

supports: Crisis supports are services that provide intensive supports by appropriately trained staff to an eligible recipient experiencing a behavioral or medical crisis either within the eligible recipient's present residence or in an alternate residential setting. Crisis support must comply with 8.314.5.10 NMAC.

(a)
Crisis supports in the eligible recipient's residence: These services provide crisis response staff to assist in supporting and stabilizing the eligible recipient while also training and mentoring staff or family members, who normally support the eligible recipient, in order to remediate the crisis and minimize or prevent recurrence.

(b)
Crisis supports in an alternate residential setting: These services arrange an alternative residential setting and provide crisis response staff to support the eligible recipient in that setting, to stabilize and prepare

the eligible recipient to return home or to move into another permanent location. In addition, staff will arrange to train and mentor staff or family members who will support the eligible recipient long-term once the crisis has stabilized, in order to minimize or prevent recurrence of the crisis.

(c)
 Crisis response staff will deliver such support in a way that maintains the eligible recipient's normal routine to the maximum extent possible. This includes support during attendance at employment or customized community supports services, which may be billed on the same dates and times of service as crisis supports.

(d)
 This service requires prior written approval and referral from the bureau of behavioral support (BBS). Crisis supports are designed to be a short-term response (two to 90 calendar days).

(e)
 The timeline may exceed 90 calendar days under extraordinary circumstances, with approval from the BBS in which case duration and intensity of the crisis intervention will be assessed weekly by BBS staff.

(12) **Non-medical transportation:** Non-medical transportation services assists the eligible recipient in accessing other waiver supports and non-waiver activities identified in his or her ISP. Non-medical transportation enables the eligible recipient to gain physical access to non-medical community services and resources promoting the eligible recipient opportunity and responsibility in carrying out his or her ISP activities. This service is to be considered only when transportation is not available through the medicaid state plan or when other arrangements cannot be made. Non-medical transportation includes funding to purchase a pass for public transportation for the eligible recipient. Non-medical transportation provider services must comply with 8.314.5.10 NMAC.

(13)
Supplemental dental care:

Supplemental DDW dental care services are provided for an eligible recipient that requires routine oral health care more frequently than the coverage provided under other MAP benefit plans. Supplemental dental care provides one oral examination and one cleaning once every ISP year to an eligible recipient for the purpose of preserving or maintaining oral health. The supplemental dental care service must comply with 8.314.5.10 NMAC.

(14) **Assistive technology purchasing agent service:** Assistive technology purchasing agent service is intended to increase the eligible recipient's physical and communicative participation in functional activities at home and in the community. Items purchased through the assistive technology service assist the eligible recipient to meet outcomes outlined in his or her ISP, increase functional participation in employment, community activities, activities of daily living, personal interactions, or leisure activities, or increase the eligible recipient's safety during participation of the functional activity.

(a)
 Assistive technology services allows an eligible recipient to purchase needed items to develop low-tech augmentative communication, environmental access, mobility systems and other functional assistive technology, not covered through the eligible recipient's medicaid state plan benefits.

(b)
 Assistive technology purchasing agent providers act as a fiscal agent to either directly purchase, or reimburse team members who purchase devices or materials which have been prior authorized by DOH on behalf of the eligible recipient.

(c)
 Assistive technology purchasing agent services must comply with 8.314.5.10 NMAC.

(15)
Independent living transition services: Independent living transition services are one-time set-up expenses for an eligible recipient

who transitions from a 24 hour living supports setting into a home or apartment of his or her own with intermittent support that allows him or her to live more independently in the community. The service covers expenses associated with security deposits that are required to obtain a lease on an apartment or home, set-up fees or deposits for utilities (telephone, electricity, heating, etc.), and furnishings to establish safe and healthy living arrangements, such as a bed, chair, dining table and chairs, eating utensils and food preparation items, and a telephone. The service also covers services necessary for the eligible recipient's health and safety such as initial or one-time fees associated with the cost of paying for pest control, allergen control or cleaning services prior to occupancy. Independent living transition services must comply with 8.314.5.10 NMAC.

(16) Personal support technology/on-site response service: Personal support technology/on-site response service is an electronic device or monitoring system that supports the eligible recipient to be independent in the community or in his or her place of residence with limited assistance or supervision of paid staff. This service provides 24-hour response capability or prompting through the use of electronic notification and monitoring technologies to ensure the health and safety of the eligible recipient in services. Personal support technology/on-site response service is available to the eligible recipient who has a demonstrated need for timely response due to health or safety concerns. Personal support technology/on-site response service includes the installation of the rented electronic device, monthly maintenance fee for the electronic device, and hourly response funding for staff that support the eligible recipient when the device is activated. Personal support technology/on-site response services must comply with 8.314.5.10 NMAC.

(17) Preliminary risk screening and consultation related to

inappropriate sexual behavior (PRSC): PRSC identifies, screens, and provides periodic technical assistance and crisis intervention when needed to the IDTs supporting the eligible recipient with risk factors for sexually inappropriate or offending behavior, as defined in the DDW definitions and DDW standards. This service is part of a continuum of behavioral support services (including behavioral support consultation, and socialization and sexuality services) that promote community safety and reduce the impact of interfering behaviors that compromise quality of life.

- (a)**
The key functions of PRSC are to:
- (i)** provide a structured screening of the eligible recipient's behaviors that may be sexually inappropriate;
 - (ii)** develop and document recommendations of the eligible recipient in the form of a report or consultation notes;
 - (iii)** develop and periodically review risk management plans for the eligible recipient, when recommended; and
 - (iv)** provide consultation regarding the management and reduction of the eligible recipient's sexually inappropriate behavioral incidents that may pose a health and safety risk to the eligible recipient or others.

(b)
Preliminary risk screening and consultation related to inappropriate sexual behavioral services must comply with 8.314.5.10 NMAC.

(18) Socialization and sexuality education service: Socialization and sexuality education service is carried out through a series of classes intended to provide a proactive educational program about the values and critical thinking skills needed to form and maintain meaningful relationships, and about healthy sexuality and sexual expression. Social skills learning objectives include positive self-image, communication skills, doing things

independently and with others, and using paid and natural supports. Sexuality learning objectives include reproductive anatomy, conception and fetal development, safe sex and health awareness. Positive outcomes for the eligible recipient include safety from negative consequences of being sexual, assertiveness about setting boundaries and reporting violations, expressing physical affection in a manner that is appropriate, and making informed choices about the relationships in the eligible recipient's life. Independent living skills are enhanced and improved work outcomes result from better understanding of interpersonal boundaries, and improved communication, critical thinking and self-reliance skills. Socialization and sexuality education services must comply with 8.314.5.10 NMAC.

(19) Customized in-home supports: Customized in-home support services is not a residential habilitation service and is intended for an eligible recipient that does not require the level of support provided under living supports services. Customized in-home supports provide an eligible recipient the opportunity to design and manage the supports needed to live in his or her own home or family home. Customized in-home supports include a combination of instruction and personal support activities provided intermittently to assist the eligible recipient with ADLs, meal preparation, household services, and money management. The services and supports are individually designed to instruct or enhance home living skills, community skills and to address health and safety of the eligible recipient, as needed. This service provides assistance with the acquisition, improvement or retention of skills that provides the necessary support to achieve personal outcomes that enhance the eligible recipient's ability to live independently in the community. Customized in-home support services must comply with 8.314.5.10 NMAC. [8.314.5.15 NMAC - Rp, 8.314.5.15 NMAC, 12/1/2018]

8.314.5.16 NON-COVERED SERVICES: Only those services listed in the DDW benefit package may be reimbursed through the DDW. Room, board and ancillary services are not covered DDW services. An eligible recipient may access, as medically necessary, all medicaid state plan benefits in addition to his and her DDW services. If the eligible recipient is an enrolled member of a HSD managed care organization (MCO), he or she may access, as medically necessary, the benefits listed in 8.308.9 NMAC. [8.314.5.16 NMAC - Rp, 8.314.5.16 NMAC, 12/1/2018]

8.314.5.17 INDIVIDUALIZED SERVICE PLAN (ISP):

A. CMS requires a person-centered service plan for every individual receiving HCBS. The ISP must be developed annually through an ongoing person-centered planning process. The ISP development must:

- (1) Involve those whom the participant wishes to attend and participate in developing the service plan and are provided adequate notice;
- (2) Use assessed needs to identify services and supports;
- (3) Include individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and others;
- (4) Identify roles and responsibilities of IDT members responsible for implementing the plan;
- (5) Include the timing of the plan and how and when it is updated, including response to changing circumstances and needs; and
- (6) Outline how the individual is informed of available services funded by the DDW as well as other natural and community resources.

B. The IDT must review the eligible recipient's person-

centered plan every 12 months or more often if indicated.

C. The IDT is responsible for compiling clinical documentation to justify the requested services and budget to the OR for adult recipients excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990).

D. The person-centered service plan must consist of the following:

- (1) identifies risks and includes a plan to reduce any risks;
- (2) incorporates other health concerns (e.g. mental health, chemical health, chronic medical conditions, etc.);
- (3) is written in plain language;
- (4) records the alternative HCBS that were considered by the person;
- (5) includes natural supports and services;
- (6) includes strategies for solving conflict or disagreement within the process, including any conflict of interest guidelines for planning participants;
- (7) identifies who is responsible for monitoring implementation of the plan;
- (8) includes the person's strengths;
- (9) describes goals or skills that are related to the person's preferences;
- (10) includes a global statement about the person's self-determined goals and aspirations;
- (11) details what is important to the person; and
- (12) includes a method for the individual to request updates to the plan, as needed.

E. Upon completion of the ISP by the IDT, the case manager shall develop a budget to be evaluated in accordance with the outside reviewer (OR) process; see Subsection D of 8.314.5.18 NMAC.

F. Upon completion of the ISP by the IDT, the case manager shall develop a budget to be evaluated

in accordance with the medicaid third party assessor (TPA) review process for child recipients and class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990).

G. All services must be provided as specified in the ISP. [8.314.5.17 NMAC - Rp, 8.314.5.17 NMAC, 12/1/2018]

8.314.5.18 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: All MAD services, including services covered under the DDW, are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made; see 8.310.2 NMAC. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.

A. MAD prior authorization: To be eligible for DDW services, a MAD eligible recipient must require the level of care (LOC) of services provided in an ICF-IID. LOC determinations are made by MAD or its designee. The eligible recipient's person centered ISP must specify the type, amount and duration of services and meet clinical criteria. Certain procedures and services specified in the ISP may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. DOH prior authorization: Certain services are subject to utilization review by DOH.

C. Eligibility determination: Prior authorization of services does not guarantee that individuals are eligible for MAD services. Providers must verify that individuals are eligible for MAD services, including DDW services or other health insurance prior to the time services are furnished. An eligible recipient may not be

institutionalized, hospitalized, or receive personal care option (PCO) services or other HCBS waiver services at the time DDW services are provided, except for certain case management services that are required to coordinate discharge plans or transition of services to DDW services.

D. Outside review process: All services for adult recipients excluding class members of *Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al*, (757 F. Supp. 1243 DNM 1990) will be reviewed by an OR contracted by DOH. The OR will adhere to deadlines set forth in its contract with the DOH. The OR will apply the DDW clinical criteria to make a clinical determination on whether the requested services and service amounts are needed, and will recommend whether the requested annual budget and ISP should be approved. If the OR approves in whole or part the requested ISP and budget, the OR will send the approved portion of the budget to the medicaid TPA for entry into the medicaid management information system and issue a prior authorization to the case manager. If there is a denial in part or whole, the OR decision must be in writing, identify a list of all documents and input considered by the OR team during its review, and state the reasons for any denial of requested services. The eligible recipient, case manager, and guardian (if applicable) will be provided with this written determination and notice of an opportunity to request a fair hearing as well as an agency review conference.

(1) The eligible recipient, case manager, and guardian (if applicable) may submit to the OR additional information relating to support needs.

(2) The decision of the OR approving services requested by the DDW participant is binding on the State. However, the state may agree to overturn a decision to deny services requested by the DDW participant at a requested agency conference.

E. Reconsideration: Providers who disagree with the denial of a prior authorization request or other review decisions may request a reconsideration. See 8.350.2 NMAC, Reconsideration of Utilization Review Decisions. [8.314.5.18 NMAC - Rp, 8.314.5.18 NMAC, 12/1/2018]

8.314.5.19 REIMBURSEMENT: DDW service providers must submit claims for reimbursement to MAD's fiscal contractor for processing. A DDW provider must follow 8.302.2 NMAC, MAD billing instructions, utilization review instructions, and supplements. Reimbursement to providers of waiver services is made at a predetermined reimbursement rate. [8.314.5.19 NMAC - Rp, 8.314.5.19 NMAC, 12/1/2018]

8.314.5.20 RIGHT TO A HSD ADMINISTRATIVE HEARING: An eligible recipient may request a HSD administrative hearing to appeal a decision of MAD or its third party assessor contractor, or the OR, that is an adverse action against the recipient. Prior to the fair hearing an eligible recipient may be offered an agency review conference. An agency review conference (AC) means an optional conference offered by the DOH to provide an opportunity to informally resolve a dispute over the denial, suspension, reduction, termination or modification of DDW benefits or services. An AC will be attended by the recipient and their authorized representative if applicable, representatives of the outside review, DOH and any other necessary parties. The recipient may also bring whomever he or she wishes to assist during the AC. The AC is optional and shall in no way delay or replace the fair hearing process or affect the deadline for a fair hearing request.

A. An authorized representative means any individual designated by the eligible recipient or his or her guardian, if applicable, to represent the recipient and act on their behalf. The authorized representative must provide formal documentation

authorizing him or her to access the identified case information for this specific purpose. An authorized representative may be, but need not be, the recipient's guardian or attorney.

B. The DOH will issue written notification describing the outcome of the AC and any agreements within seven business days of the AC to the recipient, recipient's guardian if applicable, and case manager.

C. Unless the fair hearing request is withdrawn by the recipient or recipient's guardian or lawyer, any requested fair hearing will proceed. At the fair hearing the claimant may raise any relevant issue and present any relevant information that he or she chooses. See 8.352.2 NMAC for a description of a claimant's HSD administrative hearing rights and responsibilities.

D. In addition to the requirements set forth in 8.352.2 NMAC, HSD and DOH shall take such actions as are necessary to assure the presence at the hearing of all necessary witnesses within DOH's control, including, when relevant to a denial of services or when requested by the claimant, a representative of the OR with knowledge of the claimant's case and the reason(s) for the denial, in whole or in part, of any requested services.

E. Denials of services through the exception authorization process or other actions during this process adverse to the participant can also be appealed through a fair hearing.

F. All HSD administrative hearings are conducted in accordance with state and federal law.

G. No ex parte communications with an HSD administrative law judge are permitted by any DDW participant or counsel regarding any pending case. The MAD director shall not have ex parte communications regarding any pending cases with any DDW participant or counsel involved in that case. The MAD director's decision shall be limited to an on the record review.

[8.314.5.20 NMAC - Rp, 8.314.5.20 NMAC, 12/1/2018]

8.314.5.21 CONTINUATION OF BENEFITS PURSUANT TO A TIMELY APPEAL AND A HSD ADMINISTRATIVE HEARING PROCEEDING: A continuation of an existing DDW benefit or benefits is automatically provided to an eligible recipient claimant pending the resolution of the outside review process and any subsequent fair hearing. The continuation of a benefit is only available to a claimant that is currently receiving the appealed benefits. The continuation of the benefits will be the same as the claimant’s current allocation, budget or LOC unless a revision is agreed to in writing by the eligible recipient (or authorized representative) and DOH. [8.314.5.21 NMAC - Rp, 8.314.5.21 NMAC, 12/1/2018]

HISTORY OF 8.314.5 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives.
ISD-Rule 310.2000, Coordinated Community In-Home Care Services, 3/19/1984.

History of Repealed Material:
ISD-Rule 310.2000, Coordinated Community In-Home Care Services, Repealed 1/18/1995.
8 NMAC 4.MAD.736.12 - Repealed 9/1/1998; and
8 NMAC 4.MAD.736.412 - Repealed 9/1/1998.
8.314.5 NMAC, Developmental Disabilities Home and Community-Based Services Waiver, Repealed 3/1/2007.
8.314.5 NMAC, Developmental Disabilities Home and Community-Based Services Waiver, filed 2/15/2007 - Repealed effective 11/1/2012.
8.314.5 NMAC, Developmental Disabilities Home and Community-Based Services Waiver, filed 10/2/2012 - Repealed effective 3/1/2016.

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 9/19/2018 hearing, to repeal its rule 6.60.3 NMAC, Alternative Licensure (filed 10/31/2007) and replace it with 6.60.3 NMAC, Alternative Licensure (adopted on 11/15/2018) and effective 11/27/2018.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 60 SCHOOL PERSONNEL - GENERAL PROVISIONS
PART 3 ALTERNATIVE LICENSURE**

6.60.3.1 ISSUING AGENCY: Public Education Department, herein after the department.
[6.60.3.1 NMAC - Rp, 6.60.3.1 NMAC, 11/27/2018]

6.60.3.2 SCOPE: Applicants for alternative teaching licensure alternative administrative licensure, or student success advisor licensure.
[6.60.3.2 NMAC - Rp, 6.60.3.2 NMAC, 11/27/2018]

6.60.3.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-10A-6, and 22-10A-8 NMSA 1978.
[6.60.3.3 NMAC - Rp, 6.60.3.3 NMAC, 11/27/2018]

6.60.3.4 DURATION: Permanent
[6.60.3.4 NMAC - Rp, 6.60.3.4 NMAC, 11/27/2018]

6.60.3.5 EFFECTIVE DATE: November 27, 2018 unless a later date is cited in the history note at the end of a section.
[6.60.3.5 NMAC - Rp, 6.60.3.5 NMAC, 11/27/2018]

6.60.3.6 OBJECTIVE: To define the requirements for obtaining an alternative teaching license, alternative administrator license, or student success advisor license.
[6.60.3.6 NMAC - Rp, 6.60.3.6 NMAC, 11/27/2018]

6.60.3.7 DEFINITIONS:
A. “Alternative license” means:
(1) a temporary, two-year teaching license issued by the department to a candidate who does not yet meet the requirements for a level 1 standard license but is participating in an alternative route to licensure as defined in Subsections B and C of 6.60.3.9 NMAC; or

(2) a temporary, one-year teaching license issued by the department to a candidate who does not yet meet the requirements for a level 1 standard license but is participating in an alternative route to licensure as defined in Subsection D of 6.60.3.9 NMAC; or

(3) a temporary, one-year administrator certificate or license issued by the department to a candidate who does not yet meet the requirements for a level 3B administrator license but is participating in an alternative route to licensure as defined in 6.60.3.11 NMAC; or

(4) a temporary, five-year alternative student success advisor license issued by the department to a candidate who does not yet meet the requirements for school counselor licensure but is working toward meeting the requirements established in 6.63.6 NMAC.

B. “Competencies for licensure” means the content knowledge and skills a teacher shall know and apply in order to demonstrate competency in a particular content area as defined in Title 6, Chapter 64, Competencies for Licensure, Parts 2 through 18 NMAC.

C. “Department-approved educator preparation program” or “department-

approved EPP” means an educational program approved by the department pursuant to 6.65.3 NMAC that offers coursework intended to lead to teacher licensure upon a candidate’s successful completion of program requirements.

D. “Full school year” means a minimum of 160 instructional days or equivalent number of days in schools or local education agencies on alternative schedules over multiple school years of full-time or part-time teaching during which the teacher is the teacher of record or serves as an instructional coach or resource teacher in at least one class each school year while holding a standard teaching license. An equivalent number of instructional hours may be accepted for those teachers who do not teach every day. Instructional days may include teaching in summer school or similar educational setting.

E. “Internship” means an official program with practical experience in which candidates for administrative licensure assume all responsibilities of a school administrator under the guidance of a mentor for a minimum of 180 clock hours throughout one full school year, including those responsibilities that are unique to the beginning and end of the school year. Internships shall be served at a public school, private school, or state educational institution.

F. “Local education agency” or “**LEA**” means a school district or a state-chartered charter school.

G. “Mental health services” means the responsibilities of a school counselor as outlined in Subsection D and E of 6.63.6.9 NMAC.

H. “New Mexico teacher assessments” or “**NMTA**” means the tests required for individuals seeking initial New Mexico licensure.

I. “NMTEACH” means the department-approved educator effectiveness evaluation system defined in 6.69.8 NMAC that

measures teacher performance using the five components:

- (1) improved student achievement;
- (2) classroom observation;
- (3) planning, preparation, and professionalism;
- (4) student or parent surveys; and
- (5) teacher attendance.

J. “Standard teaching license” means a certificate or license issued by the department at five and nine year intervals authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services, or serve as an administrator in a New Mexico public school.

K. “Teacher of record” means the recipient of an alternative teaching license named in an employment contract with an LEA responsible for teaching students and managing a classroom the majority of the time. The teacher of record is responsible for lesson planning, assigning grades, meeting with parents, and completing all duties of a classroom teacher with a standard teaching license.

[6.60.3.7 NMAC - Rp, 6.60.3.7 NMAC, 11/27/2018]

6.60.3.8 PATHWAYS FOR ALTERNATIVE TEACHING

LICENSURE: Three pathways shall be available for candidates seeking to obtain an alternative teaching license in New Mexico.

A. Alternative EPP pathway. A two-year alternative teaching license may be granted to candidates who simultaneously complete face-to-face or online courses through a department-approved EPP while serving as a teacher of record for two years. Candidates who complete the EPP and meet coursework and testing requirements at the conclusion of the two-year alternative license period shall be eligible to transfer to a level 1 standard teaching license.

B. Alternative NMTEACH pathway. A two-year alternative teaching license may be granted to candidates who simultaneously complete required teaching of reading coursework and testing requirements while serving as a teacher of record. Candidates who complete coursework and testing requirements and who earn two consecutive ratings of effective or higher on NMTEACH at the completion of the two-year alternative license period shall be eligible to transfer to a level 1 standard teaching license.

C. Alternative post-secondary experience pathway.

A one-year alternative license may be granted to candidates who have obtained a bachelor’s and master’s degree in a field outside education and who have taught at an accredited college or university for a minimum of five years. Candidates who serve as the teacher of record for one full school year who earn an effective or higher rating on NMTEACH and who satisfactorily demonstrate teaching competencies for the type and level of licensure being sought, as determined by the LEA, shall be eligible to transfer to a level 2 or level 3A standard teaching license. Candidates following the alternative post-secondary experience pathway shall not be required to complete testing requirements.

[6.60.3.8 NMAC - Rp, 6.60.3.8 NMAC, 11/27/2018]

6.60.3.9 REQUIREMENTS FOR ALTERNATIVE TEACHING LICENSURE:

A. General requirements. All applicants for alternative teaching licensure shall:

- (1) be at least 18 years of age;
- (2) hold either a bachelor of arts or science degree, master of arts or science degree, or doctorate degree from a regionally accredited college or university with a minimum grade point average of 2.75;
- (3) complete a background check in accordance with 6.60.8 NMAC; and

(4) have no licensure requirements waived on an emergency or temporary basis, or for any other reason; and

(5) meet the application requirements for the license being sought.

B. Alternative EPP pathway. Applicants following the alternative EPP pathway shall:

(1) pass the required NMTA essential academic skills tests defined in 6.60.5 NMAC prior to receiving alternative licensure at any level;

(2) participate in a department-approved EPP with an alternative licensure program;

(3) serve as a teacher of record for two full school years; and

(4) complete no fewer than six semester hours including required hours of coursework in the teaching of reading aligned with the competencies for licensure for entry-level teachers for the type of license being sought.

C. Alternative NMTEACH pathway. Applicants following the alternative NMTEACH pathway shall:

(1) pass the required NMTA essential academic skills tests defined in 6.60.5 NMAC prior to receiving alternative licensure at any level;

(2) serve as a teacher of record for two full school years;

(3) receive two consecutive ratings of effective or higher on the NMTEACH summative evaluation; and

(4) complete required coursework in the teaching of reading.

(a)

Applicants seeking early childhood birth to pre-K, early childhood age three to age eight, elementary K-8, or special education pre K-12 licensure, shall complete six semester hours of coursework in the teaching of reading.

(b)

Applicants seeking middle level 5-9, secondary 7-12, or specialty area pre

K-12 licensure, shall complete three semester hours of coursework in the teaching of reading.

D. Alternative post-secondary experience pathway.

Applicants following the post-secondary experience pathway shall:

(1) provide documentation of at least five full school years' experience teaching at an accredited college or university;

(2) complete at least one full school year as a teacher of record while holding an alternative license; and

(3) complete required coursework in the teaching of reading.

(a)

Applicants seeking early childhood birth to pre-K, early childhood age three to age eight, elementary K-8, or special education pre K-12 licensure, shall complete six semester hours of coursework in the teaching of reading.

(b)

Applicants seeking middle level 5-9, secondary 7-12, or specialty area pre K-12 licensure, shall complete three semester hours of coursework in the teaching of reading.

[6.60.3.9 NMAC - Rp, 6.60.3.9 NMAC, 11/27/2018]

6.60.3.10 APPLICATION FOR ALTERNATIVE TEACHING LICENSURE:

A. Alternative EPP pathway. Applicants following the alternative EPP pathway who meet the criteria for alternative licensure as defined in 6.60.3 NMAC shall be issued a two-year alternative license and shall be permitted to serve as a teacher of record prior to completion of licensure requirements. The licensee shall complete coursework requirements within the two-year period and shall provide the department with documentation of coursework completion. Candidates with alternative licensure may be issued a one-year extension to allow additional time for completing coursework and testing requirements if they can demonstrate good standing with the LEA or EPP. Applicants for alternative licensure

via the alternative EPP pathway shall provide:

(1) official sealed bachelor's degree transcript with at least 30 semester hours in the license subject area, a master's degree transcript with at least 12 graduate hours in the license subject area, or a doctoral degree in the license subject area;

(2) a letter of acceptance into a department-approved EPP; and

(3) proof of passage of required NMTA essential academic skills tests.

B. Alternative NMTEACH pathway. Applicants following the alternative NMTEACH pathway who meet the criteria for alternative licensure as defined in 6.60.3 NMAC shall be issued a two-year alternative license and shall be permitted to serve as a teacher of record prior to completion of licensure requirements. The licensee shall complete coursework requirements within the two-year period and shall provide the department with documentation of coursework completion. Candidates with alternative licensure following the NMTEACH pathway who are not successful in demonstrating competency by way of NMTEACH summative evaluations shall not have their alternative license extended or renewed. Applicants for alternative licensure via the alternative NMTEACH pathway shall provide:

(1) official sealed bachelor's degree transcript with at least 30 semester hours in the license subject area, a master's degree transcript with at least 12 graduate hours in the license subject area, or a doctoral degree in the license subject area;

(2) a letter of acceptance into a department-approved EPP; and

(3) proof of passage of required NMTA essential academic skills tests.

B. Alternative NMTEACH pathway. Applicants following the alternative NMTEACH pathway who meet the criteria for alternative licensure as defined in 6.60.3 NMAC shall be issued a two-year alternative license and shall be permitted to serve as a teacher of record prior to completion of licensure requirements. The licensee shall complete coursework requirements within the two-year period and shall provide the department with documentation of coursework completion. Candidates with alternative licensure following the NMTEACH pathway who are not successful in demonstrating competency by way of NMTEACH summative evaluations shall not have their alternative license extended or renewed. Applicants for alternative licensure via the alternative NMTEACH pathway shall provide:

(1) official sealed transcript for a bachelor's degree transcript with at least 30 semester hours in the license subject area, a master's degree transcript with at least 12 graduate hours in the license subject area, or a doctoral degree in the license subject area;

(2) proof of registration to complete required coursework in the teaching of reading;

(3) proof of passage of required NMTA essential academic skills tests;

(4) a letter of support from the LEA requesting that the applicant follow the alternative NMTEACH pathway; and

(5) a letter of interest from the applicant requesting to follow the alternative NMTEACH pathway.

C. Alternative post-secondary experience pathway. Applicants following the alternative post-secondary experience pathway who meet the criteria for alternative licensure as defined in 6.60.3 NMAC shall be issued a one-year alternative license and shall be permitted to serve as a teacher of record prior to completion of licensure requirements. Applicants shall provide:

- (1) proof of registration to complete required coursework in the teaching of reading; and
- (2) verification of five-years' teaching experience at an accredited college or university. [6.60.3.10 NMAC - Rp, 6.60.3.11 NMAC, 11/27/2018]

6.60.3.11 REQUIREMENTS FOR ALTERNATIVE ADMINISTRATOR LICENSURE:

A. A one-year alternative license in educational administration may be issued to any candidate who:

- (1) holds a level 2 or level 3 teaching license; and
- (2) has at least six full school years of experience in administration at an accredited college or university. Administrators shall be in a position of supervision which shall include:

- (a) dean;
- (b) president; and
- (c) vice president.

B. Alternatively licensed educational administrators shall complete and internship of at least 180 hours. Upon completion of the internship, the candidate shall be issued a level 3B administrator license so long as they have met the administrator licensure competencies and indicators outlined in 6.62.2.10 NMAC, as verified to the department by the candidate's employer. [6.60.3.11 NMAC - Rp, 6.60.3.11 NMAC, 11/27/2018]

6.60.3.12 REQUIREMENTS FOR ALTERNATIVE STUDENT SUCCESS ADVISOR LICENSURE:

A. Applicants for an alternative student success advisor license shall:

- (1) be at least 18 years of age;
- (2) hold either a bachelor of arts or science degree from a regionally accredited college or university; and
- (3) complete a background check in accordance with 6.60.8 NMAC.

B. Applicants who meet the criteria established in Subsection A of 6.60.3.13 NMAC shall be issued a five-year alternative license to serve as a student success advisor. Student success advisors shall:

- (1) work with students in grades seven through 12; and
- (2) sign an ethical statement, prescribed by the department, stating that the licensee shall not provide mental health services while employed as a student success advisor.

C. Alternative student success advisor licenses shall be non-renewable. Student success advisors shall complete the requirements to earn a school counselor license defined in 6.63.6 NMAC within the five-year term of their alternative license to maintain employment in the role of a student advisor or to transition into the role of school counselor.

D. Responsibilities of the student success advisor may include any of the following:

- (1) maintaining accurate and complete records and reports as required by federal and state law and regulation, department guidance, and district and charter school policies;
- (2) analyzing transcripts;
- (3) guiding student and parent decision making regarding courses and graduation pathways;

(4) supporting students with the college application and admission process, including preparation for college admissions tests;

(5) developing master schedules;

(6) arranging for dual or concurrent enrollment, career technical education, and advanced placement course offerings;

(7) informing students about postsecondary financing options such as the free application for federal student aid that can be used to support advanced education and training;

(8) supporting student documentation of career preparedness, including industry-recognized credentials or certificates, test results, grades, samples of student work, resumes, and cover letters to prospective employers;

(9) planning and conducting activities focused on increasing career awareness;

(10) conducting orientation and training programs for students, parents, and staff;

(11) serving as a district or school test coordinator or administrator as defined in 6.10.7 NMAC; and

(12) supporting students in meeting the requirements for a New Mexico diploma of excellence by providing guidance on coursework and demonstration of competency requirements.

E. Responsibilities of the student success advisor shall not include providing mental health services.

[6.60.3.12 NMAC - Rp, 6.60.3.12 NMAC, 11/27/2018]

HISTORY OF 6.60.3 NMAC:

PRE-NMAC HISTORY: The material in this part was derived from that previously filed with State Records Center and Archives under: SBE Regulation No. 86-6, Alternative Licensure, filed July 14, 1986; and SBE Regulation No. 86-6, Amendment No. 1, Alternative Licensure filed December 4, 1990.

HISTORY OF REPEALED MATERIAL:

6 NMAC 4.2.2.1, Alternative Licensure, was repealed by the State Board of Education effective July 1, 2000 and repromulgated effective July 1, 2000.

6.60.3 NMAC, Alternative Licensure, filed June 1, 2001 -was repealed and replaced by 6.60.3 NMAC, Alternative Licensure, effective 10/31/2007.

6.60.3 NMAC, Alternative Licensure, filed 10/31/2007 - was repealed and replaced by 6.60.3 NMAC , Alternative Licensure, effective 11/27/2018.

REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 20 TRANSACTION COORDINATOR**

16.61.20.1 ISSUING

AGENCY: New Mexico Real Estate Commission.
[16.61.20.1 NMAC - N, 01-01-2019]

16.61.20.2 SCOPE:

The provisions in Part 20 of Chapter 61 apply to all New Mexico brokers.
[16.61.20.2 NMAC - N, 01-01-2019]

16.61.20.3 STATUTORY AUTHORITY:

Part 20 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 61-29-4.
[16.61.20.3 NMAC - N, 01-01-2019]

16.61.20.4 DURATION:

Permanent.
[16.61.20.4 NMAC - N, 01-01-2019]

16.61.20.5 EFFECTIVE DATE:

January 1, 2019, unless a later date is cited at the end of a section.
[16.61.20.4 NMAC - N, 01-01-2019]

16.61.20.6 OBJECTIVE:

The objective of Part 20 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of all brokers.
[16.61.20.6 NMAC - N, 01-01-2019]

16.61.20.7 DEFINITIONS:

Refer to 16.61.1.7 NMAC.
[16.61.20.7 NMAC - N, 01-01-2019]

16.61.20.8 REQUIREMENTS.

A. Any transaction coordinator performing activities that require a New Mexico real estate license, including offering and negotiating contracts and leases, must hold a current real estate license issued by the real estate commission.

B. A transaction coordinator performing activities for a brokerage under one ownership is not required to have a qualifying broker's license provided that the transaction coordinator is under the direct supervision of a qualifying broker of that same brokerage.

C. Any transaction coordinator providing services for multiple brokerages other than the transaction coordinator's own brokerage must hold a current New Mexico qualifying broker's license.

D. Any transaction coordinator providing services for a brokerage other than the transaction coordinator's own brokerage must have a transaction-specific written agreement with the qualifying broker of the brokerage for which those transaction coordinator services are being provided that details the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services.

E. A broker who engages the services of a transaction coordinator to perform activities that may require a real estate license whether within the broker's brokerage or outside the broker's brokerage, shall be responsible for disclosing the name(s) of the transaction coordinator, in writing, to the buyer, seller and brokers in the transaction.

F. A broker who hires a transaction coordinator must have a transaction-specific written agreement with that broker's qualifying broker detailing the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services, including written authorization that the transaction coordinator may be paid by the associate broker who has hired him or her.

G. A broker who hires a transaction coordinator remains responsible for the transaction; the hiring of a transaction coordinator in no way eliminates or mitigates the broker's responsibilities or obligations to the broker's customer or client or to other brokers and parties to the transaction.

H. Transaction coordinators may owe the following broker duties:

(1) If a transaction coordinator does not hold a real estate license and is not performing duties that require a real estate license, no broker duties are owed.

(2) If a transaction coordinator performs duties that require a real estate license, but only works for the broker that hired the transaction coordinator and has no interaction with the broker's customer or client or other brokers involved in the transaction, the transaction coordinator owes the broker duties under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC, as follows.

(a) Honesty and reasonable care and ethical and professional conduct;

(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, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations;

(c) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or occupant;

(d) Written disclosure of any potential conflict of interest or any other written agreement that the broker has in the transaction including but not limited to:

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

(ii) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

(iii) Any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction.

(e) 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.

(3) If a transaction coordinator performs duties that require a real estate license and works directly with a customer or client or other brokers and parties involved in the transaction, the transaction coordinator owes the following broker duties listed under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC listed in the preceding subparagraphs (a) through (e); and paragraphs (5) (7) and (8) of Subsection B of 16.61.19.8 NMAC, as follows.

(a) The broker shall maintain any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;

(b) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/occupant in a transaction:

(i) That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;

(ii) That the seller/owner will agree to financing terms other than those offered;

(iii) The seller/owner's motivations for selling/leasing; or

(iv) Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;

(c) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:

(i) That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer.

(ii) The buyer/tenant's motivation for buying/leasing; or

(iii) Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

[16.61.20.8 NMAC - N, 01-01-2019]

**REGULATION AND LICENSING DEPARTMENT
REAL ESTATE COMMISSION**

This is an amendment to Section 7 of 16.61.1 NMAC, effective 1-01-19. Subsections A through YY of 16.61.1.7 NMAC, were not listed below as there were no changes.

16.61.1.7 DEFINITIONS:

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

[AAA.] ZZ. “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.

[BBB.] AAA. “Sponsor”: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

[CCC.] BBB. “Subagent”: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

[DDD.] CCC. “Transaction coordinator”: a person engaged by a broker who assists the broker in the processing of the real estate transaction, and whose services may include, but not be limited to, the following: gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual deadlines, communicating and coordinating with lenders, title companies, inspectors, other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing.

[EEE.] DDD. “Transaction”: any real estate activity subject to the jurisdiction of the commission.

[FFF.] EEE. “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.

[GGG.] FFF. “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.

~~HHH:~~ **GGG.**

“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.

~~HH:~~ **HHH.** “Vacation rental”: With the exception of hotels and motels, a vacation rental is the rental of real property by a renter who does not manifest an intent to make the real property a permanent residence. Evidence that the renter does not intend to make the real property a permanent residence includes, but is not limited to, the following: landlord/property manager supplies all furnishings, appliances, bedding, towels, utensils, plates, and silverware.

~~HH:~~ **III.** “Virtual office”: A real estate brokerage office that provides communication and address services without providing dedicated office space. [16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2012; A, 1-1-2017, A, 1-15-2018; A, 1-1-2019]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

This is an amendment to Section 8 of 16.61.2 NMAC, effective 1-01-19. Subsections A through J of 16.61.2.8 NMAC, were not listed below as there were no changes.

16.61.2.8 FEES:

K. [For each application to the commission to become an approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course. For each application to the commission to become approved to instruct a currently approved pre-licensing or continuing education course, a fee not to exceed seventy

dollars (\$70.00) per course. For each application to the commission to renew certification as a commission approved instructor of real estate pre-licensing or continuing education courses, a fee not to exceed one hundred dollars (\$100.00).]

L. [For each application to the commission to renew certification as a commission approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed one hundred dollars (\$100.00).] For each application to the commission for approval of a new pre-licensing and continuing education course, a fee not to exceed fifty dollars (\$50.00) plus two dollars (\$2.00) for each credit hour up to a maximum of 10 credit hours. For applications to the commission for bulk course approval, defined as five or more courses at a single committee meeting, a reduced fee not to exceed twenty-five dollars (\$25.00) per course plus one dollar (\$1.00) for each credit hour up to a maximum of 10 credit hours.

[16.61.2.8 NMAC - Rp, 16 NMAC 61.2.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 1-1-2012; A, 1-1-2019]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

This is an amendment to Sections 11 through 14 of 16.61.3 NMAC, effective 1-01-19.

16.61.3.11 QUALIFYING BROKER CANDIDATE EDUCATION REQUIREMENTS FOR APPLICATION:

An associate broker or salesperson licensed in another state who is applying for a qualifying broker license shall furnish the commission satisfactory evidence of:

A. Completion of the commission approved 30-hour brokerage office administration course, with an in-course instructor-created exam administered by the instructor at the end of the course.

B. Completion of the

eight-hour understanding and using RANM forms course [(#21020551)], or at least eight hours of other commission-approved contract course(s).

C. Completion of a minimum of eight hours of [elective courses in the professional track of the applicant; defined as residential transactions, commercial transactions, property management transactions, ranch and/or vacant land transactions] core elective courses.

D. Attendance at one New Mexico real estate commission meeting, rule [public] hearing, or disciplinary hearing for at least three hours, or until the commission meeting goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to attendance at a commission meeting by an online download, attendance at any approved equivalent, or by other approved participation.

[16.61.3.9 NMAC – Rp. 16.61.3.11, 1-15-2018; A, 1-1-2019]

16.61.3.12 QUALIFYING BROKER APPLICATION REQUIREMENTS: An associate broker or salesperson licensed in another state who is applying for a qualifying broker license shall furnish the commission satisfactory evidence of:

A. A notarized affidavit of the applicant’s acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the qualifying broker. Supervision shall be defined in the affidavit as follows:

(1)

Review and maintain all records and documents required for real estate related matters processed by personnel supervised by the qualifying broker.

(2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance with the real estate license law and commission rules.

(3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.

(4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

B. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit this affidavit.

C. A supervisory plan which will outline the qualifying broker's schedule of training and education provided or promoted. The supervisory plan will be applicable to the broker applying to be a qualifying broker and to all other brokers affiliated with them, if any. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit a supervisory plan.

D. Applicants with current licenses who can document that they were New Mexico qualifying brokers 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.

E. 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 broker's examination prior to being issued a qualifying broker's license.

F. 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.

G. 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. 16.61.3.12, 1-15-2018; A, 1-1-2019]

16.61.3.13 QUALIFYING BROKER LICENSE RENEWAL REQUIREMENTS: A qualifying broker applying for renewal of their license shall furnish the commission satisfactory evidence of successful completion of:

A. The qualifying broker refresher course.

B. A minimum of 36 hours of commission-approved courses, including

(1) The four-hour core course in each year of the broker's licensing cycle

(2) [~~A minimum of eight hours of courses from the qualifying broker's professional track, including commission-approved courses in residential transactions; commercial transactions, including courses offered by CCIM, SIOR, and CBI; property management transactions, including courses offered by IREM; and vacant land and/or farm and ranch sales.~~] Eight hours of core elective courses.

C. Attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

D. An application for renewal of a qualifying broker's license shall include a notarized affidavit of the applicant's acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the brokerage, including but not limited to:

(1) Review and maintain all records and documents required for real estate related matters processed by the brokerage.

(2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker to ensure compliance with the Real Estate License Law and commission rules.

(3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.

(4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

E. A qualifying broker applying for license renewal who will be supervised by another qualifying broker will not be required to submit this affidavit.

F. An application for renewal of a qualifying broker's license shall include a statement affirming that the qualifying broker substantially fulfilled the supervisory plan filed with the initial application, and a plan outlining the schedule of training and education to be provided or promoted and the policies for supervision in the next licensing cycle. The supervisory plan will be applicable to the applicant for renewal of the qualifying broker's license and all affiliated brokers, if any. A qualifying broker who is supervised by another qualifying broker is not required to submit a supervisory plan. [16.61.3.9 NMAC – Rp. 16.61.3.13, 1-15-2018; A, 1-1-2019]

16.61.3.14 PROPERTY MANAGEMENT EDUCATIONAL REQUIREMENTS: Qualifying brokers or associate brokers intending to offer property management services for others, shall as a condition of offering property management services complete the following education requirements:

A. Completion of the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering property management services, and during every subsequent three-year licensing cycle.

B. As a condition of offering property management services, in addition to the course requirement in paragraph A above,

associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

C. Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, during each three-year licensing cycle.

D. While qualifying brokers are already subject to the meeting attendance renewal requirements listed in Subsection C of 16.61.3.13 NMAC, associate brokers who offer or intend to offer property management services shall also be subject to the same meeting attendance requirements in Subsection C of 16.61.3.13 NMAC, namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation. [N, 1-01-2019]

**REGULATION AND LICENSING DEPARTMENT
REAL ESTATE COMMISSION**

This is an amendment to Section 8 of 16.61.11 NMAC, effective 1-01-19.

16.61.11.8

REQUIREMENTS: Every real estate license expires every three years on the last day of the month following the broker's birth month, unless it is renewed on or before that date. Renewal of a license is the sole responsibility of each broker. A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a reinstatement fee three times the regular license renewal fee. A qualifying broker with multiple licenses cannot avoid paying the late fee on an expired license by allowing the license to expire and applying for an additional license. An application for an additional license within one year of the broker's license expiration date will only be accepted if the qualifying broker brings all other licenses current with respect to fees, continuing education, and other renewal requirements. In addition to paying a reinstatement fee, the broker will be required as a condition of reinstatement to provide documentation of the completion of 36 hours of commission-approved continuing education courses. [Application for renewal shall be on the renewal form prescribed by the commission. Renewal forms will be mailed to brokers at the last residential mailing address on file at the commission. The broker must notify the commission of a residential address change within 10 days of address change.] The commission shall email online license renewal forms and all related web links to brokers at the broker's email address on file at the commission, and if possible, in the case of active associate brokers, send a copy of said email notice to the applicable qualifying broker. Brokers are responsible for providing the commission with a current email address, and phone number; and, for notifying the commission within 10 days of a change of email address. Brokers must also maintain a current residential address with the commission and notify the commission within 10 days of a residential address change.

The qualifying broker may pay a commission to a broker whose license is expired or to the estate of a deceased broker if the transaction was under contract while the broker's license was current.

[8-15-97; A, 1-1-2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

**REGULATION AND LICENSING DEPARTMENT
REAL ESTATE COMMISSION**

This is an amendment to Section 8 of 16.61.13 NMAC, effective 1-01-19.

16.61.13.8

REQUIREMENTS: Except for brokers who are exempt from continuing education by virtue of having attained 65 years of age and a minimum of 20 years of continuous licensure prior to July 1, 2011;

A. All active and inactive associate brokers and qualifying brokers shall successfully complete a minimum of 36 credit hours of continuing education in courses approved by the commission during each licensing cycle.

B. Required courses include the four hour New Mexico real estate commission (NMREC) core course to be completed annually; a four hour commission-approved core elective course to be completed once during each three year licensing; and four hours of commission-approved ethics courses to be completed during each three year licensing cycle.

C. Of the remaining 16 credit hours, no more than 10 credit hours may be earned toward the continuing education requirement from commission-approved training category courses. All 16 remaining credit hours may be earned toward the continuing education requirement from commission-approved education category courses.

D. The NMREC core course requirements shall apply to those associate brokers and qualifying

brokers who have not completed the eight hour mandatory course in their current licensing cycle by December 31, 2016. If a broker has so completed the eight hour mandatory course, the NMREC core course requirement will not apply until their next licensing cycle. Brokers who have completed the eight hour mandatory course in their current licensing cycle and who wish to take the NMRE core course will receive four additional hours of education category credit in their current licensing cycle.

E. The NMREC core course will have a unique course name and course number each year, including the year in which it was presented. The commission shall ensure that the content is unique for each year's course to ensure that brokers are not receiving identical information in more than one course.

F. Pursuant to 16.61.11.8 NMAC, the licensee's license will expire and can only be renewed within one year of expiration by payment of a late fee, and successful completion of all renewal requirements; including all applicable core course requirements. If a licensee fails to meet the core course requirements at the time of renewal, and are not exempt under 16.61.13.8 NMAC, the following policy will be in effect until December 31, 2019.

(1) If a broker failed to complete the core course required for the renewal year, the third calendar year of their license renewal cycle, the broker must complete that core course with a core course instructor, in a regular core course class setting, or another format that has been approved by the commission.

(2) If a broker failed to complete the core course required for the first and/or second years of their license renewal cycle, the broker must complete that core course with a core course instructor, in a regular core course class setting, or other format that has been approved by the commission. The broker will have the option to

repeat the current year's core course, with a different instructor, to fulfill the renewal requirements of the first and/or second year's core course. The broker will be given credit for the repeated core course for renewal purposes, but will not be given any continuing education credit for the repeated core course.

(3) Effective January 1, 2020, paragraph (2) above will be replaced by the following: If a broker failed to complete the core course required for the first and/or second years of their license renewal cycle, the broker will be required to successfully complete the 30-hour broker basics course. The broker will be given credit for renewal purposes, but will not be given any continuing education credit.

[F.] G. Commission-approved pre-licensing courses may count for up to 10 credit hours toward continuing education credit for license renewal. The commission approved 30 hour post-licensing course may also count for up to 10 education category credit hours toward continuing education.

[G.] H. No commission-approved continuing education course in either the education or the training category will be granted more than 10 credit hours of continuing education credit.

[H.] I. Continuing education credit hours cannot be carried forward to the next licensing cycle.

[I.] J. The same continuing education course cannot be repeated for credit in a three-year renewal cycle.

[J.] K. Brokers may receive up to a maximum of four approved education course credit hours during each licensing cycle for attending commission meetings, rule hearings, disciplinary hearings, or meetings of the education advisory committee (EAC).

[K.] L. Approved instructors may use up to 10 credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved

courses. Teaching documentation must be provided by the course sponsor.

[H:] M. Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.

N. Pursuant to 16.61.3.14 NMAC, all brokers who intend to offer property management services for others, shall as a condition of offering property management services complete the education requirements as listed below:

(1) Completion of the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering property management services, and every subsequent three year licensing cycle.

(2) As a condition of offering property management services, in addition to the course requirement in subsection A above, associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

(3) Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

(4) While qualifying brokers are already subject to the meeting attendance requirements for license renewal under Subsection C of 16.61.3.13 NMAC, associate brokers who offer or intend to offer property management services shall also

be subject to the same meeting attendance requirements namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

[1-1-2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 12-31-2008; A, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

**REGULATION AND LICENSING DEPARTMENT
REAL ESTATE COMMISSION**

This is an amendment to Sections 9 through 12 of 16.61.15 NMAC, effective 1-01-19.

16.61.15.9 APPROVAL OF EDUCATION PROGRAMS:

A. Courses offered for New Mexico real estate commission approved credit must be offered by sponsors approved by the New Mexico real estate commission and be taught by instructors approved by the commission.

B. Applications for sponsor, instructor and course approvals shall be accompanied by the fee(s) specified in 16.61.2.8 NMAC of the commission rules.

(1) An approved education category course shall consist of a 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,

and ethical practice of real estate; and real estate related local, state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

(2) Approved training category courses include personal and property protection for the broker and clients; using the computer, the internet, business calculators and other technologies to enhance the broker's service to the public; concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

(3) With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable continuing education classes shall include courses taken in fulfillment of another state's continuing education requirements. Other non-acceptable courses include mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar courses.

C. The committee shall review instructor candidates:

(1) to determine the candidate's knowledge of the subject matter;

(2) to determine the candidate's ability to communicate his/her knowledge to students;

(3) to determine if the candidate uses appropriate teaching delivery skills;

(4) to determine if the candidate is honest, truthful, reputable, professional, and competent.

[16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

16.61.15.10 APPROVAL OF SPONSORS AND RESPONSIBILITIES:

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission before the course being offered for credit.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form with supporting documentation as required by the commission.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;

(2) permit all New Mexico real estate brokers to attend all classes offered by the sponsor for which continuing education credit is awarded;

(3) document electronically to the real estate commission that the student has completed the course;

(a) certify no candidate as successfully completing the broker basics or brokerage office administration course unless the student has attended at least ninety percent of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing a commission approved course unless the broker has attended 50 minutes of each hour, or successfully completed a distance education course approved by the New Mexico real estate commission; ~~[In the case of a course that is offered in both live and distance education formats, the sponsor shall have discretion as to completion and~~

certification;]

(4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation, deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is in the education or training category;

(7) in the event a sponsor determines that it intends to cease sponsoring real estate classes it shall inform the commission in writing not less than 30 days before cessation;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be maintained by the sponsor for not less than one year and shall be made available to the commission, or any duly authorized commission representative, upon request;

(10) renew sponsorship approval every three years by submitting a sponsor renewal form and renewal fee to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act and all other local, state and federal laws.

E. Failure to comply with this rule may result in the loss of sponsor approval. The commission may investigate any claim of violation of this rule. ~~[pursuant to 16.61.36.8-NMAC of the commission rules.]~~ [16.61.15.10 NMAC - Rp, 16.61-15.10 NMAC, 1-1-2012; A, 1-1-2019]

16.61.15.11 APPROVAL OF COURSES:

A. Any pre-licensing or continuing education course must have been approved by the commission before the course being offered for credit. Courses must incorporate New Mexico law and ~~[regulations]~~ rules when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the committee.

(1) Before course approval, the instructor teaching the course shall make a presentation before the committee according to presentation criteria established by the committee.

(2) The committee shall assign the number of credit hours to each course and determine whether the course is in the education or training category.

(3) Commission approved pre-licensing courses may count for up to ten credit hours toward continuing education requirements for license renewal.

B. The committee may waive a course presentation appearance by a nationally recognized professional real estate organization that provides professional designations if the organization can document to the committee's satisfaction that the course instructor received training in the course subject matter in addition to attending a train the trainer class.

C. The commission must approve any continuing education course offered for one-time credit before the course being offered.

(1) A commission approved application form for one-time credit approval must be completed and submitted to the committee before consideration of

the course for credit.

(2) Approved sponsors are limited to ~~four~~ 10 course submittals for one-time credit during each calendar year.

(3) The sponsor, or its representative, requesting one-time course credit, shall make a presentation before the committee according to presentation criteria established by the committee.

D. The course shall conform to the generally accepted principles of education as prescribed by the real estate educators association (REEA) and shall comply with commission approved course content requirements. The minimum length of a course shall be one hour.

E. The commission will maintain a list of courses that have been approved for credit.

F. If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last three years the committee may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

G. Distance education: For purposes of this part, distance learning is education and training that takes place outside of the traditional classroom setting and in which non-traditional instructional media are used because the teacher and student are separated by distance or time. Distance education sponsors seeking continuing education credit for their courses will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for committee review and approval:

(1) course syllabus which clearly states the course objectives and the specific learning objectives for desired student competencies;

(2) instructions for accessing, using and testing the online materials for committee auditing purposes including everything necessary for evaluating course content materials, duration, accuracy and timeliness;

(3) reference materials appropriate to the course;

(4) when a series of courses is offered in a curriculum, evidence of sequential development and logical progression;

(5) description of the method, such as examination and quizzes, by which student progress and mastery of the subject matter are measured, and for determining what is required for a student to successfully complete the course;

(6) description of the method by which student identity is verified, such as user name and password;

(7) the names, telephone numbers and email addresses of individuals, web-sites or other resources that students can contact for technical assistance;

(8) the name and contact information of the New Mexico instructor approved to teach the course who will be available to answer subject matter questions during regularly posted hours;

(9) a description of the methodology used by the sponsor in determining the classroom hour equivalency of each distance education course.

H. Live distance education is distance education in which the teacher and student are separated by distance, but not time. In addition to the requirements of Subsection G, the following regulations will apply to live distance education. Live distance education sponsors and instructors seeking approval to offer continuing education credit will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for committee approval the following:

(1) The technology a sponsor intends to use

to provide live distance education will be in place, at the place of instruction and at student location(s), and demonstrated to the committee in a situation as near to the actual proposed class setting as possible.

(2) The sponsor or instructor will provide technical support sufficient to rectify minor technical problems. If there are interruptions that exceed the regulatory mandate of 50 minutes of instruction per hour, no credits will be issued to students.

(3) At live distance education locations where there is a proctor provided by the sponsor or the instructor, a final examination is not required. At locations where there is no proctor, a final examination is required.

(4) Live distance education core course instruction will be proctored, will have a maximum of 40 students total, and a minimum of five students at each location, unless there is a one teacher to one student instruction.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

16.61.15.12 APPROVAL OF INSTRUCTORS:

A. Commission approved course instructors. Instructors must be approved by the commission before teaching courses. The following requirements apply to all commission approved ~~courses~~ instructors.

(1) Be honest, truthful, reputable, professional, and competent.

(2) Submit a commission-approved application before presenting the course to the committee.

(3) Complete a commission approved instructor training course within one year of being initially approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor-training course will not be re-certified.

(4) Provide copies of student handouts during their course presentation.

(5) Make a minimum 15 minute presentation to the committee exhibiting their teaching skills and knowledge of the subject matter, and be prepared to answer questions. Presentations must conform to the generally accepted principles of education (GAPE) as established by the real estate educators' association (REEA).

B. Pre-licensing instructors. Pre-licensing courses include: real estate law, real estate principles and practices, broker basics and brokerage office administration. In addition to Subsection A. above, these instructor candidates must:

(1) pass the New Mexico broker's examination with a minimum score of 84 within the previous three years from the date of application;

(2) audit the course they wish to teach before being approved as an instructor for that course; documentation of having audited the course must be submitted with the candidate's application;

(3) broker basics: be approved to teach real estate law and real estate principles and practice;

(4) brokerage office administration: be approved to teach real estate law and real estate principles and practice and broker basics; in addition, candidates must also have two-year's experience as a qualifying broker in New Mexico or another licensing jurisdiction.

C. Core course instructors. In addition to Subsection A. above core course instructor candidates must:

(1) Successfully complete a core course training [and be approved by the committee;] class recommended by the committee and approved by the commission; and

(2) [ensure the NMREC core course materials they present include the most recent updates provided by the New Mexico real estate commission;]

Teach the current core course twice for no compensation; teamed with two different approved core course instructors designated by the commission executive secretary or commission education administrator; and receive "above average" evaluations in both courses, and

(3) [make a presentation to the committee and answer questions.] Appear before and be approved by the committee, including presentation to the committee of a component of the current year's core class; and

(4) Appear before the commission, and be sworn in, and

(5) Ensure that the core course materials the applicant presents includes the materials approved by the commission for the current calendar year that is being taught.

D. Qualifying broker refresher course instructors. In addition to Subsection A above, qualifying broker refresher course instructor candidates must comply with one of the following:

(1) be a currently approved instructor for real estate law and real estate principles and practice and broker basics and be a qualifying broker or would qualify to be one; or

(2) be approved to teach the ~~[mandatory]~~ core course and be a qualifying broker.

E. New broker business practices post-licensing course instructors. In addition to Subsection A above, new broker business practices course instructors must:

(1) have two years' experience as an active qualifying broker with supervisory responsibilities or two years actively licensed as an associate broker and served in the capacity as a trainer for the brokerage, or two years actively licensed as an associate broker and be approved as a continuing education instructor;

(2) attend, when offered, a commission approved

train-the-trainer on how to instruct the post-licensing course and attend, when offered, a periodic update of the course offered by the commission or the commission contractor; and

~~[(3) make a minimum 60 minute presentation to the committee and answer questions;]~~

F. Committee approval process. The committee will make its recommendation to the commission to grant or deny instructor approval. If the application is denied, a written evaluation to the candidate will provide specific reasons for denial and recommendations for improvement. An instructor candidate not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

G. Post-approval requirements. After approval all instructors must comply with the following:

(1) pay applicable fee(s);

(2) conduct all classes in accordance with commission rules and educational policies;

(3) ensure all instruction is free from all misrepresentation, solicitations of products and recruitment;

(4) conform to commission-approved course content requirements; and

(5) allow access to any class to any duly appointed representative of the commission.

H. Instructor approval expiration and re-certification.

(1) Expiration. Instructor approvals expire on the same three-year cycle as the instructor's broker's license. If an instructor is not a real estate broker, then the expiration will be three years from the date of initial approval.

(2) Re-certification. Instructors seeking re-certification shall:

(a) submit the commission-approved form;

(b) submit documentation of having

completed a commission-approved instructor training course;

(c) an instructor who has not taught a course in the preceding three year instructor renewal cycle will not be recertified to teach that course; an instructor may submit at the time of renewal, a written request to the committee to be re-certified to teach that course; the written request must specify how the instructor has remained current on the course material, and must include the course outline and course material.

I. Failure to comply with this part may result in the loss of instructor approval. [~~The commission may investigate any claim of instructor impropriety pursuant to 16.61.36.8 NMAC of the commission rules.~~]
 [16.61.15.12 NMAC - Rp, 16.61.15.12 NMAC, A 1-1-2017; A, 1-1-2019]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

This is an amendment to Section 8 of 16.61.17 NMAC, effective 1-01-19.

16.61.17.8 AFFILIATION:
 An associate broker must be affiliated with a qualifying broker in order to engage in real estate brokerage business. An associate broker may have only one associate broker's license and be affiliated with only one qualifying broker at a time. If specified in the independent contractor agreement between the broker and the associate broker, an associate broker may perform brokerage services for different qualifying brokers within the same brokerage with the same ownership. A broker performing brokerage related services in the capacity of a transaction coordinator for multiple brokerages must have a qualifying broker's license issued by the commission.

[1-1-2000; 16.61.17.8 NMAC - Rn, 16 NMAC 61.17.8, 1-1-2002; A, 1-1-2006; A, 1-1-2012; A, 1-1-2019]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

This is an amendment to 16.61.19 NMAC, Section 8, effective 1-01-19.

16.61.19.8 BROKER DUTIES; DISCLOSURE: Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants as set forth [~~in this Part 16.61.19.8.~~] herein, 16.61.19.8 NMAC. Brokers shall disclose the applicable set of broker duties owed to buyers, sellers, landlords (owners) of rental property and tenants as set forth [~~in this Part 16.61.19.8~~] herein, 16.61.19.8 NMAC, prior to the time the broker generates or presents any written document to that party that has the potential to become an express written agreement and obtain from that applicable party written acknowledgement that the broker has made such disclosures. Brokers shall perform all duties established for brokers by the commission. In the case of prospective buyers, sellers, landlord (owners) and tenants to whom the broker is not directly providing real estate services, such disclosure and acknowledgment of receipt shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

A. Brokers owe the following duties to prospective buyers, sellers, landlords (owners) and tenants:

(1) Honesty and reasonable care and ethical and professional conduct;

(2) 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, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations;

(3) Performance of any and all written agreements made with the prospective

buyer, seller, landlord (owner) or tenant;

(4) Written disclosure of any potential conflict of interest or any other written agreement that the broker has in the transaction including but not limited to:

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

(b) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

(c) Any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction.

(5) 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.

B. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Subsection A of 16.61.19.8 NMAC, Brokers owe the following broker duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services, regardless of the scope and nature of those services; brokers working as property managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:

(1) Assistance to the party in completing the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services, including:

(a) Timely presentation of and response to all written offers or counter-offers; and

(b) Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction; If the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance;

(2) Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;

(3) Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement.

(4) Prompt accounting for all money or property received by the broker;

(5) maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;

(6) Written disclosure of brokerage relationship options available in New Mexico;

(7) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:

(a) That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;

(b) That the seller/owner will agree to financing terms other than those offered;

(c) The seller/owner's motivations for

selling/leasing; or

(d) Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;

(8) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:

(a) That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer.

(b) The buyer/tenant's motivation for buying/leasing; or

(c) Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

(9) In the event the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

C. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in [~~this Section 16.61.19.8(A);~~] this Subsection A of 16.61.19.8 NMAC, brokers working as property managers for a landlord (owner) owe the following duties to tenants:

(1) Prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;

(2) If a residential property manager, written disclosure that the broker is the agent of the owner of the property and not of the tenant; in the commercial property management context, written disclosure of the broker's relationship with the landlord (owner).

D. Broker obligations to other brokers. Brokers owe the following professional obligations to other brokers; however, brokers are

not required to provide to one another a list of these broker obligations.

(1) Honesty, reasonable care, and ethical and professional conduct;

(2) Timely presentation of all written offers or counter-offers and responses thereto, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;

(3) Active participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the contract and with the closing of the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;

(4) 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; the New Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;

(5) Written disclosure of any adverse material facts actually known by the 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;

(6) Written disclosure of any potential conflict of interest that the broker has in the transaction, including but not limited to, any material interest the broker has in the transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction;

(7) Non-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.

[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. A-1-15-2018; A, 1-1-2019]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

This is an amendment to 16.61.23 NMAC, adds a new Section 12, effective 1-01-19.

16.61.23.12 TRUST ACCOUNT DECLARATION AND RECORD KEEPING :

Qualifying brokers who offer property management services for others shall:

A. Execute and submit to the commission, on a form provided by the commission, a declaration of intent to offer such services. Such declaration will acknowledge the qualifying broker's responsibility for all property management services provided by the brokerage including maintenance of the records described below.

B. Maintain records of such services as provided in 16.61.23 NMAC and 16.61.24 NMAC, including:

(1) A list of all property management trust accounts maintained by the brokerage;

(2) The name of the bank(s) at which such trust accounts are maintained;

(3) Monthly trust account reconciliation(s) demonstrating a three-way reconciliation between the trust account, the bank statement, and the property ledger;

(4) Trust account year-end balances.

C. Qualifying brokers who offer property management services for others shall review 16.61.23 NMAC and 16.61.24 NMAC of the commission rules with licensed and unlicensed personnel performing property management services at the brokerage.

D. Qualifying brokers offering property management

services for others shall make the records and information delineated in this part available to the commission upon request.

E. Failure of a qualifying broker to comply with the provisions of 16.61.23.12 NMAC, shall subject the qualifying broker to disciplinary action. [16.61.23.12 NMAC – N, 1-1-2019]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

This is an amendment to Sections 9, 10, 13, 14, and 16 of 16.61.24 NMAC, and adds a new Section 17, effective 1-01-2019.

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.] At any time that a qualifying broker or associate broker offers or intends to offer property management services for others, the broker shall declare that intent on a form approved by the commission, and shall be subject to education and meeting attendance requirements pursuant to 16.61.3.14 NMAC, and delineated as follows:

A. Qualifying brokers and associate brokers who offer or intend to offer property management services for others, shall as a condition of offering property management services, first complete the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering such services, and in every subsequent three-year licensing cycle.

B. Associate brokers who offer or intend to offer property management services for others, shall do so only with the knowledge, written permission and under the supervision of their qualifying broker. As a condition of offering property management services, in addition to

the course requirement in Subsection A above, the broker shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

C. Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

D. Qualifying brokers and associate brokers shall attend at least one New Mexico real estate commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first, in each three three-year licensing cycle. Attendance may be at a live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing. [16.61.24.9 NMAC - N, 1-1-2012; A, 1-1-2014; A, 1-1-2019]

16.61.24.10 COMPLIANCE WITH APPLICABLE LAW:

Brokers shall comply with applicable local, state and federal laws and ordinances concerning managing and leasing, and maintaining property for others, including but not limited to [the New Mexico Uniform Owner-Resident Relations Act, Sections 47-8-1 through 47-8-52 NMSA 1978.] the following:

A. Federal fair housing law

B. New Mexico Uniform Owner-Resident Relations Act

C. Federal lead-based paint regulations, including provisions of the federal Environmental Protection Agency's lead-based paint renovation, repair and painting rule.

[16.61.24.10 NMAC - N, 1-1-2012; A, 1-1-2019]

16.61.24.13 MANAGEMENT AGREEMENTS:

A. There shall be a signed written management agreement between the brokerage and the owner for each property managed. The agreement shall be executed prior to acting on behalf of the owner and shall specify the brokerage relationship.

B. The agreement shall define the duties and responsibilities of the brokerage and the owner including, but not limited to, the following:

- (1) duties to be provided by the brokerage;
- (2) disclosure of all fees to be charged to owner;
- (3) disclosure of all fees to be charged to tenant that are retained by the brokerage; and
- (4) a question asking the owner to disclose the status of any foreclosure or other financial situation that could affect the tenant's occupancy.

C. If the property manager is prohibited by law or contract from providing the owner with a given document, such as a tenant's criminal background check or credit report, the property management agreement shall include the following:

- (1) a written disclosure to the owners that the property manager is prohibited by law or contract from providing such documents to the owner; or
- (2) the owner's written consent that such documents will not be provided.

D. The qualifying broker shall include with every written residential management agreement a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act. The qualifying broker shall obtain separate written confirmation from each client that the client has received such a copy of the act. The qualifying broker shall make this confirmation available to the New

Mexico real estate commission if requested.

E. Before the brokerage transfers any management agreement to another brokerage, both the qualifying broker assigning the contract and the qualifying broker receiving the contract shall execute an assignment of contract. Because the management agreement is a personal services contract, the qualifying broker must have the property owner's written consent to assign the contract to another brokerage. If there is no assignment of contract, the qualifying broker receiving the contract must execute a new management agreement.

[16.61.24.13 NMAC - Rp, 16.61.24.13 NMAC, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

16.61.24.14 RESIDENTIAL TENANCY AGREEMENTS:

There shall be a signed written tenancy agreement for each property or rental unit. ~~[Tenancy agreements shall include, but not limited to, the following:~~

- ~~**A.**~~ name of tenant;
- ~~**B.**~~ property address or legal description including unit number (if unit number is applicable);
- ~~**C.**~~ rent amount;
- ~~**D.**~~ security deposit and other deposit amounts;
- ~~**E.**~~ when and where rent is to be paid;
- ~~**F.**~~ date possession began;
- ~~**G.**~~ date possession ends;
- ~~**H.**~~ all fees charged tenant; and
- ~~**I.**~~ how payments are to be applied to outstanding charges.]

A. Tenancy agreements shall include, but not be limited to, the following:

- (1) name of tenant;
- (2) property address or legal description including unit number (if unit number is applicable);
- (3) rent amount;
- (4) security

deposit and other deposit amounts;
(5) when and where rent is to be paid;
(6) date property possession began;
(7) date property possession ends;
(8) all fees charged to the tenant; and
(9) how payments are to be applied to outstanding expenses/charges.

B. The qualifying broker shall include a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act, with every written residential tenancy agreement. The qualifying broker shall obtain separate written or electronic confirmation from each tenant that the tenant has received such copy of the act. The qualifying broker shall make this confirmation available to the commission if requested.

C. If the property manager's name is on a lease as the agent of the property owner, and a new property manager takes over management of the property, the lease shall be assigned to the new property manager. The owner of the property must give written consent for assignment of the lease and the assignment must be acknowledged in writing by the qualifying broker.

[16.61.24.14 NMAC - Rp, 16.61.24.14 NMAC, 1-1-2012; A, 1-1-2019]

16.61.24.16 [SHORT TERM AND] VACATION RENTALS:

In addition to the provisions set forth above, the following special provisions apply only with respect to the management of ~~[short term and]~~ vacation rentals.

A. ~~[Management agreement to authorize collection of New Mexico gross receipts tax and lodger's tax from tenant. Broker to report and pay gross receipts tax and lodger's tax due on all receipts derived from reservations in accordance with New Mexico law.]~~ If gross receipts taxes and/or lodgers' taxes are due, the management agreement shall specify who or what

entity is responsible for collection, reporting and/or remitting of such taxes. If the taxes are to be collected from the tenant by the broker or a third party, the management agreement shall authorize the broker or third party entity to collect and remit the applicable taxes from the renter.

B. Management agreements shall disclose if the broker is using a third party advertising or reservation service (such as AirBnB, VRBO, etc.)

C. Compensation retained by or paid to third parties who engage in advertising and/or taking reservations for vacation rental properties shall not be considered to be in violation of Subsection (3) of Section 61-29-12 A NMSA 197 of the New Mexico real estate license law which prohibits real estate brokers from paying or receiving rebate, profit, compensation or commission to or from any unlicensed person.

D. If a broker uses an online travel agent or third party advertising entity which prohibits disclosure of the brokerage name and/or telephone number as registered with the commission, such displays are exempt from the disclosure requirement in Subsection B of 16.61.32.8 NMAC. In this event, the broker shall ensure that the renter receives this disclosure promptly upon completing a rental reservation.

E. The broker shall not be required to deliver a copy of the Uniform Owner-Resident Relations Act to a renter of a vacation rental.

~~[B:]~~ **E.** ~~[A tenant]~~ A rental agreement shall also include the following:

- (1) arrival and departure dates;
- (2) check-in and check-out times;
- (3) nightly rental rate;
- (4) rental deposit;
- (5) security deposit;
- (6) disclosure of all fees charged to ~~[tenant]~~ the renter (e.g. cleaning, hot tub, phone,

cable internet, resort, etc.);

(7)

accommodation rules (e.g. occupancy, parking, smoking, pets, noise, etc.); and

(8)

cancellation policy.

~~[C:]~~ **G.** Reports to owners.

In the monthly statement to the owner, qualifying broker shall also list rental income, credit card fees, maintenance charges and amount paid in commission to the brokerage office.

~~[D:]~~ **H.** ~~[Tenant]~~ Renter security deposits. Funds collected as a tenant security deposit shall be deposited into the property management trust account.

~~[E:]~~ **I.** ~~[Tenant rental deposits]~~. Rental deposits. Funds collected ~~[as a tenant rental deposit]~~ as a rental deposit shall be deposited into the property management trust account to secure a reservation.

~~[F:]~~ **J.** Employees of the brokerage handling short term or vacation rentals or third parties who engage only in taking reservations for short term or vacation rentals shall not be required to be licensed.

[16.61.24.16 NMAC - Rp, 16.61.24.16 NMAC, 1-1-2012; A, 1-1-2019]

16.61.24.17 VENDORS

All brokers hiring vendors or employees to perform maintenance, repair or renovation activities shall only use vendors and employees who are:

A. certified and/or licensed as required by local, state and/or federal law; and,

B. insured and/or bonded.

[16.61.24.17 NMAC - N, 01-01-2019]

END OF ADOPTED RULES

Other Material Related to Administrative Law

**AGRICULTURE
DEPARTMENT**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The New Mexico Agriculture Department gives Notice of Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of 21.19.2 NMAC:

Incorrect Chapter name “Pest, Disease, and Weed Control” was corrected to “Pecan Buyers Licensure”.

A copy of this Notification was filed with the official version of the above rule.

**End of Other
Material Related to
Administrative Law**

2018 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	March 1	March 13
Issue 6	March 15	March 27
Issue 7	March 29	April 10
Issue 8	April 12	April 24
Issue 9	April 26	May 15
Issue 10	May 17	May 29
Issue 11	May 31	June 12
Issue 12	June 14	June 26
Issue 13	June 28	July 10
Issue 14	July 12	July 24
Issue 15	July 26	August 14
Issue 16	August 16	August 28
Issue 17	August 30	September 11
Issue 18	September 13	September 25
Issue 19	September 27	October 16
Issue 20	October 18	October 30
Issue 21	November 1	November 13
Issue 22	November 15	November 27
Issue 23	November 29	December 11
Issue 24	December 13	December 27

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Submittal Deadlines and Publication Dates

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Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 15
Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
Issue 10	May 16	May 28
Issue 11	May 30	June 11
Issue 12	June 13	June 25
Issue 13	July 5	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 15
Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

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