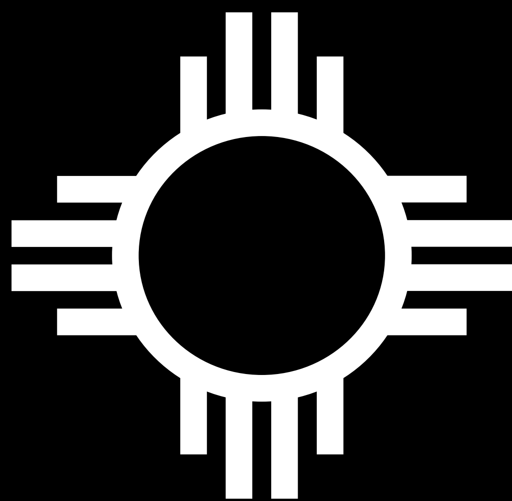
NEW MEXICO REGISTER



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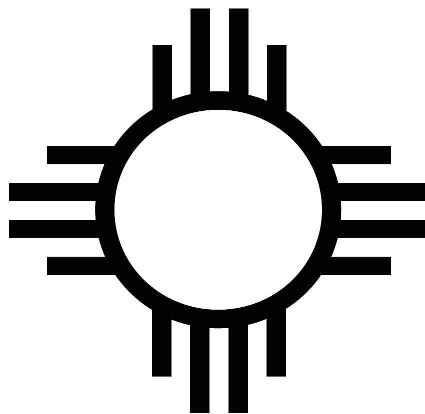

The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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New Mexico Register

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February 14, 2014

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Effective Date and Validity of Rule Filings

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

A=***Amended***, E=***Emergency***, N=***New***, R=***Repealed***, Rn=***Renumbered***

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
NOTICE OF RESCHEDULED HEARING

The hearing scheduled for February 12, 2014, regarding the proposal to amend 20.11.66 NMAC, *Process Equipment*, has been rescheduled for March 12, 2014.

On March 12, 2014, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM. The hearing will address:

* Proposal to amend 20.11.66 NMAC, *Process Equipment*, and Incorporate These Amendments into the New Mexico State Implementation Plan for Air Quality (SIP)

The Air Quality Program (AQP) of the City of Albuquerque Environmental Health Department is proposing these amendments for the following reasons:

1. Albuquerque-Bernalillo County regulations should be consistent with the State's regulations whenever possible *See* NMSA § 74-2-4(C). However, the currently effective Sections 20.11.66.12 NMAC, *Emissions of Particulate Matter*, and 20.11.66.18 NMAC *Emissions of Particulate Matter: Table 1* are no longer consistent with the State's regulations. The State's regulations do contain other particulate matter emission standards, but these standards apply only to specific types of sources with specific emissions limits that are not comparable to Sections 12 and 18 of 20.11.66 NMAC. To resolve these inconsistencies, the City proposes to delete Sections 12 and 18 of 20.11.66 NMAC.

2. The language in the currently effective Sections 20.11.66.12 and 18 NMAC, *Emissions of Particulate Matter and Emissions of Particulate Matter: Table 1* are overbroad in scope and inappropriately apply the same particulate matter emissions standards to disparate sources of particulate matter (PM) emissions, even though they each have unique operating and emissions characteristics. Furthermore, Sections 12 and 18 could potentially conflict with established federal NSPS and NESHAPs. Therefore, Section 12 and 18 of 20.11.66 NMAC are proposed to be deleted. To assure continued stringency and consistency after this deletion, references to applicable New Source Performance Standards ("NSPS") and National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") have been added to Sections 13, 14, and 15.

3. The process weight-based particulate matter emission limits for process equipment found in the currently effective Sections 20.11.66.12 NMAC, *Emissions of Particulate Matter*, and 20.11.66.18 NMAC, *Emissions of Particulate Matter: Table 1* are not practically enforceable because these Sections impose standards that are difficult to measure. For this reason, Sections 12 and 18 of 20.11.66 NMAC are proposed to be deleted.

4. To clarify which standards apply to Cement Kilns, the City proposes to add language to Section 20.11.66.13 NMAC, *Cement Kilns*, that would impose different standards on cement kilns constructed or modified on or before August 17, 1971 versus those constructed or modified after that date. In the proposed rule, the former remain subject to the existing standard, a PM emissions limit of 230 mg/m^3 of exhaust gas, while the latter would no longer be subject to this standard; instead they would be required to comply with 40 CFR 60, Subpart F, *Standards of Performance for Portland Cement Plants*. This is because August 17, 1971 is when this NSPS was promulgated and so sources constructed before this date are "grandfathered" and not subject to this NSPS. In addition, all new and existing Portland cement plants which are a "major source" or an "area source" as defined in 40 CFR 63.2, remain subject to 40 CFR 63, Subpart LLL, *National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry*. Both of these federal rules referenced in the proposed amended Section 20.11.66.13 NMAC are at least as stringent as Sections 12 and 18 of 20.11.66 NMAC which are proposed to be deleted.

5. To clarify which standards apply to gypsum cookers the City proposes to add language to Section 20.11.66.14 NMAC which would impose different standards on gypsum processing equipment constructed, modified or reconstructed on or before April 23, 1986 versus that constructed, modified or reconstructed after that date. In the proposed rule, the former remain subject to the existing standard, a PM emissions limit of 690 mg/m^3 of exhaust gas while the latter would no longer be subject to this standard; instead they are required to comply with 40 CFR 60, Subpart UUU, *Standards of Performance for Calciners and Dryers in Mineral Industries*. This is because April 23, 1986 is when this NSPS was promulgated and so sources constructed before this date are "grandfathered" and not subject to this NSPS. The City also proposes to change the title from "*Gypsum Cookers*" *to* "*Gypsum Caliners*" to more accurately reflect the types of sources that are regulated.

6. Because currently effective Sections 20.11.66.15 and 19 NMAC could potentially be less stringent than existing federal standards, the City proposes to add clarifying language to Section 15 so that if any asphalt process equipment is subject to a federal PM emissions standard that is more stringent than that prescribed by Section 19 then the federal rule governs. The City proposes to add citations for the applicable federal standards in order to make it easier for the owner or operator of the source to determine which standard is more stringent, and thus is applicable to the particular source. In addition, the City is proposing to change the title of Section 20.11.66.15 NMAC, from "*Asphaltic Batch Plants*" to "*Asphalt Process Equipment*" and the title of 20.11.66.19 NMAC from "*Asphaltic Batch Plants – Table 2*" to "*Asphalt Process Equipment Allowable Emission Rates For Particulate Matter: Table 2,*" to more accurately reflect the types of sources and emissions that are affected.

Under the currently effective Section 20.11.66.15 NMAC, asphaltic batch plants are not subject to Sections 12 or 18 of 20.11.66 NMAC, therefore the proposed deletion of these two sections will have no effect on Section 20.11.66.15 NMAC.

7. With respect to any process equipment other than gypsum calciners, cement kilns, and asphalt process equipment currently covered by Sections 12 and 18 which are proposed to be deleted, they would be covered by other applicable Air Quality Control Board rules.

8. Currently effective 20.11.66 NMAC could inadvertently require sources with a Registration Certificate issued

pursuant to 20.11.40 NMAC, *Source Registration*, to apply for a Construction Permit pursuant to the new 20.11.41 NMAC, *Construction Permits*, instead. The problem is that Paragraph (6) of Subsection B of Section 2 of the newly adopted version of 20.11.41 NMAC, which became effective January 1, 2014, requires that: "If a stationary source was constructed after August 31, 1972 and the source is subject to an existing or new board regulation that includes **an equipment emission limitation**, the source shall apply for and obtain a construction permit or construction permit modification as required by 20.11.41 NMAC."

Since the PM emission standards under currently effective 20.11.66 NMAC can be applied broadly, then sources that would normally be required to only apply for a Source Registration could instead be required to apply for a Construction Permit instead, because they are subject to **"an equipment emission limitation",** under 20.11.66 NMAC. To resolve these inconsistencies, the City proposes to delete Sections 12 and 18 of 20.11.66 NMAC, and language is proposed in Sections 13, 14 and 15 of 20.11.66 NMAC, to make it clear which specific types of sources are subject to **"an equipment emission limitation"**, and thus potentially subject to 20.11.41 NMAC.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the proposed amendments to 20.11.66 NMAC, *Process Equipment*.

The Air Quality Control Board is the federally-delegated air quality authority for Albuquerque and Bernalillo County. The Air Board is authorized to adopt, promulgate, publish, amend and repeal regulations consistent with the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, *Rulemaking Procedures -- Air Quality Control Board.*

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC, *Technical Testimony; Notice Of Intent (NOI)*, to file a written Notice of Intent to testify (NOI) before 5:00 p.m. no later than February 25, 2014 with: Andrew Daffern, Air Quality Control Board Liaison and serve a copy on Neal Butt, at: Air Quality Program, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Alternatively, NOIs may be delivered to the Environmental Health Department, Suite 3023, Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM, 87102. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 3. include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and attach an original and fifteen copies of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Written comments to be incorporated into the public record for this hearing should be received at the above P.O. Box, the Environmental Health Department office, or to adaffern@cabq.gov before 5:00 p.m. by March 5, 2014. Comments shall include the name and address of the individual or organization submitting the statement if the commenter wishes to receive any communications about the proceeding. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Andrew Daffern electronically at adaffern@cabq.gov.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and require special assistance to participate in this process, please call 311 (Voice) and special assistance will be made available to you to receive any public meeting documents, including agendas and minutes. TTY users may request special assistance by calling the New Mexico Relay at 1-800-659-8331.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend the following rule that is part of the New Mexico Administrative Code (NMAC): 8.200.400 NMAC, *General Medicaid Eligibility.* The proposed amendment provides a definition and clarification of a recipient or beneficiaries authorized representative. The register and the proposed amendment are available on the HSD/MAD web site at http://www.hsd.state.nm.us/ . If you do not have Internet access, a copy of the rule may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the South Park Conference Room, 2055 S. Pacheco, Santa Fe on Monday, March 17, 2014, at 9:00 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to Emily.Floyd@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Monday, March 17, 2014.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal the following rules that are part of the New Mexico Administrative Code (NMAC): 8.310.15 NMAC, *Health Care Professional Services*, *Intensive Outpatient Program (IOP) Services*; 8.353.2 NMAC, *Provider Hearings*, *Provider Hearings*; 8 NMAC 4.MAD.746.6, *Licensed Alcohol and Drug Abuse Counselors.* All of these rules have been incorporated into other rules. Information from 8.310.15 NMAC and 8 NMAC 4.MAD.746.6 has been incorporated into 8.321.2 NMAC, *Specialized Behavioral Health Provider Enrollment and Reimbursement*. Information from 8.353.2 NMAC has been moved to 8.352.3 NMAC, *Provider Hearings*. The register for the repeal of these rules is available on the HSD/MAD web site at http://www.hsd.state.nm.us/ . If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the South Park Conference Room, 2055 S. Pacheco, Santa Fe on Thursday, March 20, 2014 at 10 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to Emily.Floyd@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Thursday, March 20, 2014.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Psychologist Examiners will hold a Rule Hearing on Wednesday, March 19, 2014. Following the Rule Hearing, the New Mexico Board of Psychologist Examiners will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Psychologist Examiners Rule Hearing will begin at 9:00 a.m. and the regular meeting will convene immediately following the Rule Hearing. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Rd., in the Hearing Room 1, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.22.1 NMAC General Provisions, 16.22.9 NMAC Continuing Professional Education Requirements, 16.22.14 NMAC Licensure for Military Service Members, Spouses and Veterans, 16.22.29 NMAC Conditional Prescribing or Prescribing Psychologists: Continuing Professional Education and Certificate Renewal.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, PO Box 25101 Santa Fe, New Mexico 87505, (505)476-4622, or send an e-mail to Psychologist.Examiners@state.nm.us after February 14, 2014. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than March 3, 2014. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

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

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Monday, March 17, 2014, at the times indicated below. The purpose of the public hearing will be to obtain input on the following rules.

[*Continued on page 62.*]

Rule Number	Rule Name	Proposed Action	Hearing Time
6.12.7 NMAC	BULLYING PREVENTION	Amend rule	10:00 a.m. to noon
6.12.6 NMAC	SCHOOL DISTRICT WELLNESS POLICY	Amend rule	1 p.m. to 2 p.m.
6.10.8 NMAC	COMPULSORY SCHOOL ATTENDANCE	Amend rule	1 p.m. to 2 p.m.

Interested individuals may provide comments at the public hearing and/or submit written comments to Dean Hopper, School and Family Support Bureau Director, via email at rule.feedback@state.nm.us, fax (505) 827-1826, or directed to Mr. Hopper, School and Family Support Bureau Director, Public Education Department,120 S. Federal Place, Room 206, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (http://ped.state.nm.us/) under the "Public Notices" link, or obtained from Mr. Hopper by calling (505) 827-1806.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Mr. Hopper as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO REAL ESTATE COMMISSION

NEW MEXICO REAL ESTATE COMMISSION
NOTICE OF RULEMAKING AND PUBLIC HEARING
MARCH 17, 2014

The New Mexico Real Estate Commission will hold a regular meeting and rule hearing on Monday, March 17, 2014 at 9 a.m. at the Real Estate Commission offices at 5200 Oakland Avenue NE in Albuquerque, New Mexico.

The purpose of the rule hearing is to consider amendments to **16.61.7.8 NMAC, Fingerprinting and Arrest Record Checks, Requirements** of the commission rules as follows:

16.61.7.8. Requirements

A. All persons applying for or renewing a New Mexico real estate broker's license or upgrading an associate broker's license to a qualifying broker's license must be fingerprinted as a condition of licensure or license renewal.

B. Applicant fingerprints and processing fees are submitted electronically to the New Mexico department of public safety from approved live scan vendor sites for the purpose of matching applicant fingerprints with fingerprints in state and national arrest record databases. Applicants must register on the vendor web site prior to being fingerprinted. The vendor web site address and a list of approved live scan sites are available on the real estate commission web site at www.rld.state.nm.us.

C. To verify compliance with the fingerprinting requirement, applicants for licensure or license renewal shall submit to the commission along with their license or renewal application a copy of the commission-approved fingerprint certification form completed by the vendor. To ensure that the commission is receiving the most current information available, fingerprinting should be done no earlier than six months prior to applying for or renewing a license.

D. License or license renewal applicants who do not have access to approved live scan vendor sites may be fingerprinted by other vendors using hardcopy fingerprint cards provided by the commission. Such applicants will be responsible for mailing the hardcopy cards and fees to vendor's headquarters at the address show on the commission web site.

The purpose of the amendments is to bring commission fingerprinting requirements in line with a recent conversion by the New Mexico department of public safety from hardcopy fingerprint cards to an electronic live scan system.

The proposed amendments, public comments, and written comments made and submitted during the rule hearing will be voted on by the Commission at the regular Commission meeting immediately following the rule hearing.

Copies of the proposed rule as described above may be obtained in person from Wayne W. Ciddio, Executive Secretary of the New Mexico Real Estate Commission, 5200 Oakland Avenue NE in Albuquerque by calling (505) 222-9829 or by emailing at wayne.ciddio@state.nm.us. Interested persons may submit their comments on the proposed rules in writing or by email at the above address or by participating in the rule hearing.

If you are an individual with a disability who is need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Mr. Ciddio at the Commission office at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Mr. Ciddio at the address indicated herein if a summary or other type of accessible format is needed.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

The New Mexico Department of Workforce Solutions ("Department") hereby gives notice that the Department will conduct a public hearing in the auditorium of the State Personnel Office located at 2600 Cerrillos Road, Santa Fe, New Mexico on March 21, 2014 from 2:00 P.M. until 4:00 P.M. The purpose of the public hearing will be to obtain input on the repeal of the following rule: 11.1.3 NMAC and the adoption of the following proposed rule: 11.1.3 NMAC.

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M.,

87103, Attention Attorney Rudolph Arnold. Written comments must be received no later than 5 p.m. on March 21, 2014. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule for repeal and the proposed rule for adoption may be accessed on the Department's website http://www.dws.state.nm.us or obtained from Attorney Rudolph Arnold Tel.: (505) 841-8672 rudolph.arnold@state.nm.us. The proposed rule for repeal and the proposed rule for adoption will be made available at least thirty days prior to the hearings.

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

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS
PART 21 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

16.2.21.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.
[16.2.21.1 NMAC - N, 03-02-14]

16.2.21.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.
[16.2.21.2 NMAC - N, 03-02-14]

16.2.21.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to and in accordance with the Acupuncture and Oriental Medicine Practice Act, NMSA 1978, Sections 61-14A-1 to -22 (specific authority to promulgate rules is 61-14A-8(B) and NMSA 1978, Section 61-1- (HB 180).
[16.2.21.3 NMAC - N, 03-02-14]

16.2.21.4 DURATION: Permanent.
[16.2.21.4 NMAC - N, 03-02-14]

16.2.21.5 EFFECTIVE DATE: March 2, 2014, unless a later date is cited at the end of a section.
[16.2.21.5 NMAC - N, 03-02-14]

16.2.21.6 OBJECTIVE: The purpose of this part is to expedite licensure for military service members, their spouses and veterans pursuant to NMSA 1978, Section 61-1-34.
[16.2.21.6 NMAC - N, 03-02-14]

16.2.21.7 DEFINITIONS:
A. "Military service member" means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.
B. "Recent veteran" means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.
[16.2.21.7 NMAC - N, 03-02-14]

16.2.21.8 APPLICATION REQUIREMENTS:
A. Applications for licensure shall be completed on a form provided by the board.
B. The applicant shall provide:
(1) a completed application and corresponding fee pursuant to 16.2.10.9 NMAC;
(2) satisfactory evidence that the applicant is currently licensed in another jurisdiction, including a branch of the United States armed forces, and holds a current license in good standing; the applicant further must provide satisfactory evidence that he has met the minimal licensing requirements in that jurisdiction and that they are substantially equivalent to the licensing requirements for New Mexico licensees in acupuncture and oriental medicine; and
(3) proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.
C. Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978.
[16.2.21.8 NMAC - N, 03-02-14]

16.2.21.9 RENEWAL REQUIREMENTS:
A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance specified in 16.2.3 NMAC, application for licensure or 16.2.17 NMAC licensure by endorsement and for the renewal of a license specified in 16.2.8 NMAC pursuant to Chapter 61, Articles 2 through 22 NMSA 1978.
B. A license issued pursuant to this section shall be valid for one year or until JULY 31 unless renewed.
C. The board office mails license renewal notifications to licensees before the license expiration date. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.
D. The renewal application will be available online at the board's website and in paper copy if requested from the board office and must be received at the board office on or before July 31, except that licenses initially issued after May 1 shall not expire until July 31 of the next renewal period.
E. To renew a license, the licensee must submit the following documentation on or before July 31: a completed license renewal application, verification of continuing education, and the applicable renewal fee at the time of renewal.
[16.2.21.9 NMAC - N, 03-02-14]

History of 16.2.21 NMAC: [RESERVED]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.1 NMAC, Section 7, effective 03-02-2014.

16.2.1.7 DEFINITIONS:
A. The definitions in Subsection B of 16.2.1.7 NMAC are in addition to those in the act.
B. The following definitions apply to the rules and the act.
(1) "Act" is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.
(2) "Animal acupuncture" is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act (61-14-1. to 61-14-20.) and the rules of the New Mexico board of veterinary medicine. (16.25.9.15 NMAC)
(3) "Applicant" is a person who has submitted to the board an application for licensure as a doctor of oriental medicine.
(4) "Applicant for temporary licensure" is a person who has submitted to the board an application for temporary licensure as a doctor of oriental medicine.
(5) "Auricular acupuncture detoxification" is an acupuncture related technique used only in the treatment and prevention of alcoholism, substance abuse and chemical dependency. Auricular acupuncture detoxification may be described or referred to as "auricular detoxification", "acupuncture detoxification", "auricular acupuncture detoxification", or "acudetox".
[~~(5)~~] (6) "Auricular detoxification specialist supervisor" is a doctor of oriental medicine registered with the board under the provisions of 16.2.16.18 NMAC.
[~~(6)~~] (7) "Auricular detoxification specialist training program" is a training program approved by the board under the provisions of 16.2.16.26 NMAC to train certified auricular detoxification specialists and auricular detoxification supervisors.

[~~(7)~~] (8) "Auricular detoxification specialist training program trainer" is a member of the staff of an auricular detoxification specialist training program who, though not necessarily licensed or certified by the state, shall be deemed to be a certified auricular detoxification specialist only for the purposes of and only for the duration of the auricular detoxification specialist training program.

[~~(8)~~] (9) "Authorized substances" are the specific substances defined in the four certification in 16.2.20 NMAC that are authorized according to 61-14A-8.1 of the act for prescription, administration, compounding and dispensing by a doctor of oriental medicine certified for a specific category of expanded practice as defined in 16.2.19 NMAC.

[~~(9)~~] (10) "Bioidentical hormones" means compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body.

[~~(10)~~] (11) "Biomedical diagnosis" is a diagnosis of a person's medical status based on the commonly agreed upon guidelines of conventional biomedicine as classified in the most current edition or revision of the international classification of diseases, ninth revision, clinical modification (ICD-9-CM).

[~~(11)~~] (12) "Biomedicine" is the application of the principles of the natural sciences to clinical medicine.

[~~(12)~~] (13) "Certified auricular detoxification specialist" is a person certified by the board under the provisions of 16.2.16.10 NMAC to perform auricular detoxification techniques, [~~including acupuncture~~], only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. [~~The title may be abbreviated as CADS~~] A person certified pursuant to 61-14A-4.1(B) shall use the title of "certified auricular detoxification specialist" or "C.A.D.S.".

[~~(13)~~] (14) "Chief officer" is the board's chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.

[~~(14)~~] (15) "Clinical skills examination" is a board approved, validated, objective practical examination that demonstrates the applicants entry level knowledge of and competency and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine and of biomedicine.

[~~(15)~~] (16) "Clinical experience" is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year of clinical experience shall consist of not less than 500 patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least 25 different patients within that year. One patient hour is defined as one clock hour spent in the practice of oriental medicine with patients.

[~~(16)~~] (17) "Complainant" is the complaining party.

[~~(17)~~] (18) "Complaint committee" is a board committee composed of the complaint committee chairperson and the complaint manager.

[~~(18)~~] (19) "Complaint committee chairperson" is a member of the board appointed by the board's chairperson.

[~~(19)~~] (20) "Complaint manager" is the board's administrator or any member of the board appointed by the board's chairperson.

[~~(20)~~] (21) "Department" is the state of New Mexico regulation and licensing department.

[~~(21)~~] (22) "Doctor of oriental medicine" is a physician licensed to practice acupuncture and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.

[~~(22)~~] (23) "Educational course" is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded practice. An educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.

[~~(23)~~] (24) "Educational program" is a board approved complete formal program that has the goal of educating a person to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four (4) academic years and meets the requirements of Section 61-14A-14 of the act and 16.2.7 NMAC.

[~~(24)~~] (25) "Expanded practice" is authorized by Section 61-14-8.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in 16.2.19 NMAC. Expanded practice is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G.(2) of the act.

[~~(25)~~] (26) "Extern" is a current applicant undergoing supervised clinical training by an externship supervisor, and who has satisfied the application requirements for extern certification and who has received an extern certification issued by the board pursuant to 16.2.14 NMAC.

[~~(26)~~] (27) "Externship" is the limited practice of oriental medicine in New Mexico by an extern supervised by an externship supervisor pursuant to 16.2.14 NMAC.

[~~(27)~~] (28) "Externship supervisor" is a doctor of oriental medicine who has at least five years clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board's application requirements for an externship supervisor and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC.

[~~(28)~~] (29) "Good cause" is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

[~~(29)~~] (30) "Inactive licensee" means a licensee in good standing whose license is placed on inactive status by the board and is therefore considered an inactive license in compliance with 16.2.15 NMAC.

[~~(30)~~] (31) "Licensee" is a doctor of oriental medicine licensed pursuant to the act.

[~~(31)~~] (32) "Licensing candidate" is an applicant whose initial application for licensure as a doctor of oriental medicine has been approved by the board.

[~~(32)~~] (33) "Licensure by endorsement" is a licensing procedure for the experienced practitioner who completed his initial education in acupuncture and oriental medicine prior to the establishment of current educational standards and who has demonstrated his or her competency through a combination of education, examination, authorized legal practice and clinical experience as defined in 16.2.17 NMAC. Completion of the licensure by endorsement process results in full licensure as a doctor of oriental medicine.

[~~(33)~~] (34) "Limited temporary license" is a license issued under the provisions of 16.2.5.12 NMAC for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized healthcare practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required

for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

[~~(34)~~] (35) "Live cell products" are living cells from glandular tissues and other tissues.

[~~(35)~~] (36) "Natural substances" are substances that exist in or are produced by nature and have not been substantially transformed in character or use.

[~~(36)~~] (37) "NCA" is a notice of contemplated action.

[~~(37)~~] (38) "Office" is the physical facility used for the practice of acupuncture and oriental medicine and auricular detoxification.

[~~(38)~~] (39) "Oxidative medicine" is the understanding and evaluation of the oxidation and reduction biochemical functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body's oxidation and reduction function and health.

[~~(39)~~] (40) "Protomorphogens" are extracts of glandular tissues.

[~~(40)~~] (41) "Respondent" is the subject of the complaint.

[~~(41)~~] (42) "Rules" are the rules, promulgated pursuant to the act, governing the implementation and administration of the act as set forth in 16.2 NMAC.

[~~(42)~~] (43) "Supervised clinical observation" is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

[~~(43)~~] (44) "Supervised clinical practice" is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

[~~(44)~~] (45) "Supervision" is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC. No more than four (4) students shall be under supervision for supervised clinical practice and no more than four students shall be under supervision for supervised clinical observation by a qualified instructor at any time.

[~~(45)~~] (46) "Temporary licensee" is a doctor of oriental medicine who holds a temporary license pursuant to the act, Section 61-14-12 NMSA 1978 and 16.2.5 NMAC.

[~~(46)~~] (47) "Therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells.

[~~(47)~~] (48) "Treatment program" is an integrated program that may include medical and counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that is located at a fixed location or in a mobile unit and approved by the board under the provisions of 16.2.16.28 NMAC.

[11-3-81…7-1-96; N, 8-31-98; A, 2-17-00; 16.2.1.7 NMAC - Rn & A, 16 NMAC 2.1.7, 8-13-01; A, 4-4-02; A, 3-2-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A/E, 06-15-10; A/E, 06-15-10; Re-pr & A, 11-28-10; A, 03-02-14]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.9 NMAC, Sections 8 and 9, effective 03-02-2014.

16.2.9.8 CONTINUING EDUCATION:

A. A doctor of oriental medicine shall complete continuing education in oriental medicine equivalent to that required by the national certification commission for acupuncture and oriental medicine (NCCAOM). A doctor of oriental medicine shall submit to the board at the time of license renewal either of the following:

(1) proof of continuing NCCAOM recertification in oriental medicine, acupuncture or Chinese herbology; or

(2) proof of completion of 15 hours annually, or 60 hours every four years, [~~of 60 hours~~] of NCCAOM approved continuing education courses.

B. A doctor of oriental medicine who is a board approved examiner, examiner supervisor, or examiner trainer, for the clinical skills examination, shall be granted continuing education credit for time spent functioning as an examiner or training to be an examiner. This also applies to an observing board member who has completed the training. The continuing education credit is limited to six hours per year.

C. The board shall annually audit a random 10 percent of continuing education documentation to determine the validity of the documentation.

D. A doctor of oriental medicine who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

E. A doctor of oriental medicine shall maintain an understanding of the current act and rules.

[16.2.9.8 NMAC - Rp 16 NMAC 2.9.8, 12-1-01; A, 10-1-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A/E, 06-15-10; A/E, 06-15-10; Re-pr, 11-28-10; A, 02-08-13; A, 03-02-14]

16.2.9.9 CONTINUING EDUCATION FOR LICENSEES CERTIFIED FOR EXPANDED PRACTICE: In addition to the continuing education requirements listed in 16.2.9.8 NMAC, doctors of oriental medicine previously certified in expanded practice [~~shall acquire 14 hours of continuing education every two years, beginning August 1, 2009. Beginning August 1, 2013,~~] are subject to the following requirements [~~will be in effect~~] beginning August 1, 2013:

A. a doctor of oriental medicine certified for expanded practice in one or more areas as defined in 16.2.19 NMAC shall complete continuing education hours as follows:

(1) three hours every three years for recertification in basic injection therapy;

(2) [~~nine~~] seven hours every three years [~~to be recertified~~] for recertification in injection therapy;

(3) [~~nine~~] seven hours every three years [~~to be recertified~~] for recertification in intravenous therapies; and

(4) [~~nine~~] seven hours every three years [~~to be recertified~~] for recertification in bioidentical hormone therapy;

(5) except that a [~~DOM~~] doctor of oriental medicine recertifying in injection therapy or intravenous therapy need not complete an additional three hours in basic injection therapy; and

(6) doctors of oriental medicine [~~previous~~] previously certified as Rx1 [~~will~~] shall need [~~nine~~] seven hours, every three years, [~~to be recertified~~] for recertification in prolotherapy as specified in 16.2.19.16 NMAC;

B. license holders who are newly certified for expanded practice [~~will be required to~~] shall complete continuing education hours on a prorated basis during the first [~~year of recertification and then each three years thereafter~~] years(s) of certification, and then shall comply with recertification requirements every three years thereafter;

C. the continuing education shall be about substances in the board approved appropriate expanded practice formulary or formularies defined in 16.2.20 NMAC or updated information in improving current techniques or new and advanced techniques that are part of the expanded practice certification as defined in

16.2.19 NMAC;

D. continuing education courses, including teachers, shall be approved by the board:

(1) course providers requesting approval for Rx continuing education certification shall be required to submit the following materials to the board for approval no less than 45 days prior to the date of the course offering and the materials shall include:

(a) an application fee as defined in Subsection C of 16.2.10.9 NMAC;

(b) course description, including objectives, subject matter, number of hours, date time and location; and

(c) curriculum vitae of the instructor(s) including previous experience of at least five years in subjects they are engaged to teach;

(2) individual practitioners requesting approval for a specific course that has not already been approved as defined in Paragraph (1) of Subsection D of 16.2.9.9 NMAC, for their own personal continuing education shall submit a copy of the course brochure including a course description, subject matter, contact hours, and curriculum vitae of the instructor 45 days prior to the course offering;

(3) the continuing education committee shall meet each month on or before the 15th to review course materials; electronic review is acceptable;

(4) a doctor of oriental medicine certified for expanded practice in basic injection, injection or intravenous therapies must remain current in basic life support, BLS, and CPR with proof of having completed an American heart association approved course; hands-on supervised practice of clinical skills is required; the didactic portion may be completed on-line; a current copy of this card shall be submitted to the board at the time of each triennial expanded practice certification renewal; and

E. teaching an approved continuing education course shall be equivalent to taking the approved course; continuing education that is appropriate for regularly licensed doctors of oriental medicine shall not be considered as fulfilling the above requirements for expanded practice continuing education; the board may determine specific mandatory courses that must be completed; specific mandatory courses shall be noticed at least six months prior to the date of the course; exceptions to being required to complete a specific mandatory course may be made for good cause.

[16.2.9.9 NMAC - N, 10-1-03; A, 02-15-05; A, 11-28-09; A, 02-08-13; A, 03-02-14]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.10 NMAC, Section 9, effective 03-02-2014.

16.2.10.9 FEES CHARGED:

A. All fees shall be paid by check, certified check or money order in US funds unless otherwise specified by rule.

B. No fees paid to the board shall be refunded.

C. The board shall charge the following fees:

(1) application for licensure: $525.00;

(2) application for reciprocal licensure: $750.00;

(3) application for licensure by endorsement: $800.00;

(4) application for temporary licensure: $330.00;

(5) application for limited temporary license: $100.00;

(6) clinical skills examination, not including the cost of any nationally recognized examinations: $500.00;

(7) annual license renewal: $225.00;

(8) late license renewal: an additional $200.00;

(9) expired license renewal: an additional $350.00 plus the renewal and late fees;

(10) temporary license renewal: $100.00;

(11) application for a new annual approval or renewal of approval of an educational program, including the same program offered at multiple campuses: $450.00;

(12) late renewal of approval of an educational program: an additional $200.00;

(13) application for single instance approval of an educational program: $225.00;

(14) application for initial expanded practice certification: $100.00 per module;

(15) application for triennial expanded practice license renewal: an additional $200;

(16) late expanded practice license renewal: an additional $125.00 plus the renewal fee;

(17) expired expanded practice license renewal: an additional $100.00 plus the renewal and late fees;

(18) application for externship supervisor registration: $225.00;

(19) application for extern certification: $225.00;

(20) continuing education provider course approval application: $50.00;

(21) auricular detoxification specialist certification application: $50.00;

(22) auricular detoxification specialist certification renewal: $30.00;

(23) auricular detoxification specialist certification late renewal: $20.00;

(24) auricular detoxification specialist supervisor registration application: $50.00;

(25) auricular detoxification specialist training program approval application: $100.00;

(26) auricular detoxification specialist training program approval renewal: $50.00;

(27) treatment program approval application: $100.00;

(28) administrative fee for application for approval of an expanded practice educational [~~program~~] course: $600.00;

(29) administrative fee for faculty change in an expanded practice course: $50.00;

(30) administrative fee for curriculum change in an expanded practice course: $150.00;

[~~(29)~~] (31) renewal of expanded prescriptive authority course: $200.00;

[~~(30)~~] (32) administrative fee for inactive license application: $125.00;

[~~(31)~~] (33) administrative fee for inactive license renewal: $100.00;

[~~(32)~~] (34) administrative fee for inactive license reinstatement application: $125.00;

[~~(33)~~] (35) administrative fee for each duplicate license: $30.00;

[~~(34)~~] (36) administrative fee for a single transcript or diploma from the former international institute of Chinese medicine, per copy: $50.00;

[~~(35)~~] (37) administrative fees to cover the cost of photocopying, electronic data, lists and labels produced at the board office.

[11-3-81…7-1-96; A, 5-15-99; A, 2-17-00; 16.2.10.9 NMAC - Rn, 16 NMAC 2.10.10, 10-22-00; A, 1-1-01; A, 8-13-01; A, 3-2-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A, 11-28-10; A, 11-28-10; A, 02-08-13; A, 03-02-14]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.16 NMAC, Sections 11 and 28, effective 03-02-2014.

16.2.16.11 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST SCOPE OF PRACTICE AND TITLE:

A. A certified auricular detoxification specialist, or CADS is authorized to perform only the following, for the purpose of harm reduction or treating and preventing alcoholism, substance abuse or chemical dependency, only within a board approved treatment program that [~~demonstrates experience in~~] focuses on disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency, and only under the supervision of one or more auricular detoxification specialist supervisor(s) registered with the board:

(1) auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association (NADA) procedure, or other board approved auricular procedure; and

(2) the application to the ear of simple board approved devices that do not penetrate the skin using the five auricular point national acupuncture detoxification association (NADA) procedure, or other board approved auricular procedure; and

B. the board approved devices that do not penetrate the skin of the ear are:

(1) seeds or grains;

(2) stones;

(3) metal balls;

(4) magnets; and

(5) any small sterilized, spherical object that is non reactive with the skin; and

C. a certified auricular detoxification specialist [~~is authorized to~~] shall use the title certified auricular detoxification specialist or CADS.

[16.2.16.11 NMAC - N, 02-15-05; A, 12-26-08; A, 03-02-14]

16.2.16.28 TREATMENT PROGRAM APPROVAL: All treatment programs [~~for~~] focused on disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that are officially recognized by a federal, state or local government agency shall automatically be approved by the board. Upon approval of a treatment program application for approval that fulfills the requirements listed below, the board shall issue a treatment program approval. In the interim between regular board meetings, whenever a qualified applicant for a treatment program approval has filed an application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary treatment program approval that will suffice until the next regular meeting of the board. The application requirements for a treatment program approval shall be receipt of the following by the board:

A. the treatment program approval application fee specified in 16.2.10 NMAC [~~(Part 10 of the rules)~~];

B. an application for treatment program approval that is complete and in English on a form provided by the board that shall include the applicant's name, address, phone number, fax number and email address, if available, and:

(1) [~~confirmation~~] affidavit that the treatment program is for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency; [~~and~~]

(2) whether the facility is at a fixed address or is mobile; [~~and~~]

(3) the name of the director of the program; [~~and~~]

(4) the number and qualifications of the treatment staff; and

(5) the name of the auricular detoxification supervisor and the certified auricular detoxification specialist, if known; and

C. an affidavit as provided on the treatment program approval application form stating that the facility has access to a toilet and a sink; and

D. an affidavit as provided on the treatment program approval application form stating that the applicant understands that:

(1) the treatment program must notify the board within ten (10) days if the program's address or phone number changes; and

(2) the board may refuse to issue, or may suspend, or revoke any treatment program approval in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC [~~(Part 12 of the rules)~~].

[16.2.16.28 NMAC - N, 02-15-05; A, 12-26-08; A, 03-02-14]

[*Continued on page 70*]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.17 NMAC, Sections 8, 9, 11, 14 and 16, effective 03-02-2014.

16.2.17.8 GENERAL REQUIREMENTS:

A. An applicant for licensure by endorsement [~~must~~] shall have [~~three~~] five years of clinical experience, within the last [~~five~~] six years as defined in 16.2.1.7 NMAC immediately preceding application.

B. An applicant for licensure by endorsement must be licensed, certified, registered or legally recognized to practice acupuncture or oriental medicine in another state or jurisdiction of the United States.

C. Any applicant for licensure by endorsement who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.

D. Any applicant for licensure by endorsement who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

[16.2.17.8 NMAC - N, 02-15-05; A, 11-28-09; A, 03-02-14]

16.2.17.9 EDUCATIONAL PROGRAM REQUIREMENTS:

A. An applicant for licensure by endorsement shall provide proof that he completed an educational program in acupuncture that fulfilled the requirements of the national certification commission for acupuncture and oriental medicine in place in [~~1986~~] 1992 or if graduated after 1992 is in compliance with the educational program requirements in 16.2.7 NMAC or that was accredited by the accreditation commission for acupuncture and oriental medicine, ACAOM, formerly the national accreditation commission for schools and colleges of acupuncture and oriental medicine and ACSCAOM.

B. If the educational program is no longer in existence, or if the applicant's records are not available for good cause, the applicant for licensure by endorsement shall submit an affidavit so stating and shall identify the educational program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the board shall deem necessary. The board, in its sole and sound discretion, may accept [~~or reject~~] as adequate and sufficient or reject such evidence presented in lieu of the records otherwise required.

C. If an applicant graduated before 1992 from an educational program lacking annual approval status from the board for the year of graduation, as defined in 16.2.7.10 NMAC, then the applicant shall apply for a single instance review. The applicant must obtain an approval of the educational program for use by a single applicant and will need to submit the following to the board:

(1) the required application fee as specified in 16.2.10 NMAC, paid by check or money order in U.S. funds; and

(2) an application on a form prescribed by the board, completed and in English, that contains the matriculation date for the educational program, the information necessary to verify that the standards of professional education required by 16.2.17.9 NMAC and an official copy of the curriculum.

[16.2.17.9 NMAC - N, 02-15-05; A, 11-28-09; A, 03-02-14]

16.2.17.11 EXAMINATION REQUIREMENTS: The following requirements shall be received at the board's office within [~~12~~] 24 months of the receipt of the initial licensure by endorsement application:

A. proof of successful completion of one of the following examination options:

(1) the national certification commission for acupuncture and oriental medicine (NCCAOM) comprehensive written exam (acupuncture portion);

(2) the NCCAOM foundations of oriental medicine module and the acupuncture module if completed after June 2004;

(3) the NCCAOM comprehensive written exam (Chinese herbology portion); or

(4) the NCCAOM foundations of oriental medicine module and the Chinese herbology module if completed after June 2004; and

B. proof of successful completion of the NCCAOM approved clean needle technique course;

C. proof of successful completion of the New Mexico clinical skills examination specified in 16.2.4.10 NMAC; and

D. proof of successful completion of the board approved and board administered jurisprudence examination specified in 16.2.4.10 NMAC.

[16.2.17.11 NMAC - N, 02-15-05; A, 11-28-09; A, 03-02-14]

16.2.17.14 DEADLINE FOR COMPLETING ALL REQUIREMENTS FOR LICENSURE: All documentation required for licensure by endorsement shall be received at the board office no later than [~~12~~] 24 months after the initial application for licensure by endorsement is received at the board office.

[16.2.17.14 NMAC - N, 02-15-05; A, 11-28-09; A, 03-02-14]

16.2.17.16 EXPIRATION AND ABANDONMENT OF APPLICATION: If all licensure by endorsement application requirements have not been met within [~~12~~] 24 months of the initial licensure by endorsement application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause. If the licensure by endorsement application is abandoned and the applicant for licensure by endorsement wants to reapply, the applicant for licensure by endorsement shall be required to submit the completed current licensure by endorsement application form, pay the current application fee and satisfy the requirements for licensure by endorsement in effect at the time of the new licensure by endorsement application. The board shall notify the applicant for licensure by endorsement of pending abandonment of the licensure by endorsement application by mail postmarked at least 60 days before the date of abandonment which is the expiration of the [~~12~~] 24 month deadline for completing all requirements for licensure by endorsement. The board shall notify the applicant for licensure by endorsement of abandonment of the application by mail postmarked no more than 21 days after the date of abandonment.

[16.2.17.16 NMAC - N, 02-15-05; A, 11-28-09; A, 03-02-14]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.18 NMAC, Sections 7, 9, 14, 15, 16 and 17, effective 03-02-2014.

16.2.18.7 EDUCATIONAL COURSE APPROVAL GENERAL REQUIREMENTS: The board shall

approve an educational course for a specific category of expanded practice upon completion of the following general requirements and the specific requirements listed for the specific category of expanded practice educational course approval.

A. The educational course shall provide at least the minimum number of hours of education in the areas listed for the specific category of educational course hours. One hour of education shall be equal to that defined by the accreditation commission for acupuncture and oriental medicine (ACAOM). The education shall be in addition to the education required to meet the minimum educational program requirements for licensure as a doctor of oriental medicine.

B. The educational course application shall include a description of the education being provided as required by the educational course general curriculum defined in 16.2.18.10 NMAC and the educational course curriculum defined for the specific category of expanded practice for which the educational course is applying for approval.

C. The educational course application shall include the curriculum vitae for all teachers, and proposed substitute teachers, and all classes shall be taught by qualified teachers approved by the board with the following qualifications:

(1) the education in the pharmacology of the authorized substances shall be taught by a licensed pharmacist, Pharm D or a Ph.D. in pharmacology; and

(2) the education in the clinical therapeutic use of the authorized substances shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience using the authorized substances.

D. The educational course application shall include documentation that all required clinical practice hours shall have a teacher to student ratio of at least one teacher to no more than eight students.

E. The educational course application shall include examples of the test questions that students enrolled in the course are required to successfully pass in order to ensure competence in all required areas. Testing methodology shall be approved by the board and testing shall be administered as approved by the board. The educational course shall send all student test scores and evaluation instruments directly to the board.

F. The educational course application shall include an example of the certificate that shall be given for successful completion of the educational course.

G. Each educational course shall be completed within two years of commencement of that course.

H. A student who is allergic or hypersensitive to an authorized substance may be excused from participating in clinical practice when such an authorized substance is being used.

I. The board has the authority to observe, audit and evaluate educational courses. Each educational course applicant shall agree that the educational course may be observed, audited and evaluated by an authorized member of the board or by an agent of the board, prior to approval, after approval or during any educational course classes. A course audit or evaluation may result in denial, suspension or revocation of the course's approval by the board in accordance with law.

J. The educational course shall specify whether the organization offering the educational course is a sole proprietorship, partnership, LLC, corporation or non-profit corporation and shall provide proof of such legal business status.

K. An educational course shall submit a new application on the form approved by the board, pay the appropriate fee defined in 16.2.10 NMAC and comply with all other new application requirements if any of the following changes:

(1) ownership;
(2) faculty; and
(3) curriculum.

L. An educational course shall inform the board in writing, provided that the educational course certifies that all factors defined in Subsection J of 16.2.18.8 NMAC remain unchanged, if any of the following changes:

(1) name;
(2) address; and
(3) phone number.

[16.2.18.7 NMAC - N, 02-08-13; A, 03-02-14]

16.2.18.9 EDUCATIONAL COURSE PREREQUISITES:

A. Proof of completion of a course in pharmacology from an accredited institution or the equivalent of at least three college or university credit hours (30-45 contact hours) in pharmacology from an accredited college or university. If the applicant prefers they can sit for a pharmacology final exam at an accredited institution:

(1) proof of completion of a four hour American heart association approved CPR or basic life support (BLS) course; a current card will serve as proof; and

(2) proof of completion of a two hour instruction [~~from an approved American heart association provider~~] in the use of inhaled O2 and IM epinephrine for emergency use or inclusion of that education and training in the basic education course curriculum.

B. The basic injection course is a prerequisite to injection therapy certification and intravenous therapy certification.

[16.2.18.9 NMAC - N, 02-08-13; A, 03-02-14]

16.2.18.14 INJECTION THERAPY EDUCATIONAL COURSE APPROVAL: The board shall approve an injection therapy educational program upon completion of the following requirements. The educational course shall submit to the board:

A. the completed application form provided by the board;

B. payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;

C. documentation that it will comply with all educational course approval general requirements defined in 16.2.18.7 NMAC;

D. documentation demonstrating that it will provide the educational course general curriculum defined in 16.2.18.10 NMAC;

E. documentation demonstrating that it will provide the injection therapy educational course hours defined in 16.2.18.16 NMAC;

F. documentation demonstrating that it will provide the injection therapy educational course curriculum defined in 16.2.18.17 NMAC; and

G. documentation of examination and testing to be administered to each applicant with a passing grade of at least 70 percent to demonstrate learned knowledge (final certification is dependent on instructor's approval).

[16.2.18.14 NMAC - N, 03-02-14]

16.2.18.15 INJECTION THERAPY COURSE PREREQUISITES:

A. licensed doctor of oriental medicine in New Mexico; and

B. board certification in basic injection therapy.

[16.2.18.15 NMAC - N, 03-02-14]

16.2.18.16 INJECTION THERAPY EDUCATIONAL COURSE HOURS: The education shall be completed within two years of commencement of the course as specified in Subsection G of 16.2.18.7 NMAC and consist of a minimum total of 115 hours and with at least the minimum number of hours of education in the areas listed below:

A. eight hours in pharmacology, relevant pharmaceutical law, differential diagnosis relative to the selection, prescription, compounding and

administration, of the authorized substances in the injection therapy formulary listed in Paragraph (2) of Subsection F of 16.2.20.8 NMAC, and the use of some of these substances as pain medicine: upon completion and certification in injection therapy some of these substances can be used with previously learned basic injection techniques including trigger point, mesotherapy, and neural therapy techniques;

B. four hours in the art and practice of phlebotomy in order to safely perform injection of ozone or platelet rich plasma when considered as appropriate therapeutic intervention and at least half of the required hours shall be in clinical practice; a certificate of completion of a board approved course in phlebotomy is acceptable;

C. 15 hours in a board approved course in oxidative medicine;

D. 52 hours to include:

(1) the scientific principles of prolotherapy;

(2) aseptic technique as it relates to injecting a joint;

(3) detailed anatomy of joints, supporting soft tissue structures, and specific injection sites;

(4) orthopedic and neurological functional evaluation;

(5) the use of platelet rich plasma and prolozone;

(6) theory and practice of advanced neural therapy techniques;

(7) differentiation and selection of authorized substances in the injection therapy formulary as defined in Paragraph (2) of Subsection F of 16.2.20.8 NMAC; and

(8) at least half of these required hours shall be clinical practice;

E. 30 hours of diagnostic musculoskeletal ultrasound and ultrasound guided musculoskeletal procedures from a board approved course; and

F. six hours in the theory and practice of advanced injection therapy techniques including: mesotherapy including cellulite reduction and apitherapy refer to Subsection H of 16.2.18.7 NMAC; at least half of these hours shall be in clinical practice; a certificate of completion from a board approved course in advanced mesotherapy or apitherapy will be considered to meet these hours.

[16.2.18.16 NMAC - N, 03-02-14]

16.2.18.17 INJECTION THERAPY EDUCATIONAL COURSE CURRICULUM: The injection therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the educational course general curriculum knowledge and skills defined in 16.2.18.10 and 16.2.18.13 NMAC and the following specific knowledge and skills in:

A. regenerative injection therapy (RIT or prolotherapy):

(1) understanding of the scientific principles of prolotherapy, its application, alternatives, risks and consequences;

(2) recognizing the most common pain patterns generated from injured and lax ligaments of the joints of the extremities, lumbar and sacral regions;

(3) the concept of tissue regeneration and proliferation and how it can be promoted in the body;

(4) injecting some of the most commonly treated ligamentous, tendonous, and cartilaginous and intra-articular structures of the joints of the extremities, lumbar and sacral regions;

(5) how to perform regional anesthesia or a nerve block for pain relief; and

(6) the use of diagnostic musculoskeletal ultrasound and ultrasound guided procedures;

B. orthopedic and neurological physical exam and differential diagnosis:

(1) anatomy of the regions to be examined and treated;

(2) selecting and performing orthopedic and neurologic physical examination methods including but not limited to reflex testing, motor power testing, sensory exam, common orthopedic provocations, ligament stretch testing, accurate palpation and marking of anatomic landmarks, ligament and tendon compression testing;

(3) interpreting physical exam signs in context as evidence for or against the differential diagnoses;

(4) most common orthopedic pain differential diagnoses for these areas as well as other medical differential diagnoses that should be ruled out; and

(5) the most important treatment options for these differential diagnoses;

C. how to generate and carry out a comprehensive treatment plan that addresses the causative factors leading to pain and dysfunction from the perspective of the understanding of each style of injection therapy, offers post treatment palliation and provides post therapy recommendations to support rehabilitation and prevent recurrence:

(1) how to explain to the patient the purpose of the therapy, the expected outcome and possible complications of the therapy that could occur; and

(2) anatomical locations that are relatively safe for injection therapy, as well as those locations that should be avoided for injection therapy;

D. perform phlebotomy and collect and centrifuge blood to be used for platelet rich plasma injection; knowledge of diagnostic and physical exam findings which indicate the need for platelet rich plasma as a treatment modality;

E. advanced neural therapy techniques; knowledge and skills as described in 16.2.18.13 NMAC of basic injection;

F. advanced mesotherapy;

(1) how to evaluate and treat the patient with cellulite including determination of a treatment plan, utilizing appropriate substance(s) and dosing to accomplish treatment goals;

(2) how to evaluate and treat fat;

(3) technique of injections to reduce fat or cellulite; and

(4) mechanisms of action of substances used for cellulite and fat reduction;

G. apitherapy;

(1) knowledge of and skill in performing apitherapy; and

(2) understanding theory and application of apitherapy, expected outcomes, benefits and potential risks and complications.

[16.2.18.17 NMAC - N, 03-02-14]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.19 NMAC, Sections 12, 17 and 18, effective 03-02-2014.

16.2.19.12 INJECTION THERAPY CERTIFICATION: The board shall issue to a doctor of oriental medicine, certification for injection therapy, upon completion of the following requirements.

A. The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

B. The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

C. The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

D. The doctor of oriental medicine shall submit, with the application, proof of:

(1) current certification by the board for basic injection therapy; or

(2) any course combining basic injection therapy and injection therapy, as they are specified in the board's rules, or otherwise in accordance with law, must be [~~completed within three years of the start of course~~] completed within two years of the start of the course.

E. The doctor of oriental

medicine shall submit, with the application, proof of successful completion of the injection therapy educational course approved by the board.
[16.2.19.12 NMAC - N, 11-28-09; A, 03-02-14]

16.2.19.17 LICENSE DESIGNATION: The designation for expanded practice shall follow the license number on the license and shall reflect the respective modules of certification: Rx basic injection, Rx1 basic injection, Rx injection, Rx intravenous, Rx hormones.
[16.2.19.17 NMAC - N, 02-08-13; A, 03-02-14]

16.2.19.18 ULTRASOUND CREDENTIALING: A licensed doctor of oriental medicine may utilize musculoskeletal diagnostic ultrasound and ultrasound guidance of procedures with the RMSK credential from ARDMS, the American registry of diagnostic medical sonography. A licensed doctor of oriental medicine (DOM) who wishes to practice diagnostic musculoskeletal ultrasound and ultrasound guidance of procedures shall register with the board of acupuncture and oriental medicine (BAOM) to be provisionally credentialed to practice diagnostic musculoskeletal ultrasound and ultrasound guided procedures upon completion of a minimum of 30 hours in BAOM approved courses. Within 36 months of provisional credentialing, the doctor of oriental medicine shall submit to the BAOM proof of scheduling for RMSK testing with ARDMS. If the provisional credentialing period is continued to 36 months without ARDMS RMSK credentialing, the provisionally credentialed DOM shall submit proof of 30 hours of continuing education in courses approved by the BAOM. Provisional credentialing shall lapse within 48 months of initial provisional credentialing. Ultrasound credentialing does not require certification in expanded practice.
[16.2.19.18 NMAC - N, 03-02-14]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 308 MANAGED CARE PROGRAM
PART 15 GRIEVANCES AND APPEALS

8.308.15.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.308.15.1 NMAC - N, 2-14-14]

8.308.15.2 SCOPE: This rule applies to the general public.
[8.308.15.2 NMAC - N, 2-14-14]

8.308.15.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.308.15.3 NMAC - N, 2-14-14]

8.308.15.4 DURATION: Permanent.
[8.308.15.4 NMAC - N, 2-14-14]

8.308.15.5 EFFECTIVE DATE: February 14, 2014, unless a later date is cited at the end of a section.
[8.308.15.5 NMAC - N, 2-14-14]

8.308.15.6 OBJECTIVE: The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance division programs.
[8.308.15.6 NMAC - N, 2-14-14]

8.308.15.7 DEFINITIONS:

A. ***"Adverse action"*** or ***"action"*** means:

(1) a termination, modification, reduction, or suspension of a covered medical assistance division (MAD) service;

(2) the denial or limiting of an authorized service, including type or level of service (with the exception of a managed care value-added service), requests for a prior approval or a utilization review (UR) action following a reconsideration hearing decision; see 8.350.2 NMAC;

(3) the denial in whole or in part of a provider's claim which results in the claimant's becoming liable for the payment;

(4) the failure to approve a service in a timely manner;

(5) the failure of a contractor to act on grievance and appeals within the timeframes specified in 42 CFR 438.408 (b);

(6) the denial of a value added service will not be considered an action or adverse action; value added services are not included in the managed care medicaid benefit package; value added services shall not be construed as Medicaid funded services, and therefore, there is no appeal or fair hearing rights for members regarding these services.

B. ***"Appeal"*** means a request by the member for review by the MCO of an MCO action or adverse action.

C. ***"Authorized representative"*** means an individual that has been legally appointed by the appropriate court to act on behalf of the claimant.

D. ***"Denial"*** means the decision not to authorize the member's requested service, prior approval, utilization review decision, or level of care (LOC).

E. ***"Grievance"*** means an expression of dissatisfaction about any matter or aspect of the MCO or its operation other than an MCO action.

F. ***"Hearing"*** or ***"administrative hearing"*** or ***"fair hearing"*** means an evidentiary hearing that is conducted so that evidence may be presented as it relates to an adverse action by MAD, its designee or contractor. This hearing is conducted by the HSD fair hearings bureau (FHB).

G. ***"HSD"*** or ***"the department"*** means the New Mexico human services department.

H. ***"Notice"*** means a written statement from the member or provider's managed care organization (MCO) which states the intended action to be taken or an action has been taken, the reasons for the intended or taken action, the specific MAD rule that requires this action, and an explanation of the member and provider's right to request an administrative hearing, along with an explanation of the circumstances under which the service or LOC may be continued if an administrative hearing is requested.
[8.308.15.7 NMAC - N, 2-14-14]

8.308.15.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.308.15.8 NMAC - N, 2-14-14]

8.308.15.9 GENERAL REQUIREMENTS: The HSD managed care organization (MCO) shall have a grievance system in place for its members and providers to express dissatisfaction about any matter or aspect of the MCO operation. The MCO shall have an appeal system in place that meets the requirements of 42 CFR 438 subpart F to dispute the MCO's planned or taken adverse action for its members and providers.
[8.308.15.9 NMAC - N, 2-14-14]

8.308.15.10 GENERAL INFORMATION ON PROVIDER GRIEVANCE AND APPEALS:

A. Upon a provider's contracting with an MCO, the MCO shall provide, at no cost, a written description of its grievance and appeal procedure and process to the provider. The MCO will update each of its providers with any

changes to these procedures and processes. The description shall include:

(1) information on how the provider can file a MCO grievance or appeal and the resolution process;

(2) time frames for each step of the grievance or appeal process through its final resolution; and

(3) a description of how the MCO provider's grievances or appeals are resolved.

B. Provider rights.

(1) A provider shall have the right to file a grievance with his or her MCO to express dissatisfaction about any matter or aspect of the MCO operation. The provider may file the grievance either orally or in writing following his or her MCO's procedures and processes.

(2) A provider shall have the right to file an appeal with the MCO related to the provider's payment and the utilization review decisions on behalf of a member.

C. A MCO provider does not have the right to request a HSD administrative hearing.

[8.308.15.10 NMAC - N, 2-14-14]

8.308.15.11 GENERAL INFORMATION ON MEMBER GRIEVANCE AND APPEALS:

A. Upon the member's enrollment, the MCO shall provide, at no cost, a written description of its grievance and appeal procedures and processes. The MCO will promptly provide each member with any changes to these procedures and processes. The description shall include:

(1) information on how the member can file a MCO grievance or appeal and the resolution process;

(2) information of the member's right to file a request for a HSD administrative hearing if the member is appealing the MCO's final appeal decision letter;

(3) timeframes for each step of the grievance or appeal process through its final resolution; and

(4) a description of how MCO member grievances or appeals are resolved.

B. Member rights.

(1) A member shall have the right to file a grievance within 30 days of the date the dissatisfaction occurred with his or her MCO to express dissatisfaction about any matter or aspect of his or hers MCO operation. The member may file the grievance either orally or in writing following his or her MCO's procedures and processes.

(2) A member shall have the right to file an appeal with the MCO within 90 calendar days of receiving a notice of the action.

(3) The member's MCO will provide him or her with its decision on an appealed adverse action.

(4) A member shall have the right to request a HSD administrative hearing after the member has exhausted his or her MCO appeal process. See 8.352.2 NMAC for instructions on how a MCO member requests a HSD administrative hearing.

(5) A member must request a HSD administrative hearing within 30 calendar days of the date of his or her MCO's final decision letter.

C. The following individuals may file a MCO grievance or appeal on behalf of a member:

(1) the member's legal guardian;

(2) the member's authorized representative; an authorized representative is the individual that has been legally appointed by the appropriate court to act on behalf of the member; the member's authorized representative may attend the hearing with or without the member being present; or

(3) the member may appoint a personal representative or his or her provider to assist the member during the grievance and appeal process if a member has signed a written consent; provided that the administrative law judge determines the member fully understands the matters presented on grievance or appeal; the personal representative cannot make decisions on behalf of the member; and the member must attend the grievance and appeal hearings with his or her personal representative.

[8.308.15.11 NMAC - N, 2-14-14]

8.308.15.12 MCO GRIEVANCE PROCESS:

A. The MCO shall provide reasonable member or provider assistance in completing forms and procedural steps, including but not limited to:

(1) providing interpreter services; and

(2) providing toll-free numbers that have adequate TTY/TTD and interpreter capability.

B. The MCO shall designate a specific employee or subcontractor as its member or provider grievance coordinator with the authority to:

(1) administer the policies and procedures for resolution of a grievance; and

(2) review patterns and trends in grievances and initiate corrective action.

C. The MCO shall ensure that the individuals who make decisions on grievances are not involved in any previous level of review or decision-making.

D. The MCO shall provide the member or provider with written notice:

(1) when a grievance request has been received;

(2) of the expected date of resolution; and

(3) of the final resolution of the grievance.

E. The MCO shall ensure that punitive or retaliatory action is not taken against a member or a provider that files a grievance, or the provider that supports a member's grievance.

[8.308.15.12 NMAC - N, 2-14-14]

8.308.15.13 MCO APPEAL PROCESS:

A. The MCO shall provide reasonable member or provider assistance in completing forms and procedural steps, including but not limited to:

(1) providing interpreter services; and

(2) providing toll-free numbers that have adequate TTY/TTD and interpreter capability.

B. The MCO shall designate a specific employee or subcontractor as its member or provider appeal coordinator with the authority to:

(1) administer the policies and procedures for resolution of an appeal; and

(2) review patterns and trends in appeals and initiate corrective action.

C. The MCO shall ensure that the individuals who make decisions on grievances or appeals are not involved in any previous level of review or decision-making.

D. The MCO shall provide the member or provider with written notice:

(1) when an appeal request has been received;

(2) of the expected date of resolution; and

(3) of the final resolution of the appeal.

E. The MCO shall provide the member or provider with a notice of action for decisions related to:

(1) previously authorized services as permitted under 42 CFR 431.213 and 431.214;

(2) newly requested services; and

(3) denials of claims that may result in the member's financial liability.

F. The MCO must follow the provisions of 42 CFR 438.420 regarding continuation of the member's benefits while a MCO appeal or the HSD administrative hearing process is pending. A continuation of benefits will be provided to the member who requests a MCO appeal within 13 calendar days of the MCO's notice of an adverse action.

(1) If the MCO reverses the appealed adverse action and the disputed service was not furnished while the appeal was pending, the MCO shall authorize or provide the disputed service promptly and as expeditiously as the member's health condition requires.

(2) If the MAD director's final decision through the state's administrative hearing process reverses the MCO's appealed adverse action and the member received the disputed services while the administrative hearing decision or appeal was pending, the MCO shall pay for these services.

(3) If the MAD director's final decision through the state's administrative hearing process upholds the MCO's action, the MCO may recover from the member the cost of the services furnished while the administrative hearing decision or appeal was pending providing the member was advised that he or she could be responsible for cost of the services as part of the information provided to the member. See 8.352.2 NMAC considering the MCO recovery process.

G. The MCO shall ensure that health care professionals with appropriate clinical expertise make decisions for the following:

(1) an appeal that involves clinical issues;

(2) an appeal of a MCO denial that is based on lack of medical necessity; and

(3) the MCO's denial that is upheld in an expedited resolution.

H. The MCO shall establish and maintain an expedited review process for appeals when the MCO determines that allowing the time for a standard resolution could seriously jeopardize the member's life, health; or his or her ability to attain, maintain, or regain maximum function.

(1) In the case of expedited service authorization decisions that deny or limit services, the MCO shall automatically file an appeal on behalf of the member, and use its best effort to resolve the appeal and give the member oral notice of the decision on the automatic appeal.

(2) The MCO shall ensure that punitive or retaliatory action is not taken against a member or a provider that files an appeal, or a provider that supports a member's appeal.

[8.308.15.13 NMAC - N, 2-14-14]

HISTORY OF 8.308.15 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.430 NMAC, Section 18, effective February 14, 2014.

8.200.430.18 ELIGIBLE RECIPIENT RESPONSIBILITY TO ENROLL IN AVAILABLE EMPLOYER-BASED GROUP HEALTH PLAN OR OTHER INSURANCE PLANS: Effective July 01, 1998, HSD no longer accepts referrals to the health insurance premium payment (HIPP) program. HIPP is only available to participants active on HIPP as of July 01, 1998 who have continued to maintain their eligibility for the program. This program will end January 31, 2014.

[~~A. **Payments under the health insurance premium payment program:** Under HIPP, HSD will pay premiums, deductibles, co-insurance and other cost-sharing obligations necessary to enroll an applicant or medicaid eligible recipient in an available cost-effective insurance plan.~~

~~(1) An applicant or an eligible recipient is required to participate in an employer-based group health plan (EGHP) as a condition of eligibility. If an applicant or an eligible recipient is enrolled in a non-employer-based plan and is also eligible to enroll in a cost-effective EGHP, he or she must enroll in the EGHP to remain eligible for medicaid. If continued enrollment in both plans remains cost-effective, HSD may choose to pay the premiums for the non-employer-based plan. If an applicant or an eligible recipient is eligible for more than one cost-effective EGHP, he or she must enroll in the EGHP which HSD determines to be more cost-effective.~~

~~(2) An applicant or an eligible recipient is not required to enroll in a non- employer-based insurance plan as a condition of eligibility. If such plan is cost-effective, HSD may choose to pay the applicable premiums and cost-sharing obligations.~~

~~(3) HSD can pay the premiums only for a non-medicaid eligible family member if that member must be enrolled in the EGHP in order for the medicaid eligible family member to receive coverage. The costs of furnishing coverage to the non-medicaid eligible family members are not considered in determining the cost effectiveness of the EGHP or non employer-based plan.~~

~~(4) HSD may pay the cost of premiums for a medicare supplemental insurance policy for a dual-eligible MAD recipient if HSD determines that such payment would be cost effective.~~

~~(5) Claims submitted by providers for furnishing medical or behavioral health services to an applicant or an eligible recipient covered under the HIPP program are subject to standard third party editing and processing. See 8.302.3 NMAC.~~

~~(6) Payments will not be made for premiums used as a deduction to income for purposes of the medicaid eligibility determination.~~

~~B. Insurance plans excluded from coverage under the health insurance premium payment program: HSD will not pay premiums or cost-sharing obligations for health insurance plans under the following circumstances:~~

~~(1) the EGHP is that of an absent parent;~~

~~(2) the EGHP is an indemnity policy which supplements the policyholder's income or pays only a predetermined amount for services covered under the policy; for instance, the plan pays $50 a day versus 80 percent of the total charges;~~

~~(3) the plan is an education policy offered on the basis of attendance or enrollment at an educational facility;~~

~~(4) the plan is maintained for the applicant or an eligible recipient through another source, such as maintenance of insurance for a child by the absent parent;~~

~~(5) the EGHP is designed to provide coverage for a temporary period only; or~~

~~(6) the individual covered under the plan is not medicaid eligible on the date the decision is made for enrollment in the HIPP program.~~

~~C. **Application process:** At the time an applicant applies for medicaid or a program that includes medicaid benefits or at the time of the periodic review of the eligible recipient's medicaid eligibility, he or she must complete a health insurance premium payment referral (HIPP) form. The form must be completed during the process and forwarded to MAD third party liability unit (TPLU).~~

~~(1) The MAD TPLU determines whether an EGHP is cost-effective using guidelines set forth in the approved state medicaid plan. After a determination is made, the MAD TPLU furnishes notice to the applicant or the eligible recipient and the appropriate ISD, SSI, or CYFD office of the determination within 30 calendar days of the receipt of the HIPP form or as soon as possible. Additional time may be required for the determination if required information cannot be obtained within the 30 calendar day time period.~~

~~(2) As a condition of medicaid eligibility, an applicant or an eligible recipient must provide HSD with all necessary information about the plan and~~

~~report all changes with respect to the plan to HSD within 10 calendar days of that change.~~

~~(a) If an applicant or an eligible recipient parent fails to provide the information necessary to make the cost- effectiveness determination, fails to enroll in a cost-effective plan, or disenrolls from such a plan for reasons not described in Subsection E below, he or she is no longer a MAD eligible recipient. MAD benefits to an applicant or eligible recipient child are not terminated if the parent or responsible individual fails to provide information or cooperate with HSD.~~

~~(b) Medicaid benefits for the spouse of an employed individual are not terminated due to the employed individual's failure to provide information or cooperate if the spouse cannot enroll in the plan independently.~~

~~D. **Effective date:** Premium payments to the cost-effective plan are due on the first of the month in which an applicant's eligibility is established or the month, in which premium payments are due for the applicant or the eligible recipient enrollment in a cost-effective plan, whichever is later.~~

~~E. **Disenrollment and discontinuation of premium payments:** Premium payments are discontinued on the first of the month after the date that all members of a household lose medicaid eligibility. If only a portion of the household members lose medicaid eligibility, HSD will conduct a review of the plan to determine whether enrollment in the plan remains cost effective. As a condition of medicaid eligibility, an applicant or an eligible recipient is required to be enrolled in a cost-effective EGHP. Disenrollment is permissible under the following circumstances:~~

~~(1) HSD determines that plan enrollment is no longer cost effective; or~~

~~(2) the plan is no longer available to the applicant or the eligible recipient for instance, the applicant or the eligible recipient changes employers or the employer no longer offers insurance coverage; or~~

~~(3) the applicant or the eligible recipient was enrolled in a plan through a spouse or parent who is no longer willing to enroll him or her.~~

~~F. **Review of cost-effectiveness:** HSD reviews the cost-effectiveness for each plan:~~

~~(1) at least every six months for an EGHP and annually for non-employer-based insurance plans;~~

~~(2) with a change in the predetermined cost or services covered by the plan, such as an increase in a premium rate or elimination of maternity coverage;~~

~~(3) when a member of the household loses medicaid eligibility;~~

~~(4) when circumstances affecting the availability of the plan occur, such as employment termination, reduction in employment hours; and~~

~~(5) when the employer changes insurance carriers.~~]

[8.200.430.18 NMAC - Rp, 8.200.430.18 NMAC, 1-1-14; A, 2-14-14]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Sections 11, 12, 13 and 15, effective February 14, 2014.

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA): The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal medicaid application. If institutionalization began:

(A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is $30,000 and the federal maximum CRSA is $60,000.

(B) On or after January 1, 1990, the state minimum is $31,290 and the federal maximum CSRA is $62,580.

(C) On or after January 1, 1991, the state minimum is $31,290 and the federal maximum CSRA is $66,480.

(D) On or before January 1, 1992, the state minimum is $31,290 and the federal maximum CSRA is $68,700.

(E) On or after January 1, 1993, the state minimum is $31,290 and the federal maximum CSRA is $70,740.

(F) On or after January 1, 1994, the state minimum is $31,290 and the federal maximum CSRA is $72,660.

(G) On or after January 1, 1995, the state minimum is $31,290 and the federal maximum CSRA is $74,820.

(H) On or after January 1, 1996, the state minimum is $31,290 and the federal maximum CSRA is $76,740.

(I) On or after January 1, 1997, the state minimum is $31,290 and the federal maximum CSRA is $79,020.

(J) On or after January 1, 1998, the state minimum is $31,290 and the federal maximum CSRA is $80,760.

(K) On or after January 1, 1999, the state minimum is $31,290 and the federal maximum CSRA is $81,960.

(L) On or after January 1, 2000, the state minimum is $31,290 and the federal maximum CSRA is $84,120.

(M) On or after January 1, 2001, the state minimum is $31,290 and the federal maximum CSRA is $87,000.

(N) On or after January 1, 2002, the state minimum is $31,290 and the federal maximum CSRA is $89,280.

(O) On or after January 1, 2003, the state minimum is $31,290 and the federal maximum CSRA is $90,660.

(P) On or after January 1, 2004, the state minimum is $31,290 and the federal maximum CSRA is $92,760.

(Q) On or after January 1, 2005, the state minimum is $31, 290 and the federal maximum CSRA is $95,100.

(R) On or after January 1, 2006, the state minimum is $31,290 and the federal maximum CSRA is $99,540.

(S) On or after January 1, 2007, the state minimum is $31,290 and the federal maximum CSRA is $101,640.

(T) On or after January 1, 2008, the state minimum is $31,290 and the federal maximum CSRA is $104,400.

(U) On or after January 1, 2009, the state minimum is $31,290 and the federal maximum CSRA is $109,560.

(V) On or after January 1, 2010, the state minimum is $31,290 and the federal maximum CSRA remains $109,560.

(W) On or after January 1, 2011, the state minimum is $31.290 and the federal maximum CSRA remains $109,560.

(X) On or after January 1, 2012, the state minimum is $31,290 and the federal maximum CSRA is $113,640.

(Y) On or after January 1, 2013, the state minimum is $31,290 and the federal maximum CSRA is $115,920.

(Z) On or after January 1, 2014, the state minimum is $31,290 and the federal maximum CSRA is $117,240.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 1-1-12; A, 1-1-13; A, 2-14-14]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

	DEDUCTION	AMOUNT
A.	Personal needs allowance for institutionalized spouse	[~~$67~~] $68
B.	Minimum monthly maintenance needs allowance (MMMNA)	$1,939

C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:

(1) If allowable shelter expenses of the community spouse exceed $582 deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.

(2) Excess shelter allowance may not exceed a maximum of [~~$959.~~] $992.

D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).

F. Non-covered medical expenses.

G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed $2,898.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08; A, 7-1-08, A, 1-1-09, A, 4-1-09; A, 7-1-09; A, 7-1-11; A, 1-1-12; A, 7-1-12; A, 7-1-13; A, 2-14-14]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

	DATE	AVERAGE COST PER MONTH
A.	July 1, 1988 - Dec. 31, 1989	$ 1,726 per month
B.	Jan. 1, 1990 - Dec. 31, 1991	$ 2,004 per month
C.	Jan. 1, 1992 - Dec. 31, 1992	$ 2,217 per month
D.	Effective July 1, 1993, for application register on or after Jan. 1, 1993	$ 2,377 per month
E.	Jan. 1, 1994 - Dec. 31, 1994	$2,513 per month
F.	Jan. 1, 1995 - Dec. 31, 1995	$2,592 per month
G.	Jan. 1, 1996 - Dec. 31, 1996	$2,738 per month
H.	Jan. 1, 1997 - Dec. 31, 1997	$2,889 per month
I.	Jan. 1, 1998 - Dec 31, 1998	$3,119 per month
J.	Jan. 1, 1999 - Dec. 31, 1999	$3,429 per month
K.	Jan. 1, 2000 - Dec. 31, 2000	$3,494 per month
L.	Jan. 1, 2001 - Dec. 31, 2001	$3,550 per month
M.	Jan. 1, 2002 - Dec. 31, 2002	$3,643 per month
N.	Jan. 1, 2003 - Dec. 31, 2003	$4,188 per month
O.	Jan. 1, 2004 - Dec. 31, 2004	$3,899 per month
P.	Jan. 1, 2005 - Dec. 31, 2005	$4,277 per month
Q.	Jan. 1, 2006 - Dec. 31, 2006	$4,541 per month
R.	Jan. 1, 2007 - Dec. 31, 2007	$4,551 per month
S.	Jan. 1, 2008 - Dec. 31, 2008	$4,821 per month
T.	Jan. 1, 2009 - Dec. 31, 2009	$5,037 per month
U.	Jan. 1, 2010 - Dec. 31, 2010	$5,269 per month
V.	Jan. 1, 2011 - Dec. 31, 2011	$5,774 per month
W.	Jan. 1, 2012 - Dec. 31, 2012	$6,015 per month
X.	Jan. 1, 2013 - Dec. 31, 2013	$6,291 per month
Y.	Jan. 1, 2014	$6,229 per month

[1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06 ; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 1-1-12; A, 1-1-13; A, 2-14-14]

8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:

A. Jan. 2014 $814,000

[~~A.~~] B. Jan. 2013 $802,000

[~~B.~~] C. Jan. 2012 $786,000

[~~C.~~] D. Jan. 2011 $758,000

[~~D.~~] E. Jan. 2010 $750,000

[8.200.510.15 NMAC - N, 1-11-11; A, 1-1-12; A, 1-1-13; A, 2-14-14]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.6 NMAC, Sections 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, effective February 14, 2014.

8.314.6.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Titles XI, XIX, and XXI of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-2-12 et seq.
[8.314.6.3 NMAC - Rp, 8.314.6.3 NMAC, 10-15-12; A, 2-14-14]

8.314.6.6 OBJECTIVE: The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance programs (MAP).
[8.314.6.6 NMAC - Rp, 8.314.6.6 NMAC, 10-15-12; A, 2-14-14]

8.314.6.7 DEFINITIONS:

[~~A. **AIDS waiver:** A medical assistance division (MAD) home and community-based services (HCBS) waiver program for eligible recipients who are diagnosed as having acquired immunodeficiency syndrome (AIDS) or AIDS-related conditions and who meet the level of care provided in a nursing facility (NF).~~]

[~~B.~~] A. **Authorized agent:** [~~The eligible recipient may choose to appoint an authorized agent designated to have access to medical and financial information for the purpose of offering support and assisting the eligible recipient in understanding waiver services. The eligible recipient will designate a person to act as an authorized agent by signing a release of information form indicating the eligible recipient's consent to the release of confidential information. The authorized agent will not have the authority to direct mi via waiver services. Directing services remains the sole responsibility of the eligible recipient or [his/her legal]~~ his or her authorized ~~representative. The eligible recipient's authorized agent does not need a legal relationship with the eligible recipient. While the eligible recipient's authorized agent can be a service provider for the eligible recipient, the authorized agent cannot serve as the eligible recipient's consultant. If the authorized agent is an employee, he/she cannot sign his/her own timesheet.~~] An individual or entity that has been legally appointed by the appropriate court to act on behalf of the eligible recipient as stated in the court's order.

[~~C.~~] B. **Authorized annual budget (AAB):** The eligible recipient works with his or her consultant to develop an annual budget request which is submitted to the third party assessor (TPA) for review and approval. The total annual amount of the mi via services and goods includes the frequency, the amount, and the duration of the [~~waiver~~] services and the cost of [~~waiver~~] goods approved by the [~~TPA~~] third party assessor (TPA). Once approved, this is the annual approved budget (AAB).

C. **Authorized representative:** The eligible recipient may choose to appoint an authorized representative designated to have access to medical, behavioral health and financial information for the purpose of offering support and assisting the eligible recipient in understanding his or her waiver services. The eligible recipient will designate a person to act as an authorized representative by signing a release of information form indicating his or her consent to the release of confidential information. The authorized representative will not have the authority to direct the member's mi via waiver services. Directing services remains the sole responsibility of the eligible recipient or his or her authorized agent. The eligible recipient's authorized representative does not need a legal relationship with the eligible recipient. While the eligible recipient's authorized agent may be a service provider (depending on scope of the court's order) for the eligible recipient, the authorized representative cannot serve as the eligible recipient's consultant. An authorized representative that is also an employee cannot sign his or her specific timesheet.

[~~D. **Brain injury (BI):** Eligible recipients (through age 65) with an injury to the brain of traumatic or acquired origin resulting in a total or partial functional disability or psychosocial impairment or both. The BI eligible recipient must have a documented BI diagnosis, as included in the international classification of diseases (ICD-9-CM or its successor).~~]

[~~E.~~] D. **Category of eligibility (COE):** To qualify for [~~a medical assistance program~~] MAP services, an applicant must meet financial criteria and belong to one of the groups that [~~the state~~] MAD has defined as eligible. An eligible recipient in [~~mi via~~] the mi via program must belong to one of the categories of eligibility (COE) described in [~~8.314.6.13 NMAC~~] Section 13 below.

[~~F.~~] E. **Centers for medicare and medicaid services (CMS):** Federal agency within the United States department of health and human services that works in partnership with [~~the states~~] New Mexico to administer [~~medical assistance programs operated~~] medicaid and MAP services under HSD.

[~~G.~~] F. **Consultant provider:** [~~May be an~~] An agency or an individual that provides consultant and support guide services to the eligible recipient that assist the eligible recipient (or the eligible recipient's family, authorized agent or [~~legal~~] the authorized representative, as appropriate) in arranging for, directing and managing mi via services and supports, as well as developing, implementing and monitoring the service and support plan (SSP) and AAB.

[~~H.~~] G. **Eligible recipient:** An applicant meeting the financial and medical [~~LOC~~] level of care (LOC) criteria who is approved to receive MAD services through the mi via program.

[~~I.~~] H. **Employer of record (EOR):** The employer of record (EOR) is the individual responsible for directing the work of mi via employees, including recruiting, hiring, managing and terminating all employees. The EOR tracks expenditures for employee payroll, goods, and services. EORs authorize the payment of timesheets by the financial management agency (FMA). An eligible recipient may be [~~his/her~~] his or her own EOR unless the eligible recipient is a minor, or has a plenary or limited guardianship or conservatorship over financial matters in place. An eligible recipient may also designate an individual of his or her choice to serve as the EOR, subject to the EOR meeting the qualifications specified in this rule.

[~~J.~~] I. **Financial management agency (FMA):** Contractor that helps implement the AAB by paying the eligible recipient's service providers and tracking expenses.

[~~K.~~] J. **Home and community-based services (HCBS) waiver:** A [~~MAD program~~] set of MAP services that provides alternatives to long-term care services in institutional settings. The federal government waives certain statutory requirements of the Social Security Act to allow [~~states~~] HSD to provide an array of community-based options through these waiver programs.

[~~L.~~] K. **Individual budgetary allotment (IBA):** The maximum budget allotment available to an eligible recipient, determined by [~~his/her~~] his or her established [~~level of care (LOC)~~] LOC and category of eligibility. Based on this maximum amount, the eligible recipient will develop a plan to meet [~~his/her~~] his or her assessed functional, medical and habilitative needs to enable the eligible recipient to remain in the community.

[~~M.~~] L. **Intermediate care

facilities for individuals with intellectual disabilities (ICF/IID): Facilities that are licensed and certified by the New Mexico department of health (DOH) to provide room and board, continuous active treatment and other services for eligible [~~MAD~~] recipients with a primary diagnosis of intellectually disabled.

[~~N. **Legal representative:** A person that is a legal guardian, conservator, power of attorney or otherwise has a court established legal relationship with the eligible recipient. The eligible recipient must provide certified documentation to the consultant provider and FMA of the legal status of the representative and such documentation will become part of the eligible recipient's file. The legal representative will have access to the eligible recipient's medical and financial information to the extent authorized in the official court documents.~~]

[~~O.~~] M. **Legally responsible individual (LRI):** [~~A legally responsible individual (LRI) is any~~] A person who has a duty under state law to care for another person. This category typically includes: the parent (biological, legal, or adoptive) of a minor child; the guardian of a minor child who must provide care to the child; or a spouse.

[~~P.~~] N. **Level of care (LOC):** [~~The level of care (LOC) required by an eligible recipient in an institution. An eligible recipient in the mi via program must be determined to need either the LOC required for admittance to a licensed nursing facility (NF) or an ICF/IID.~~] The level of care a MAP recipient must meet to be eligible for the mi via program.

[~~Q.~~] O. **Mi via:** Mi via is the name of the Section 1915 (c) MAD self-directed HCBS waiver program through which an eligible recipient has the option to access services to allow him or her to remain in the community.

[~~R.~~] P. **Reconsideration:** An eligible recipient who disagrees with a [~~clinical/medical~~] clinical or medical utilization review decision or action may submit a written request to the [~~TPA~~] third party assessor for reconsideration of the decision. The eligible recipient may submit the request for a reconsideration through the consultant or the consultant agency or may submit the request directly to MAD.

[~~S.~~] Q. **Self-direction:** The process applied to the service delivery system wherein the eligible recipient identifies, accesses and manages the services (among the [~~state-determined~~] MAD approved waiver services and goods) that meet his or her assessed therapeutic, rehabilitative, habilitative, health or safety needs to support the eligible recipient to remain in his or her community.

[~~T.~~] R. **Service and support plan (SSP):** A plan that includes [~~waiver~~] mi via services that meet the eligible recipient's needs that include: the projected amount, the frequency and the duration of the [~~waiver~~] services; the type of provider who will furnish each [~~waiver~~] service; other services the eligible recipient will access; and the eligible recipient's available supports that will compliment [~~waiver~~] mi via services in meeting his or her needs.

[~~U.~~] S. **Support guide:** A function of the consultant provider that directly assists the eligible recipient in implementing the SSP to ensure access to mi via services and supports and to enhance success with self-direction. Support guide services provide assistance to the eligible recipient with [~~employer/vendor~~] employer or vendor functions or with other aspects of implementing [~~his/her~~] his or her SSP.

[~~V.~~] T. **Third-party assessor (TPA):** The contractor who determines and re-determines LOC and medical eligibility for mi via services. The TPA also reviews the eligible recipient's SSP and approves an AAB for the eligible recipient. The TPA performs utilization management duties of all [~~waiver~~] mi via services.

[~~W.~~] U. **Waiver:** A program in which the federal government has waived certain statutory requirements of the Social Security Act to allow states to provide an array of home and community-based service options through MAD as an alternative to providing long-term care services in an institutional setting.

[8.314.6.7 NMAC - Rp, 8.314.6.7 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.9 MI VIA HOME AND COMMUNITY-BASED SERVICES WAIVER:

A. New Mexico's medicaid self-directed waiver program known as mi via is intended to provide a community-based alternative to institutional care that allows an eligible recipient to have control over services and supports. [~~Mi via provides self-directed home and community-based services to eligible recipients who are living with disabilities, conditions associated with aging, certain traumatic or acquired brain injuries (BI), acquired immunodeficiency syndrome (AIDS), developmental disabilities (DD), or medically fragile conditions (MF).~~] Mi via provides self-directed home and community-based services to eligible recipients who are living with developmental disabilities (DD), or medically fragile (MF) conditions. (See 42 CFR 441.300.)

B. [~~Mi via is comprised of two MAD home and community-based waivers established under Section 1915(c) of the Social Security Act. One waiver is specifically for eligible recipients who meet the LOC otherwise provided in a nursing facility (NF). The second waiver is specifically for eligible recipients who meet the LOC otherwise provided in an ICF/IID.~~] The mi via program is for an eligible recipient who meets the LOC otherwise provided in an ICF/IID.

(1) [~~Both waivers are managed as a single self-directed program and are administered collaboratively by the DOH and HSD/MAD. MAD is responsible for the daily administration of mi via for eligible recipients living with disabilities, conditions associated with aging, and certain traumatic or acquired brain injuries who meet the LOC for admittance to an NF. DOH is responsible for the daily administration of mi via for eligible recipients living with developmental disabilities and medically fragile conditions who meet the LOC for admittance to an ICF/IID. The DOH also manages the waiver for eligible recipients living with AIDS who meet the LOC for admittance to an NF.~~] DOH, at the direction of MAD, is responsible for the daily administration of the waiver.

(2) Enrollment in mi via is limited to the number of federally authorized unduplicated eligible recipients and funding appropriated by the New Mexico legislature for this purpose.

[8.314.6.9 NMAC - Rp, 8.314.6.9 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.10 MI VIA CONTRACTED ENTITIES AND PROVIDERS SUPPORTING SELF-DIRECTED SERVICES: The following resources and services have been established to assist eligible recipients to self-direct services. These include the following.

A. **Consultant services:** Consultant services are direct services intended to educate, guide and assist the eligible recipient to make informed planning decisions about services and supports, to develop a [~~service and support plan (SSP)~~] SSP that is based on the eligible recipient's assessed disability-related needs and to assist the eligible recipient with quality assurance related to the SSP and AAB.

B. **Third-party assessor:** The TPA or MAD's designee is responsible for determining medical eligibility through [~~an~~] a LOC assessment, assigning the applicable [~~individual budgetary allotment (IBA)~~] IBA, approving the SSP and authorizing an eligible recipient's annual budget in accordance with mi via rules and service standards. The TPA:

(1) determines medical eligibility using the LOC criteria in [~~8.314.6.13 NMAC~~] Section 13 below; LOC determinations are done initially for eligible recipients who are newly enrolled to the

mi via [~~waiver~~] program and thereafter at least annually for currently enrolled mi via eligible recipients; the LOC assessment is done in person with the eligible recipient in [~~his/her~~] his or her home, an agreed upon location or in an inpatient setting; the TPA may re-evaluate the LOC more often than annually if there is an indication that the eligible recipient's condition or LOC has changed;

(2) applies the information from the LOC documentation and the following assessments[~~,~~] : long-term care assessment abstract ([~~NF or~~] ICF/IID), the comprehensive individual assessment (CIA), [~~the universal assessment tool (UAT),~~] or other [~~state~~] MAD approved assessment tools, as appropriate for the category of eligibility, to assign the IBA for the eligible recipients that are medically eligible; and

(3) reviews and approves the SSP and the annual budget request resulting in an AAB, at least annually or more often if there is a change in the eligible recipient's circumstances, in accordance with mi via rules and service standards.

C. **Financial management agent (FMA):** The FMA acts as the intermediary between the eligible recipient and the MAD payment system and assists the eligible recipient or the EOR with employer-related responsibilities. The FMA pays employees and vendors based upon an approved SSP and AAB. The FMA assures [~~the~~] there is eligible recipient and program compliance with state and federal employment requirements, monitors, and makes available to the eligible recipients [~~and~~] the reports related to utilization of services and budget expenditures. Based on the eligible recipient's approved individual SSP and AAB, the FMA must:

(1) verify that the recipients are eligible for MAD services prior to making payment for services;

(2) receive and verify that all required employee and vendor documentation and qualifications are in compliance with the mi via rules and service standards;

(3) establish an accounting for each eligible recipient's AAB;

(4) process and pay invoices for goods, services, and supports approved in the SSP and the AAB and supported by required documentation;

(5) process all payroll functions on behalf of the eligible recipients and EORs including:

(a) collect and process timesheets of employees;

(b) process payroll, withholding, filing, and payment of applicable federal, state and local employment-related taxes and insurance; and

(c) track and report disbursements and balances of the eligible recipient's AAB and provide a monthly report of expenditures and budget status to the eligible recipient and [~~his/her~~] his or her consultant, and quarterly and annual documentation of expenditures to MAD;

(6) receive and verify provider agreements, including collecting required provider qualifications;

(7) monitor hours billed for services provided by the LRI and the total amounts billed for all goods and services during the month;

(8) answer inquiries from the eligible recipients and solve problems related to the FMA's responsibilities; and

(9) [~~report any concerns related to the health and safety of the eligible recipient's or that the eligible recipient is not following the approved SSP and AAB to the consultant provider, MAD and DOH, as appropriate~~] report to the consultant provider, MAD and DOH any concerns related to the health and safety of an eligible recipient or if the eligible recipient is not following the approved SSP and AAB.

[8.314.6.10 NMAC - Rp, 8.314.6.10 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.11 QUALIFICATIONS FOR ELIGIBLE INDIVIDUAL EMPLOYEES, INDEPENDENT PROVIDERS, PROVIDER AGENCIES, AND VENDORS:

A. **Requirements for individual employees, independent providers, provider agencies and vendors:** In order to be approved as an individual employee, an independent provider, including non-licensed homemaker/companion workers, a provider agency (excluding consultant providers which are covered in a different subsection) or a vendor, including those that provide professional services, each individual or entity must meet the general and service specific qualifications set forth in this rule and submit an employee or vendor enrollment packet, specific to the provider or vendor type, for approval to the FMA. In order to be an authorized provider for [~~mi via~~] the mi via program and receive payment for delivered services, the provider must complete and sign an employee or vendor provider agreement and all required tax documents. The provider must have credentials verified by the eligible recipient or the EOR and the FMA. Prior to rendering services to a [~~MAD~~] MAP eligible mi via recipient, an individual seeking to provide services as a homemaker/direct support, respite, community direct/support/navigation, employment supports, and customized in-home living support worker (1) must obtain an internal revenue service (IRS)-SS8 letter determining the worker's status as an independent contractor or as an employee; (2) provide to the FMA and CA the IRS SS-8 letter. If the IRS SS-8 letter either determines or informs the worker that he or she meets the status of an independent contractor, the CA must submit the SSP changes to the TPA. Once the SSP is approved the independent contractor may begin the enrollment process with the FMA. [~~In order to be an authorized consultant provider for the mi via program, the provider must have approved provider agreements executed by the DOH/developmental disabilities supports division (DDSD) and MAD.~~] An authorized consultant provider must have a MAD approved provider participation agreement (PPA) and the appropriate approved DOH developmental disabilities division (DDSD) agreement.

B. **General qualifications:**

(1) Individual employees, independent providers, including non-licensed homemaker/companion workers and provider agencies (excluding consultant providers) who are employed by a mi via eligible recipient to provide direct services shall:

(a) be at least 18 years of age;

(b) be qualified to perform the service and demonstrate capacity to perform required tasks;

(c) be able to communicate successfully with the eligible recipient;

(d) pass a nationwide caregiver criminal history screening pursuant to NMSA 1978, Section 29-17-2 et seq. and 7.1.9 NMAC and an abuse registry screen pursuant to NMSA 1978, Section 27-7a-1 et seq. and 8.11.6 NMAC;

(e) complete training on critical incident, abuse, neglect, and exploitation reporting;

(f) complete training specific to the eligible recipient's needs; an assessment of training needs is determined by the eligible recipient or [~~his/her legal~~] his or her authorized representative; the eligible recipient is also responsible for providing and arranging for employee training and supervising employee performance; training expenses for paid employees cannot be paid for with the eligible recipient's AAB; and

(g) meet any other service specific qualifications, as specified in this rule and its service standards.

(2) Vendors, including those providing professional services:

(a) shall be qualified to provide the service;

(b) shall possess a valid business license, if applicable;

(c) if professional providers, required to follow the applicable licensing regulations and rules set forth by the profession; refer to the appropriate New Mexico board of licensure for information

regarding applicable licenses;

(d) if consultant providers, meet all of the qualifications set forth in [~~8.314.6.11 NMAC~~] this section;

(e) if currently MAD approved [~~waiver~~] mi via providers, are to be in good standing with the appropriate state agency; and

(f) meet any other service specific qualifications, as specified in the mi via rules.

(3) [~~Relatives or legal representatives, except LRIs (e.g., parents of minor children or spouses) may be hired and paid for provision of waiver services (except consultant/support guide, assisted living, and customized community supports services); payment is made to the eligible recipient's relative or legal representative for services provided when the relative/legal representative is qualified and approved to provide the service; the services must be identified in the approved SSP and AAB, and the eligible recipient or his/her legal representative is responsible for verifying that services have been rendered by completing, signing and submitting documentation, including the timesheet, to the FMA; relatives/legal representatives must provide services within the limits of the approved SSP and AAB and may not be paid in excess of 40 hours in a consecutive seven-day period; LRIs, legal representatives or relatives may not be both a paid employee for the eligible recipient and serve as his/her EOR.~~] Relatives or authorized representatives, except LRIs (e.g., parents of minor children or spouses) may be hired and paid for provision of mi via services (except consultant and support guide, assisted living, and customized community supports services); payment is made to the eligible recipient's relative or authorized representative for services provided when the relative or authorized representative is qualified and approved to provide the services. The services must be identified in the approved SSP and AAB, and the eligible recipient or his or her authorized representative is responsible for verifying that services have been rendered by completing, signing and submitting documentation, including the timesheet, to the FMA; relative or authorized representatives must provide services within the limits of the approved SSP and AAB and may not be paid in excess of 40 hours in a consecutive seven-day work week. LRIs, legal representatives or relatives may not be both a paid employee for the eligible recipient and serve as the eligible recipient's EOR. An authorized representative who is also an employee may not sign his or her own timesheet.

(4) Individuals with legal responsibility to provide care (LRI), e.g., the parent (biological, legal or adoptive) of a minor child (under age 18) or a spouse of the eligible recipient, may be hired and paid for provision of [~~waiver~~] mi via services (except [~~consultant/support~~] a consultant and support guide, assisted living, and customized community supports services) under extraordinary circumstances (i) in order to assure the health and welfare of the eligible recipient, and (ii) to avoid institutionalization when approved by [~~MAD and provided that MAD is eligible to~~] DOH. MAD must be able to receive federal financial participation (FFP) for the services.

(a) Extraordinary circumstances include the inability of the LRI to find other qualified, suitable caregivers when the LRI would otherwise be absent from the home and, thus, the caregiver must stay at home to ensure the eligible recipient's health and safety.

(b) LRIs may not be paid for any services that they would ordinarily perform in the household for individuals of the same age who do not have a disability or chronic illness.

(c) Services provided by LRIs must:

(i) meet the definition of a service or support and be specified in the eligible recipient's approved SSP and AAB;

(ii) be provided by a parent or spouse who meets the provider qualifications and training standards specified in the [~~waiver and his~~] mi via rule for that service; and

(iii) be paid at a rate that does not exceed that which would otherwise be paid to a provider of a similar service, and be approved by the TPA.

(d) An LRI who is a service provider must comply with the following:

(i) a parent, parents in combination, or a spouse, may not provide more than 40 hours of services in a consecutive seven-day period; for parents of the eligible recipient, 40 hours is the total amount of service regardless of the number of eligible recipients under the age of 21who receive services through the mi via [~~waiver~~] program;

(ii) planned work schedules must be identified in the approved SSP and AAB, and variations to the schedule must be reported to the eligible recipient's consultant and noted and supplied to the FMA when billing; and

(iii) timesheets and other required documentation must be maintained and submitted to the FMA for hours paid.

(e) [~~An eligible recipient must be offered a choice of providers. There must be written approval from MAD when an eligible CoLTS (c) or BI recipient, or from DOH when an eligible DOH AIDS, DD or MF recipient chooses his or her spouse as a provider. This written approval must be documented in the SSP.~~] An eligible recipient must be offered a choice of providers. There must be written approval from DOH when an eligible recipient chooses his or her parent or spouse as a provider. This written approval must be documented in the SSP.

[~~(f) Eligible recipients 16 years of age or older must be offered a choice of provider. There must be written approval from MAD when an eligible CoLTS (c) or BI recipient or from DOH when an eligible DOH AIDS, DD and MF recipient chooses his or her parent as a provider. This written approval must be documented in the SSP.~~]

[~~(g)~~] (f) The FMA monitors, on a monthly basis, hours billed for services provided by the LRI and the total amounts billed for all goods and services during the month.

(5) Once enrolled, providers, vendors and contractors receive a packet of information from the eligible recipient or FMA, including billing instructions, and other pertinent materials. Mi via eligible recipients or [~~legal~~] authorized representatives are responsible for ensuring that providers, vendors and contractors have received these materials and for updating them as new materials are received from [~~the state. MAD for CoLTS (c), and BI or DOH for AIDS, DD, and MF). 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 program rules, billing instructions, utilization review instructions, and other pertinent materials.~~] MAD and DOH. MAD makes available on its website, ~~or~~ and in hard copy format, information necessary to participate in medical assistance programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. DOH makes available on its website information, instructions and guidance on its administrative requirements for the mi via program. When enrolled, an eligible recipient or [~~legal~~] his or her authorized representative, or the provider, vendor or contractor receives instruction on how to access these documents. It is the responsibility of the eligible recipient [~~or legal~~] or authorized representative, or the provider, vendor, or contractor to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The eligible recipient or [~~legal~~] authorized representative, or the provider, vendor, or contractor must contact HSD or its authorized agents to request hard copies of any program rules manuals,

billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials.

(a) No provider of any type may be paid in excess of 40 hours within the established work week for any one eligible recipient or EOR.

(b) No provider agency is permitted to perform both LOC assessments and provide any services for the eligible recipients.

(c) Providers may market their services, but are prohibited from soliciting eligible recipients under any circumstances.

(6) The EOR is the individual responsible for directing the work of the eligible recipient's employees. MAD encourages an eligible recipient 18 years of age or older to be his or her own EOR. It is also possible to designate someone else to act as the EOR.

(a) An eligible recipient that is the subject of a plenary or limited guardianship or conservatorship may not be his or her own EOR.

(b) A person under the age of 18 years may not be an EOR.

(c) An EOR who lives outside New Mexico shall reside within 100 miles of the New Mexico state border. If the eligible recipient wants to have an EOR who resides beyond this radius, the eligible recipient must obtain written approval from [~~MAD (when an eligible CoLTS (c) or BI recipient) or from DOH (when an eligible DOH AIDS, DD or MF recipient)~~] MAD's designee, DOH, prior to the EOR performing any duties. This written approval must be documented in the SSP.

(d) The eligible recipient's provider may not also be [~~his/her~~] his or her EOR.

(e) An EOR whose performance compromises the health, safety or welfare of the eligible recipient, may have [~~his/her~~] his or her status as an EOR terminated.

(f) An EOR may not be paid for any other services utilized by the eligible recipient for whom he or she is the EOR, whether as an employee of the eligible recipient, a vendor, or an employee or contactor of an agency. An EOR makes important determinations about what is in the best interest of the eligible recipient, and should not have any conflict of interest. An EOR assists in the management of the eligible recipient's budget and should have no personal benefit connected to the services requested or approved on the budget.

C. **Service specific qualifications for consultant services providers:** In addition to general requirements, a consultant provider shall ensure that all individuals hired or contracted to provide consultant services meet the criteria specified in this section [~~in addition to as well to perform~~] and comply with all applicable MAD rules and service standards.

(1) Consultant providers shall:

(a) possess a minimum of a bachelor's degree in social work, psychology, human services, counseling, nursing, special education or a closely related field, and have one year of supervised experience working with the elderly or people living with disabilities; or

(b) have a minimum of six years of direct experience related to the delivery of social services to the elderly or people living with disabilities, and be employed by an enrolled mi via consultant provider agency; and

(c) complete all required mi via program orientation and training courses.

(2) Consultant providers may also use non-professional staff to carry out support guide functions. Support guides provide more intensive supports, as detailed in the service section of these rules. Support guides help the eligible recipient more effectively self-direct services when there is an identified need for this type of assistance. Consultant providers shall ensure that non-professional support staff:

(a) are supervised by a qualified consultant as specified in this [~~regulation~~] rule;

(b) have experience working with [~~seniors or~~] people living with disabilities;

(c) demonstrate the capacity to meet the eligible recipient's assessed needs related to the implementation of the SSP;

(d) possess knowledge of local resources, community events, formal and informal community organizations and networks;

(e) are able to accommodate a varied, flexible and on-call type of work schedule in order to meet the needs of the eligible recipient; and

(f) complete training on self-direction and incident reporting.

D. **Service specific qualifications for personal plan facilitation providers:** In addition to general MAD requirements, a personal plan facilitator agency must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements. Personal plan facilitators must possess the following qualifications in addition to the general qualifications:

(1) have at least one year of experience working with persons with disabilities; and

(2) be trained and certified in the planning tool(s) used; and

(3) have at least one year experience in providing the personal plan facilitation service.

E. **Service specific qualification for living supports providers:** In addition to general MAD requirements, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) **Qualifications of homemaker/direct support service providers:** Homemaker agencies must be certified by the MAD or its designee. Home health agencies must hold a New Mexico home health agency license. [~~Homemaker/home health agencies~~] A homemaker and home health agency must hold a current business license when applicable, and meet financial solvency, training, records management, and quality assurance rules and requirements.

(2) **Qualifications of home health aide service providers:** Home health [~~agency/homemaker~~] or homemaker agencies must hold a New Mexico current home health agency, rural health clinic, or federally qualified health center license. Home health aides must have successfully completed a home health aide training program, as described in 42 CFR 484.36(a)(1) and (2)[~~;~~] or have successfully completed a home health aide training program pursuant to 7.28.2.30 NMAC. Home health aides must also be supervised by a registered nurse (RN) licensed in New Mexico. Such supervision must occur at least once every 60 calendar days in the eligible recipient's home, and shall be in accordance with the New Mexico Nurse Practice Act and be specific to the eligible recipient's SSP.

(3) **Qualifications of assisted living providers:** Assisted living providers must be licensed as an adult residential care facility by DOH pursuant to 7.8.2 NMAC, and meet all the requirements, rules and regulations set forth by DOH as an adult residential care facility pursuant to 7.8.2 NMAC et seq.

(4) **Qualifications of customized in-home living supports providers:** The individual customized living provider must have at least one year of experience working with people with disabilities. Provider agencies must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements. Customized living agency staff must have one year of experience working with people with disabilities.

F. **Service specific qualifications for community membership support providers:** In addition to general MAD requirements, the following types of providers must meet additional qualifications specific to the type of services provided. Community access provider agencies providing community

direct support services must hold a current business license, and meet financial solvency, training, records management, and MAD and DOH quality assurance rules and requirements.

(1) **Qualifications of supported employment providers:**

(a) Job developers must have experience as a job developer for at least one year; have experience for at least one year developing and using job and task analyses; have experience for at least one year working with the division of vocational rehabilitation (DVR), a traditional DD waiver employment provider, an independent living center or other organization that provides employment supports or services for people with disabilities[~~;~~] and be trained on the purposes, functions and general practices of entities such as the department of workforce solutions navigators, one-stop career centers, business leadership network, chamber of commerce, job accommodation network, small business development centers, retired executives and the New Mexico employment institute.

(b) Job coaches must have experience as (i) a job coach for at least one year in the state of New Mexico; (ii) have experience for at least one year using job and task analyses; (iii) be trained on the Americans with Disabilities Act (ADA); and (iv) be trained on the purpose, function and general practices of the DVR office.

(2) **Qualifications of customized community supports providers:** Adult habilitation agency staff must have at least one year of experience working with individuals with disabilities. Adult day health provider agencies must be licensed by DOH as an adult day care facility pursuant to 7.13.2 NMAC. Adult day health agency staff must have at least one year of experience working with individuals with disabilities.

G. **Service specific qualifications for providers of health and wellness supports:** In addition to the general MAD qualifications, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) **Qualifications of extended state plan skilled therapy providers for adults:** Physical and occupational therapists, speech/language pathologists, and physical therapy assistants must possess a therapy license in their respective field from the New Mexico regulation and licensing department (RLD). Certified occupational therapy assistants must possess an occupational therapy assistant certification from the New Mexico RLD. Speech clinical fellows must possess a clinical fellow license from the New Mexico RLD.

(2) **Qualifications of behavior support consultation providers:** Behavior consultant provider agencies shall have a current business license issued by the state, county or city government, if required. Behavior consultant provider agencies shall comply with all applicable federal, state, and [~~waiver~~] rules and procedures regarding behavior consultation. Providers of behavior support consultation services must possess qualifications in at least one of the following areas: licensed psychiatrist, licensed clinical psychologist, licensed psychologist associate, (masters or Ph.D. level), licensed independent social worker (LISW), licensed master social worker (LMSW), licensed professional clinical counselor (LPCC), licensed professional counselor (LPC), licensed psychiatric nurse (MSN/RNCS), licensed marriage and family therapist (LMFT), or licensed practicing art therapist (LPAT). Providers of behavior support consultation must maintain a current New Mexico license with the appropriate professional field licensing body.

(3) **Qualifications of nutritional counseling providers:** Nutritional counseling providers must maintain a current registration as dietitians by the commission on dietetic registration of the American dietetic association.

(4) **Qualifications of private duty nursing providers for adults:** Direct nursing services are provided by individuals who are currently licensed as registered or practical nurses by the New Mexico state board of nursing.

(5) **Qualifications of specialized therapy providers:** Specialized therapy providers must possess a current New Mexico state license, as applicable, in at least one of the following areas:

(a) acupuncture and oriental medicine;

(b) biofeedback or a health care profession whose scope of practice includes biofeedback, and appropriate specialized training and clinical experience and supervision;

(c) chiropractic medicine;

(d) cognitive rehabilitation therapy or a health care profession whose scope of practice includes cognitive rehabilitation therapy, and appropriate specialized training and clinical experience and supervision;

(e) hippotherapy or a health care profession whose scope of practice includes hippotherapy, and appropriate specialized training and experience;

(f) massage therapy;

(g) naprapathic medicine;

(h) play therapy or a behavioral health profession whose scope of practice includes play therapy, a master's degree or higher behavioral health degree, and specialized play therapy training and clinical experience and supervision; or

(i) native American healers are individuals who are recognized as traditional healers within their communities.

H. **Service specific qualifications for other supports providers:** In addition to the general MAD qualifications, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) **Qualifications of transportation providers:** Individual transportation providers must (i) possess a valid New Mexico driver's license with the appropriate classification, (ii) be free of [~~physical or mental~~] medical and behavioral health impairment that would adversely affect driving performance, (iii) have no driving while intoxicated (DWI) convictions or chargeable (at fault) accidents within the previous two years, (iv) have current [~~CPR/first aid~~] CPR and first aid certification; and (v) be trained on DOH/division of health improvement (DHI) critical incident reporting procedures and (vi) have a current insurance policy and vehicle registration. Transportation vendors must hold a current business license and tax identification number. Each agency will ensure drivers meet the following qualifications:

(a) possess a valid, appropriate New Mexico driver's license;

(b) be free of [~~physical or mental~~] medical and behavioral health impairment that would adversely affect driving performance;

(c) have no DWI convictions or chargeable (at fault) accidents within the previous 24 months;

(d) have current [~~CPR/first aid~~] CPR and first aid certification;

(e) be trained on DOH/DHI critical incident reporting procedures;

(f) have a current insurance policy and vehicle registration; and

(g) each agency will ensure vehicles have a current basic first aid kit in the vehicle.

(2) **Qualifications of emergency response providers:** Emergency response providers must comply with all laws, rules and regulations of the New Mexico state corporation commission for telecommunications and security systems.

(3) **Qualifications of respite providers:** Respite services may be provided by eligible individual respite providers; [~~licensed registered (RN)~~] RN or practical nurses (LPN); or respite provider agencies. Individual [~~RN/LPN~~] RN or LPN providers must be licensed by the New Mexico state board of nursing as an RN or LPN. Respite provider agencies must hold a current business license, and meet financial solvency, training, records

management and quality assurance rules and requirements.

(4) **Qualifications of related goods vendors:** Related goods vendors must hold a current business license for the locale they are in and a tax [~~ID~~] identification for the state and federal government.

(5) **Qualifications of environmental modifications providers:** Environmental modification providers must possess an appropriate plumbing, electrician, contractor or other appropriate license.

[8.314.6.11 NMAC - Rp, 8.314.6.11 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.12 RECORDKEEPING AND DOCUMENTATION RESPONSIBILITIES: Service providers and vendors who furnish goods and services to mi via eligible recipients are reimbursed by the FMA and must comply with all applicable MAD mi via rules and service standards. The FMA, consultants and service providers must maintain records, which are sufficient to fully disclose the extent and nature of the goods and services provided to the eligible recipients, pursuant to [~~8.302.1.17 NMAC, record keeping and documentation requirements,~~] 8.310.2 NMAC and 8.321.2 NMAC and comply with random and targeted audits conducted by MAD and DOH or their audit agents. MAD or its designee will seek recoupment of funds from service providers when audits show inappropriate billing for services. Mi via vendors who furnish goods and services to mi via eligible recipients and bill the FMA must comply with all MAD [~~provider participation agreement~~] PPA requirements and MAD rules and requirements, including but not limited to [~~8.302.1 NMAC, *General Provider Policies*~~] 8.310.2 NMAC and 8.321.2 NMAC.

[8.314.6.12 NMAC - Rp, 8.314.6.12 NMAC, 10-15-12; A, 2-14-14]

8.314.6.13 ELIGIBILITY REQUIREMENTS FOR RECIPIENT ENROLLMENT IN MI VIA: Enrollment in [~~mi via~~] the mi via program is contingent upon the applicant meeting the eligibility requirements as described in the mi via rules, the availability of funding as appropriated by the New Mexico legislature, and the number of federally authorized unduplicated eligible recipients. When sufficient funding as well as waiver positions are available, the appropriate state administering agency will offer the opportunity to eligible recipients to apply for mi via enrollment. Once an allocation has been offered to the applicant, [~~he/she~~] he or she must meet certain medical and financial criteria in order to qualify for mi via enrollment. Eligible recipients must meet the following eligibility criteria: (1) financial eligibility criteria determined in accordance with 8.290.500 NMAC, [~~and the eligible recipient must meet the~~] (2) LOC required for admittance to [~~an NF or~~] an ICF/IID and (3) additional specific criteria as specified in the categories below.

A. **Developmental disability:** Eligible recipients who have:

(1) an intellectual disability: an individual is considered to have [~~MR/ID if she/he~~] mental retardation or an intellectual disability (MR/ID) if he or she has significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period;

(2) a specific related condition: an individual is considered to have a specific related condition if [~~she/he~~] he or she has a severe chronic disability, other than mental illness, that meets all of the following conditions:

(a) is attributable to:

(i) cerebral palsy or seizure disorder; or

(ii) is attributable to autistic disorder (as described in the fourth edition of the diagnostic and statistical manual of mental disorders and its successors); or

(iii) is attributable to chromosomal disorders (e.g. down), syndrome disorders, inborn errors of metabolism, or developmental disorders of the brain formation limited to the list in Paragraph (3) below; and

(b) results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability and requires treatment or services similar to individuals with an ID;

(c) is manifested before the person reaches age 22 years;

(d) is likely to continue indefinitely; and

(e) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living and (vii) economic self-sufficiency;

(3) [~~have~~] a disorder of one or more of the following:

(a) **chromosomal disorders:** autosomes: 4p-, trisomy 4p, trisomy 8, 5p-, 9p-, trisomy 9p, trisomy 9p mosaic, partial trisomy 10q, 13q-, ring 13, trisomy 13 (Patau), 18p-, 18q-, trisomy 18 (Edwards), ttisomy 20p, G (21,22) monosomy/deletion, trisomy 21 (down), translocation 21 (down), "cat-eye" syndrome; Prader-Willi syndrome (15);

(i) x-linked mental retardation: Allan syndrome; Atkin syndrome; Davis syndrome; Fitzsimmons syndrome; fragile x syndrome; fragile x phenotype (no fragile site); Gareis syndrome; glycerol kinase deficiency; Golabi syndrome; Homes syndrome; Juberg syndrome; Lujan syndrome; Renpenning syndrome; Schimke syndrome; Vasquez syndrome; nonspecific x-linked mental retardation;

(ii) other x chromosome disorders: xo syndrome (Turner); xyy syndrome; xxy syndrome (Klinefelter); xxyy syndrome; xxxy syndrome; xxxx syndrome; xxxxy syndrome; xxxxx syndrome (penta-x);

(b) **syndrome disorders:**

(i) neurocutaneous disorders: ataxia-telangiectasia (Louis-Bar); basal cell nevus syndrome; dyskeratosis congenital; ectodermal dysplasia (hyperhidrotic type); ectromelia ichthyosis syndrome; focal dermal hypoplasia (Goltz); ichthyosis-hypogonadism syndrome, incontinentia pigmenti (Bloch-Sulzberger); Ito syndrome; Klippel-Trenauney syndrome; linear sebaceous nevus syndrome; multiple lentigines syndrome; neurofibromatosis (Type 1); poikiloderma (Rothmund-Thomsen); Pollitt syndrome; Sjogren-Larsen syndrome; Sturge-Weber syndrome; tuberous sclerosis; xeroderma pigmentosum;

(ii) **muscular disorders:** Becker muscular dystrophy; chondrodystrophic myotonia (Schwartz-Jampel); congenital muscular dystrophy; Duchenne muscular dystrophy; myotonic muscular dystrophy;

(iii) **ocular disorders:** Aniridia-Wilm's tumor syndrome; anophthalmia syndrome (x-linked); Leber amaurosis syndrome; Lowe syndrome; microphthalmia-corneal opacity-spasticity syndrome; Norrie syndrome; oculocerebral syndrome with hypopigmentation; retinal degeneration-trichomegaly syndrome; septo-optic dysplasia;

(iv) **craniofacial disorders:** acrocephaly-cleft lip-radial aplasia syndrome; acrocephalosyndactyly;type 1 (Apert); type 2 (Apert); type 3 (Saethre-Chotzen); type 6 (Pfeiffer); Carpenter syndrome with absent digits and cranial defects; Baller-Gerold syndrome; cephalopolysyndactyly (Greig) "cloverleaf-skull" syndrome; craniofacial dysostosis (Crouzon); craniotelencephalic dysplasia; multiple synostosis syndrome;

(v) **skeletal disorders:** acrodysostosis, CHILD syndrome; chondrodysplasia punctata (Conradi-Hunerman type); chondroectodermal dysplasia; Dyggve-Melchior-Clausen syndrome; frontometaphyseal dysplasia; hereditary osteodystrophy (Albright); hyperostosis (Lenz-Majewski);

hypochondroplasia; Klippel-Feil syndrome; Nail-patella syndrome; osteopetrosis (Albers-Schonberg); pyknodysostosis; radial aplasia-thrombocytopenia syndrome; radial hypoplasia pancytopenia syndrome (Fanconi); Roberts-SC phocomelia syndrome;

(c) **inborn errors of metabolism:**

(i) **amino acid disorders:** phenylketonuria: phenylalanine hydroxylase (classical, Type 1); dihydropteridine reductase (type 4); dihydrobiopterin synthetase (type 5); histidinemia; gamma-glutamylcysteine synthetase deficiency; hyperlysinemia; lysinuric protein intolerance; hyperprolinemia; hydroxyprolinemia; sulfite oxidase deficiency; iminoglycinuria; branched-chain amino acid disorders: hypervalinemia; hyperleucine-isoleucinemia; maple-syrup urine disease; isovaleric academia, glutaric academia (type 2); 3-hydroxy-3-methylglutaryl CoA lyase deficiency; 3-kethothiolase deficiency;,biotin-dependent disorders: holocarboxylase deficiency; biotinidase deficiency; propionic academia: type A; Type BC; methylmalonic academia: mutase type (mut+); cofactor affinity type (mut-); adenosylcobalamin synthetase type (cbl A); ATP: cobalamin adenosyltransferase type (cbl B), with homocystinuria, type 1 (cbl C), with homocystinuria, type 2 (cbl D); folate-dependent disorders: congenital defect of folate absorption; dihydrofolate reductase deficiency; methylene tetrahydrofolate reductase deficiency; homocystinuria; hypersarcosinemia; non-ketotic hyperglycinemia; hyper-beta-alaninemia; carnosinase deficiency; homocarnosinase deficiency; Hartnup disease; methionine malabsorption (oasthouse urine disease);

(ii) **carbohydrate disorders:** glycogen storage disorders: type 1, with hypoglycemia (von Gierke); type 2 (Pompe); galactosemia; fructose-1, 6-diphosphatase deficiency; pyruvic acid disorders: pyruvate dehydrogenase complex (Leigh); pyruvate carboxylase deficiency; mannosidosis; fucosidosis; aspartylglucosaminuria;

(iii) **mucopolysaccharide disorders:** alpha-L-iduronidase deficiency: Hurler type; Scheie type, Hurler-Scheie type; iduronate sulfatase deficiency (Hunter type); Heparan N-sulfatase deficiency (Sanfilippo 3A type); N-acetyl-alpha-D-glucosaminidase deficiency (Sanfilippo 3B type); Acetyl CoA; glucosaminide N-acetyltransferase deficiency (Sanfilippo 3C type); N-acetyl-alpha D-glucosaminide 6-sulfatase deficiency (Sanfilippo 3D type); beta-glucuronidase deficiency (Sly type);

(iv) **mucolipid disorders:** alpha-neuraminidase deficiency (type1); N-acetylglucosaminyl phosphotransferase deficiency: I-cell disease (Type 2); Pseudo-Hurler syndrome (type 3); mucolipidosis type 4;

(v) **urea cycle disorders:** carbamyl phosphate synthetase deficiency; ornithine transcarbamylase deficiency; argininosuccinic acid synthetase deficiency (citrullinemia); argininosuccinic acid (ASA) lyase deficiency; arginase deficiency (argininemia);

(vi) **nucleic acid disorders:** Lesch-Nyhan syndrome (HGPRTase deficiency); orotic aciduria; xeroderma pigmentosum (group A); DeSanctis-Cacchione syndrome;

(vii) **copper metabolism disorders:** Wilson disease; Menkes disease;

(viii) **mitochondrial disorders:** Kearns-Sayre syndrome; MELAS syndrome; MERRF syndrome; cytochrome c oxidase deficiency; other mitochondrial disorders;

(ix) **peroxisomal disorders:** Zellweger syndrome; adrenoleukodystrophy: neonatal (autosomal recessive); childhood (x-linked); infantile Refsum disease; hyperpipecolic academia; chondrodysplasia punctata (rhizomelic type);

(d) **developmental disorders of brain formation:**

(i) neural tube closure defects: anencephaly; spina bifida; encephalocele;

(ii) brain formation defects: Dandy-Walker malformation; holoprosencephaly; hydrocephalus: aqueductal stenosis; congenital x-linked type; Lissencephaly; pachygyria; polymicrogyria; schizencephaly;

(iii) cellular migration defects: abnormal layering of cortex; colpocephaly; heterotopias of gray matter; cortical microdysgenesis

(iv) intraneuronal defects: dendritic spine abnormalities; microtubule abnormalities;

(v) acquired brain defects: hydranencephaly; porencephaly; and

(vi) primary (idiopathic) microcephaly.

B. **Medically fragile:** Eligible recipients who have been diagnosed with a medically fragile condition before reaching age 22, and who:

(1) have a developmental disability or developmental delay, or who are at risk for developmental delay; and

(2) have a chronic physical condition which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary and is characterized by one or more of the following:

(a) have a life-threatening condition, characterized by reasonably frequent periods of acute exacerbation, which requires frequent medical supervision or physician consultation, and which, in the absence of such supervision or consultation, would require hospitalization; or have frequent, time-consuming administration of specialized treatments which are medically necessary; or dependence on medical technology such that without the technology a reasonable level of health could not be maintained; examples include, but are not limited to, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen; and

(b) require an ICF/IID LOC.

[~~C. **Disabled and elderly:** Eligible recipients who are elderly (age 65 or older), blind or disabled, as determined by the MAD disability determination unit utilizing social security disability guidelines, who require NF LOC and either reside in the community, are institutionalized, or are at risk of institutionalization.~~

~~D. **AIDS:** Eligible recipients who have been diagnosed as having AIDS or AIDS-related condition (ARC) and who require NF LOC.~~

~~E. **Brain-injury (BI):** Eligible recipients through age 65 with an injury to the brain of traumatic or acquired origin resulting in total or partial functional disability or psychosocial impairment or both. The BI eligible recipient must have a documented BI diagnosis, as included in the international classification of diseases (ICD-9-CM or its successor). The MAD usage of brain injury does not apply to brain injuries that are congenital, degenerative, induced by birth trauma or neurological disorders related to the aging process, or chemically caused brain injuries that are a result of habitual substance abuse. Additional criteria include:~~

~~(1) the term applies to open and closed head injuries caused by an insult to the brain from an outside physical force, anoxia, electrical shock, shaken baby syndrome, toxic and chemical substances, near-drowning, infections, tumors, or vascular lesions;~~

~~(2) BI may result in either temporary or permanent, partial or total impairments in one or more areas including, but not limited to: cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perceptual and motor abilities, psychosocial behavior, physical functions, information processing and speech; and~~

~~(3) the individual must require NF LOC.~~]

[~~F.~~] C. After initial eligibility has been established for a recipient, on-going eligibility must be re-determined on an annual basis.

[8.314.6.13 NMAC - Rp, 8.314.6.13 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.14 ELIGIBLE RECIPIENT AND EOR RESPONSIBILITIES: Mi via eligible recipients have certain responsibilities to participate in the [~~waiver~~] program. Failure to comply with these responsibilities or other program rules and service standards can result in termination from the program. The eligible recipient and EOR have the following responsibilities:

A. To maintain eligibility the [~~eligible~~] recipient must complete required documentation demonstrating medical and financial eligibility both upon application and annually at recertification, meet in person with the TPA for a comprehensive LOC assessment in the eligible recipient's home, an agreed upon location or an inpatient setting, and seek assistance with the application and the recertification process as needed from a mi via consultant.

B. To participate in [~~mi via~~] the mi via program, the eligible recipient must:

(1) comply with the rules and regulations that govern the program;

(2) collaborate with the consultant to determine support needs related to the activities of self-direction;

(3) collaborate with the consultant to develop an SSP using the IBA in accordance with mi via program rules and service standards;

(4) use [~~state~~] mi via program funds appropriately by only requesting and purchasing goods and services covered by the mi via program in accordance with program rules which are identified in the eligible recipient's approved SSP;

(5) comply with the approved SSP and not exceed the AAB;

(a) if the eligible recipient does not adequately allocate the resources contained in the AAB resulting in a premature depletion of the AAB amount during an SSP year due to mismanagement or failure to properly track expenditures, the failure to properly allocate does not substantiate a claim for a budget increase (i.e., if all of the AAB is expended within the first three months of the SSP year, it is not justification for an increase in the budget for the SSP year);

(b) revisions to the AAB may occur within the SSP year, and the eligible recipient is responsible for assuring that all expenditures are in compliance with the most current AAB in effect;

(i) the SSP must be amended first to reflect a change in the eligible recipient's needs or circumstances before any revisions to the AAB can be requested;

(ii) other than for critical health and safety reasons, budget revisions may not be submitted to the TPA for review within the last 60 calendar days of the budget year;

(c) no mi via program funds can be used to purchase goods or services prior to TPA approval of the SSP and annual budget request;

(d) any funds not utilized within the SSP and AAB year cannot be carried over into the following year;

(6) access consultant services based upon identified need(s) in order to carry out the approved SSP;

(7) collaborate with the consultant to appropriately document service delivery and maintain those documents for evidence of services received;

(8) report concerns or problems with any part of the mi via program to the consultant or if the concern or problem is with the consultant, to [~~MAD or~~] DOH;

(9) work with the TPA agent by attending scheduled meetings, in the eligible recipient's home if necessary and providing documentation as requested;

(10) respond to requests for additional documentation and information from the consultant provider, FMA, and the TPA within the required deadlines;

(11) report to the local HSD income support division (ISD) office within 10 calendar days any change in circumstances, including a change in address, which might affect eligibility for the program; changes in address or other contact information must also be reported to the consultant provider and the FMA within 10 calendar days;

(12) report to the TPA and consultant provider if hospitalized for more than three consecutive nights so that an appropriate LOC can be obtained; [~~and~~]

(13) keep track of all budget expenditures and assure that all expenditures are within the AAB; and

(14) have monthly contact and meet face-to-face quarterly with the consultant.

C. Additional responsibilities of the eligible recipient or EOR are detailed below:

(1) Submit all required documents to the FMA to meet employer-related responsibilities. This includes, but is not limited to documents for payment to employees and vendors and payment of taxes and other financial obligations within required timelines.

(2) Report any incidents of abuse, neglect or exploitation to the appropriate state agency.

(3) Arrange for the delivery of services, supports and goods.

(4) Hire, manage, and terminate employees.

(5) Maintain records and documentation.

D. **Voluntary termination:** Eligible recipients are given a choice of receiving services through an existing waiver or [~~mi via~~] the mi via program. Mi via eligible recipients, who transition from the current traditional waivers [~~(CoLTS (c), DD, MF, or AIDS)~~] and decide to discontinue self-directing their services, may return to the traditional waiver in accordance with the mi via rules and service standards. [~~Eligible recipients who are eligible under the BI category of eligibility and choose to discontinue self direction may be transitioned to CoLTS (c) services.~~]

E. **Involuntary termination:** A mi via eligible recipient may be terminated involuntarily by MAD and offered services through a non self-directed waiver or the medicaid state plan under the following circumstances.

(1) The eligible recipient refuses to follow mi via rules after receiving focused technical assistance on multiple occasions, support from the program staff, consultant, or FMA, which is supported by documentation of the efforts to assist the eligible recipient.

(2) The eligible recipient is in immediate risk to [~~his/her~~] his or her health or safety by continued self-direction of services, e.g., the eligible recipient is in imminent risk of death or serious bodily injury related to participation in the [~~waiver~~] mi via program. Examples include but are not limited to the following.

(a) The eligible recipient refuses to include and maintain services in [~~his/her~~] his or her SSP and AAB that would address health and safety issues identified in [~~his/her~~] his or her medical assessment or challenges the assessment after repeated and focused technical assistance and support from program staff, consultant, or FMA.

(b) The eligible recipient is experiencing significant health or safety needs, and, after a referral to the state contractor for level of risk determination and assistance, refuses to incorporate the [~~state~~] contractor's recommendations into [~~his/her~~] his or her SSP and AAB.

(c) The eligible recipient exhibits behaviors which endanger [~~him/herself~~] himself or herself or others.

(3) The eligible recipient misuses mi via funds following repeated and focused technical assistance and support from the consultant or FMA, which is supported by documentation.

(4) The eligible recipient commits medicaid fraud.

(5) The eligible recipient who is involuntarily terminated from mi via will be offered a non self-directed waiver alternative. If transfer to another waiver

is authorized by MAD and accepted by the eligible recipient, [~~he/she~~] he or she will continue to receive the services and supports from mi via until the day before the new waiver services start. This will ensure that no break in service occurs. The mi via consultant and the service coordinator in the new waiver will work closely together with the eligible recipient to ensure that the eligible recipient's health and safety is maintained.
[8.314.6.14 NMAC - Rp, 8.314.6.14 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.15 SERVICE DESCRIPTIONS AND COVERAGE CRITERIA: The services covered by [~~mi via~~] the mi via program are intended to provide a community-based alternative to institutional care for an eligible recipient that allows greater choice, direction and control over services and supports in a self-directed environment. Mi via services must specifically address a therapeutic, rehabilitative, habilitative, health or safety need that results from the eligible recipient qualifying condition. The mi via program is the payor of last resort. The coverage of mi via services must be in accordance with the mi via program rules and service standards.

A. **General requirements regarding mi via covered services.** To be considered a covered service under the mi via program, the following criteria must be met. Services, supports and goods must:

(1) directly address the eligible recipient's qualifying condition or disability;

(2) meet the eligible recipient's clinical, functional, medical or habilitative needs;

(3) be designed and delivered to advance the desired outcomes in the eligible recipient's service and support plan; and

(4) support the eligible recipient to remain in the community and reduce the risk of institutionalization.

B. **Consultant pre-eligibility/enrollment services:** Consultant [~~pre-eligibility/enrollment~~] pre-eligibility and enrollment services are intended to provide information, support, guidance, and assistance to individuals during the medicaid financial and medical eligibility process. The level of support provided is based upon the unique needs of the individual. When an opportunity to be considered for mi via [~~waiver~~] program services is offered to an individual, [~~he/she~~] he or she must complete a primary freedom of choice form. The purpose of this form is for the individual to select a consultant provider. The chosen consultant provider provides [~~pre-eligibility/enrollment~~] pre-eligibility and enrollment services as well as on-going consultant services. Once the individual is determined to be eligible for mi via [~~waiver~~] services, the consultant service provider will continue to provide consultant services to the newly enrolled eligible recipient as set forth in the consultant service standards.

C. **Consultant services:** Consultant services are required for all mi via eligible recipients to educate, guide, and assist the eligible recipients to make informed planning decisions about services and supports. The consultant helps the eligible recipient develop the SSP based on [~~his/her~~] his or her assessed needs. The consultant assists the eligible recipient with implementation and quality assurance related to the SSP and AAB. Consultant services help the eligible recipient identify supports, services and goods that meet [~~his/her~~] his or her needs, meet the mi via requirements and are covered mi via services. Consultant services provide support to eligible recipients to maximize their ability to self-direct [~~in mi via~~] their mi via services.

(1) **Contact requirements:** Consultant providers shall make contact with the eligible recipient in person or by telephone at least monthly for a routine follow-up. Consultant providers shall meet in person with the eligible recipient at least quarterly; one visit must be conducted in the eligible recipient's home. Quarterly visits will be conducted for the following purposes:

(a) review and document progress on implementation of the SSP;

(b) document usage and effectiveness of the 24-hour emergency backup plan;

(c) review [~~SSP/budget~~] SSP and budget spending patterns (over and under-utilization);

(d) assess quality of services, supports and functionality of goods in accordance with the quality assurance section of the SSP and any applicable mi via rules and service standards;

(e) document the eligible recipient's access to related goods identified in the SSP;

(f) review any incidents or events that have impacted the eligible recipient's health, welfare or ability to fully access and utilize support as identified in the SSP; and

(g) other concerns or challenges raised by the eligible recipient, [~~legal representative,~~] authorized agent or authorized representative.

(2) **Change of consultants:** Consultants are responsible for assisting eligible recipients to transition to another consultant provider when requested. Transition from one consultant provider to another can only occur at the first of the month.

(3) **Critical incident management responsibilities and reporting requirements:** The consultant provider shall provide training to eligible recipients and EORs regarding recognizing and reporting critical incidents. Critical incidents include abuse, neglect, exploitation, emergency services, law enforcement involvement, environmental hazards and eligible recipient deaths. This eligible recipient training shall also include reporting procedures for eligible recipients, employees, eligible recipients, representatives or other designated individuals. The consultant provider shall report incidents of abuse, neglect and exploitation as directed by the state. The consultant provider shall maintain a critical incident management system to identify, report, and address critical incidents. The consultant provider is responsible for follow-up and assisting the [~~individual~~] eligible recipient to help ensure health and safety when a critical incident has occurred. Critical incident reporting requirements

[~~(a)~~] for mi via eligible recipients who have been designated with an ICF/IID [~~level of care~~] LOC, critical incidents should be directed in the following manner.

[~~(i)~~] (a) [~~The~~] DOH triages, and investigates all reports of alleged abuse, neglect, exploitation, and other incidents for mi via services provided by community-based waiver service agencies, to include expected and unexpected deaths. The reporting of incidents is mandated pursuant to 7.1.13 NMAC. Any suspected abuse, neglect, or exploitation must be reported to the children, youth and families department (CYFD)/child protective services (CPS) for eligible recipients under 18 years or to the aging and long-term services department (ALTSD)/adult protective services (APS) for eligible recipients 18 years or older by reporting or faxing an incident report (IR). Additionally, the IR form must be faxed to DOH within 24 hours of knowledge of an incident or the following business day when an event occurs on a weekend or holiday. Anyone may report an incident; however, the person with the most direct knowledge of the incident is the individual who is required to report the incident.

[~~(ii)~~] (b) When an incident is reported late, and the mi via service is provided by a community-based waiver service agency, a letter is sent to the provider stating that an incident report was received beyond the required 24-hour timeline for reporting. The letter further reiterates the requirement to report incidents within 24 hours. The consequences of non-compliance may result in sanctions, as set forth in 7.1.13.12 NMAC.

[~~(iii)~~] (c) With respect to [~~waiver~~] mi via services provided by any employee, contractor or vendor other than a community-based waiver service agency, any suspected abuse, neglect, or

exploitation must be reported to the CYFD/CPS for the eligible recipient under 18 years or to the ALTSD/APS for eligible recipients age 18 years or older by reporting or faxing an incident report. See NMSA 1978, Sections 27-7-14 through 27-7-31 (Adult Protective Services Act) and in NMSA 1978, Sections 32A-4-1 through 32A-4-34 (Child Abuse and Neglect Act).

[~~(b) For eligible recipients in mi via that have been designated with an NF LOC, critical incidents should be directed to:~~

~~(i) ALTSD/APS for eligible recipients age 18 years or older or CYFD/CPS for eligible recipients under 18 years for critical incidents involving abuse, neglect or exploitation; and~~

~~(ii) MAD, quality assurance bureau as well as the MCO, if applicable; the consultant provider shall fax all critical incidents in the standardized format provided by the CYFD/CPS and ALTSD/APS.~~]

D. **Personal plan facilitation:** Personal plan facilitation supports planning activities that may be used by the eligible recipient to develop [~~his/her~~] his or her SSP as well as identify other sources of support outside the SSP process. This service is available to an eligible recipient one time per budget year.

(1) In the scope of personal planning facilitation, the personal plan facilitator will:

(a) meet with the eligible recipient and [~~his/her~~] his or her family or authorized agent (or [~~legal~~] authorized representative, as appropriate) prior to the personal planning session to discuss the process, to determine who the eligible recipient wishes to invite, and determine the most convenient date, time and location; this meeting preparation shall include an explanation of the techniques the facilitator is proposing to use or options if the facilitator is trained in multiple techniques; the preparation shall also include a discussion of the role the eligible recipient prefers to play at the planning session, which may include co-facilitation of all or part of the session;

(b) arrange for participation of invitees and location;

(c) conduct the personal planning session;

(d) document the results of the personal planning session and provide a copy to the eligible recipient, his or her authorized representative, the consultant and any other parties the eligible recipient would like to receive a copy.

(2) Elements of this report shall include:

(a) recommended services to be included in the SSP;

(b) services from sources other than MAD to aid the eligible recipient;

(c) long-term goals the [~~participant~~] eligible recipient wishes to pursue;

(d) potential resources, especially natural supports within the eligible recipient's community that can help the eligible recipient to pursue his or her desired outcomes(s)/goal(s); and

(e) a list of any follow-up actions to take, including time lines.

(3) Provide session attendees, including the eligible recipient, with an opportunity to provide feedback regarding the effectiveness of the session.

E. **Living supports:**

(1) **Homemaker/direct support services:** Homemaker/direct support services are provided on an episodic or continuing basis to assist the eligible recipient with activities of daily living, performance of general household tasks, and enable the eligible recipient to accomplish tasks [~~he/she~~] he or she would normally do for [~~him/herself if he/she~~] himself or herself if he or she did not have a disability. Homemaker/direct support services are provided in the eligible recipient's home and in the community, depending on the eligible recipient's needs. The eligible recipient identifies the homemaker/direct support worker's training needs, and, if the eligible recipient is unable to do the training [~~him/herself~~] him or herself, the eligible recipient arranges for the needed training. Services are not intended to replace supports available from a primary caregiver.

(a) Two or more eligible recipients living in the same residence, who are receiving services and supports from [~~mi via~~] the mi via program will be assessed both independently and jointly to determine coverage of services and supports that are shared. Services and supports will be approved based on common needs and not individual needs unless the TPA has assessed that the eligible recipient has an individual need for the services.

(b) Personal care services are covered under the medicaid state plan as enhanced early and periodic screening, diagnostic and treatment (EPSDT) benefits for [~~waiver~~] mi via eligible recipients under 21 years and are not to be included in an eligible recipient's AAB.

(2) **Home health aide services:** Home health aide services provide total care or assist an eligible recipient 21 years and older in all activities of daily living. Home health aide services assist the eligible recipient in a manner that will promote an improved quality of life and a safe environment for the eligible recipient. Home health aide services can be provided outside the eligible recipient's home. State plan home health aide services are intermittent and provided primarily on a short-term basis. Mi via home health aide services are hourly services for eligible recipients who need this service on a more long-term basis. Home health aide services are not duplicative of homemaker services. Home health aides may provide basic non-invasive nursing assistant skills within the scope of their practice. Homemakers do not have this ability to perform such tasks.

(3) **Assisted living:** A residential service that includes personal care and supportive services (homemaker, chore, attendant services, meal preparation); medication oversight (to the extent permitted under state law); and 24-hour, on-site response capability to meet scheduled or unpredictable eligible recipient needs and to provide supervision, safety, and security.

(a) Services also include social and recreational programming. Coverage does not include 24-hour skilled care or supervision or the cost of room or board.

(b) Nursing and skilled therapy services are incidental, rather than integral, to the provision of assisted living services.

(c) Services (other than those included in the bundle of "assisted living" services) provided by third parties must be coordinated with the assisted living provider.

(d) Eligible recipients who utilize this service cannot utilize mi via homemaker/direct support, environmental modifications, emergency response, customized community supports and customized in-home living supports services because they are provided by assisted living services.

(4) **Customized in-home living supports:** Customized in-home living supports are related to the eligible recipient's qualifying condition or disability and enable [~~him/her~~] him or her to live in [~~his /her~~] his or her apartment or house. Services must be provided in [~~homes/apartments~~] home or apartment owned or leased by the eligible recipient or in the eligible recipient's home.

(a) These services and supports are provided in the eligible recipient's home and are individually designed to instruct or enhance home living skills as well as address health and safety.

(b) Customized in-home living supports include assistance with activities of daily living and assistance with the acquisition, restoration, or retention of independent living skills. This service is provided on a regular basis at least four or more hours per day one or more days per week as specified in the service plan.

(c) Eligible recipients receiving customized in-home living supports may not use homemaker/direct support or home health aide services because they are provided by customized in-home living supports.

F. **Community membership supports:**

(1) **Community direct support:** Community direct support providers deliver support to the eligible recipient to identify, develop and maintain community connections and access social and educational options.

(a) The community direct support provider may be a skilled independent contractor or a hired employee depending on the level of support needed by the eligible recipient to access the community.

(b) The community direct support provider may instruct and model social behavior necessary for the eligible recipient to interact with community members or in groups, provide assistance in ancillary tasks related to community membership, provide attendant care and help the eligible recipient schedule, organize and meet expectations related to chosen community activities.

(c) Community direct support services include:

(i) provide assistance to the eligible recipient outside of [~~his/her~~] his or her residence and segregated facilities;

(ii) promote the development of social relationships and build connections within local communities;

(iii) support the eligible recipient in having frequent opportunities to expand roles in the community to increase and enhance natural supports, networks, friendships and build a sense of belonging; and

(iv) assist in the development of skills and behaviors that strengthen the eligible recipient's connection with his or her community.

(d) The skills to assist someone in a community setting may be different than those for assisting an eligible recipient at home. The provider will:

(i) demonstrate knowledge of the local community and resources within that community that are identified by the eligible recipient on the SSP; and

(ii) be aware of the eligible recipient's barriers to communicating and maintaining health and safety while in the community setting.

(2) **Employment supports:** Employment supports include job development, support to find a job, and job coaching after available vocational rehabilitation supports have been exhausted. The job coach provides training, skill development, and employer consultation that an eligible recipient may require while learning to perform specific work tasks on the job; co-worker training; job site analysis; situational or vocational assessments and profiles; education of the eligible recipient and co-workers on rights and responsibilities; and benefits counseling.

(a) Job development is a service provided to eligible recipients by skilled staff. The service has five components:

(i) job identification and development activities;

(ii) employer negotiations;

(iii) job restructuring;

(iv) job sampling; and

(v) job placement.

(b) Employment supports will be provided by staff at current or potential work sites. When supported employment services are provided at a work site where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by eligible recipients receiving [~~waiver~~] mi via services as a result of their disabilities, but does not include payment for the supervisory activities rendered as a normal part of the business setting.

(c) Documentation is maintained in the file of each eligible recipient receiving this service that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or IDEA.

(d) FFP is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(i) incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;

(ii) payments that are passed through to users of supported employment programs; or

(iii) payments for training that is not directly related to an individual's supported employment program;

(iv) FFP cannot be claimed to defray expenses associated with starting up or operating a business.

(3) **Customized community supports:** Customized community supports can include participation in congregate community day programs and centers that offer functional meaningful activities that assist with acquisition, retention, or improvement in self-help, socialization and adaptive skills for an eligible recipient. Customized community supports may include adult day habilitation, adult day health and other day support models. Customized community supports are provided in community day program facilities and centers and can take place in non-institutional and non-residential settings. These services are provided at least four or more hours per day one or more days per week as specified in the eligible recipient's SSP.

G. **Health and wellness:**

(1) **Extended [~~state plan~~] skilled therapy for eligible recipients 21 years and older:** [~~Enhanced state plan~~] Extended skilled therapy for adults includes physical therapy, occupational therapy or speech language therapy [~~Mi via services are provided~~] when skilled therapy services under the state plan are exhausted or not a benefit. Eligible recipients 21 years and older [~~on mi via~~] in the mi via program access therapy services under the state plan for acute and temporary conditions that are expected to improve significantly in a reasonable and generally predictable period of time. Therapy services provided to eligible recipients 21 years or older in [~~mi via~~] the mi via program focus on improving functional independence, health maintenance, community integration, socialization, and exercise, or enhance support and normalization of family relationships.

(a) **Physical therapy:** 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 activities do the following:

(i) increase, maintain or reduce the loss of functional skills;

(ii) treat a specific condition clinically related to the eligible recipient's disability;

(iii) support the eligible recipient's health and safety needs; or

(v) identify, implement, and train on therapeutic strategies to support the eligible recipient and [~~his/her~~] his or her family or support staff consistent with the eligible recipient's SSP desired outcomes and goals.

(b) **Occupational therapy:** Diagnosis, assessment, and management of functional limitations intended to assist adults to regain, maintain, develop, and build skills that are important for independence, functioning, and health. Occupational therapy services typically include:

(i) customized treatment programs to improve the eligible recipient's ability to perform daily activities;

(ii) comprehensive home and job site evaluations with adaptation recommendations;

(iii) skills assessments and treatment;

(iv) assistive technology recommendations and usage training;

(v) guidance to family members and caregivers;

(vi) increasing or maintaining functional skills or reducing the loss of functional skills;

(vii) treating specific conditions clinically related to the eligible recipient's developmental disability;

(viii) support for the eligible recipient's health and safety needs, and

(ix) identifying, implementing, and training therapeutic strategies to support the eligible recipient and [~~his/her~~] his or her family or support staff consistent with the eligible recipient's SSP desired outcomes and goals.

(c) **Speech and language pathology:** Diagnosis, counseling and instruction related to the development and disorders of communication including speech fluency, voice, verbal and written language, auditory comprehension, cognition, swallowing dysfunction, oral pharyngeal or laryngeal, and sensor motor competencies. Speech language pathology is also used when an eligible recipient requires the use of an augmentative communication device. Based upon therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group. Services are intended to:

(i) improve or maintain the eligible recipient's capacity for successful communication or to lessen the effects of the eligible recipient's loss of communication skills; or

(ii) improve or maintain the eligible recipient's ability to eat foods, drink liquids, and manage oral secretions with minimal risk of aspiration or other potential injuries or illness related to swallowing disorders;

(iii) identify, implement and train therapeutic strategies to support the eligible recipient and [~~his/her~~] his or her family or support staff consistent with the eligible recipient's SSP desired outcomes and goals.

(d) **Behavior support consultation:** Behavior support consultation services consist of functional support assessments, treatment plan development, and training and support coordination for the eligible recipient's related to behaviors that compromise the eligible recipient's quality of life. Based on the eligible recipient's SSP, services are delivered in an integrated, natural setting, or in a clinical setting. Behavior support consultation:

(i) informs and guides the eligible recipient's service and support [~~employees/vendors~~] employees or vendors toward understanding the contributing factors to the eligible recipient's behavior;

(ii) identifies support strategies to ameliorate contributing factors with the intention of enhancing functional capacities, adding to the provider's competency to predict, prevent and respond to interfering behavior and potentially reducing interfering behavior(s);

(iii) supports effective implementation based on a functional assessment and SSP;

(iv) collaborates with medical and ancillary therapies to promote coherent and coordinated services addressing behavioral issues, and to limit the need for psychotherapeutic medications; and

(v) monitors and adapts support strategies based on the response of the eligible recipient and [~~his/her~~] his or her service and support providers.

(e) **Nutritional counseling:** Nutritional counseling services include assessment of the eligible recipient's nutritional needs, development or revision of the eligible recipient's nutritional plan, counseling and nutritional intervention and observation and technical assistance related to implementation of the nutritional plan.

(f) **Private duty nursing for adults:** Private duty nursing for eligible recipients 21 years or older includes activities, procedures, and treatment for the eligible recipient's physical condition, physical illness or chronic disability. Services include medication management, administration and teaching, aspiration precautions, feeding tube management, gastrostomy and jejunostomy care, skin care, weight management, urinary catheter management, bowel and bladder care, wound care, health education, health screening, infection control, environmental management for safety, nutrition management, oxygen management, seizure management and precautions, anxiety reduction, staff supervision, behavior and self-care assistance.

(2) **Specialized therapies:** Specialized therapies are non-experimental therapies or techniques that have been proven effective for certain conditions. Experimental or investigational procedures, technologies or therapies and those services covered as a medicaid state plan benefit are excluded. Services in this category include the following therapies:

(a) **Acupuncture:** Acupuncture is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy, form and function to restore and maintain physical health and increased mental clarity. Acupuncture may provide effective pain control, decreased symptoms of stress, improved circulation and a stronger immune system, as well as other benefits. See [~~acupuncture and oriental medicine practitioners~~] 16.2.1 NMAC.

(b) **Biofeedback:** Biofeedback uses visual, auditory or other monitors to feed back to eligible recipients physiological information of which they are normally unaware. This technique enables an eligible recipient to learn how to change physiological, psychological and behavioral responses for the purposes of improving emotional, behavioral, and cognitive health and performance. The use of biofeedback may assist in strengthening or gaining conscious control over the above processes in order to self-regulate. Biofeedback therapy is also useful for muscle re-education of specific muscle groups or for treating pathological muscle abnormalities of spasticity, incapacitating muscle spasm, or weakness.

(c) **Chiropractic:** Chiropractic care is designed to locate and remove interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. Chiropractic therapy may positively affect neurological function, improve certain reflexes and sensations, increase range of motion, and lead to improved general health. See 16.4.1 NMAC.

(d) **Cognitive rehabilitation therapy:** Cognitive rehabilitation therapy services are designed to improve cognitive functioning by reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems. Treatments may be focused on improving a particular cognitive domain such as attention, memory, language, or executive functions. Alternatively, treatments may be skill-based, aimed at improving performance of activities of daily living. The overall goal is to restore function in a cognitive domain or set of domains or to teach compensatory strategies to overcome specific cognitive problems.

(e) **Hippotherapy:** Hippotherapy is a physical, occupational, and speech-language therapy treatment strategy that utilizes equine movement as part of an integrated intervention program to achieve functional outcomes. Hippotherapy applies multidimensional movement of a horse for eligible recipients with movement dysfunction and may increase mobility and range of motion, decrease contractures and aid in normalizing muscle tone. Hippotherapy requires that the eligible recipient use cognitive functioning, especially for sequencing and memory. Eligible recipients with attention deficits and behavior problems are redirecting attention and behaviors by focusing on the

activity. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities, and individual speech therapy. The activities may also help improve respiratory function and assist with improved breathing and speech production.

(f) **Massage therapy:** Massage therapy is the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Massage increases the circulation, helps loosen contracted, shortened muscles and can stimulate weak muscles to improve posture and movement, improves range of motion and reduces spasticity. Massage therapy may increase, or help sustain, an eligible recipient's ability to be more independent in the performance of activities of daily living; thereby, decreasing dependency upon others to perform or assist with basic daily activities. See [~~massage therapists~~] 16.7.1 NMAC.

(g) **Naprapathy:** Naprapathy focuses on the evaluation and treatment of neuro-musculoskeletal conditions, and is a system for restoring functionality and reducing pain in muscles and joints. The therapy uses manipulation and mobilization of the spine and other joints, and muscle treatments such as stretching and massage. Based on the concept that constricted connective tissue (ligaments, muscles, and tendons) interfere with nerve, blood, and lymph flow, naprapathy uses manipulation of connective tissue to open these channels of body function. See [~~naprapathic practitioners,~~] 16.6.1 NMAC.

(h) **Native American healers:** Native American healing therapies encompass a wide variety of culturally-appropriate therapies that support eligible recipients in their communities by addressing their physical, emotional and spiritual health. Treatments may include prayer, dance, ceremony, song, plant medicines, foods, participation in sweat lodges, and the use of meaningful symbols of healing, such as the medicine wheel or other sacred objects.

(i) **Play therapy:** Play therapy is a variety of play and creative arts techniques utilized to alleviate chronic, mild and moderate psychological and emotional conditions for an eligible recipient that are causing behavioral problems or are preventing the eligible recipient from realizing [~~his/her~~] <u>his or her</u> potential. The play therapist works integratively using a wide range of play and creative arts techniques, mostly responding to the eligible recipient's direction.

H. **Other supports:**

(1) **Transportation:** Transportation services are offered to enable eligible recipients to gain access to services, activities, and resources, as specified by the SSP. Transportation services under the waiver are offered in accordance with the eligible recipient's SSP. Transportation services provided under the waiver are non-medical in nature whereas transportation services provided under the medicaid state plan are to transport eligible recipients to medically necessary physical and behavioral health services. Payment for mi via transportation services is made to the eligible recipient's individual transportation employee or to a public or private transportation service vendor. Payment cannot be made to the eligible recipient. Whenever possible, family, neighbors, friends, or community agencies that can provide this service without charge shall be identified in the SSP and utilized.

(2) **Emergency response services:** Emergency response services provide an electronic device that enables the eligible recipient to secure help in an emergency at home and avoid institutionalization. The eligible recipient may also wear a portable help button to allow for mobility. The system is connected to the eligible recipient's phone and programmed to signal a response center when a help button is activated. The response center is staffed by trained professionals. Emergency response services include:

(a) testing and maintaining equipment;

(b) training eligible recipients, caregivers and first responders on use of the equipment;

(c) 24-hour monitoring for alarms;

(d) checking systems monthly or more frequently, if warranted by electrical outages, severe weather, etc.;

(e) reporting emergencies and changes in the eligible recipient's condition that may affect service delivery; and

(f) ongoing emergency response service is covered, but initial set up and installation is not.

(3) **Respite:** Respite is a family support service, the primary purpose of which is to give the primary, unpaid caregiver time away from [~~his/her~~] <u>his or her</u> duties. Respite services include assisting the eligible recipient 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 leisure, play and other recreational activities; assisting the eligible recipient to enhance self-help skills, leisure time skills and community and social awareness; providing opportunities for community and neighborhood integration and involvement; and providing opportunities for the eligible recipient to make [~~his/her~~] <u>his or her</u> own choices with regard to daily activities. Respite services are furnished on a short-term basis and can be provided in the eligible recipient's home, the provider's home, in a community setting of the family's choice (e.g., community center, swimming pool and park) or at a center in which other individuals are provided care. FFP is not claimed for the cost of room and board as part of respite services.

(4) **Related goods:** Related goods are equipment, supplies or fees and memberships, not otherwise provided through mi via, the medicaid state plan, or medicare.

(a) Related goods must address a need identified in the eligible recipient's SSP and meet the following requirements:

(i) be responsive to the eligible recipient's qualifying condition or disability; and

(ii) meet the eligible recipient's clinical, functional, medical or habilitative needs; and

(iii) supports the eligible recipient to remain in the community and reduces the risk for institutionalization; and

(iv) promote personal safety and health; and afford the eligible recipient an accommodation for greater independence; and

(v) decrease the need for other medicaid services; and

(vi) accommodate the eligible recipient in managing [~~his/her~~] <u>his or her</u> household; or

(vii) facilitate activities of daily living.

(b) Related goods must be documented in the SSP, comply with [~~Paragraph (3) of~~] Subsection D of 8.314.6.17 NMAC, and be approved by the TPA. The cost and type of related good is subject to approval by the TPA. Eligible recipients are not guaranteed the exact type and model of related good that is requested. The consultant, TPA or [~~the state~~] <u>MAD</u> can work with the eligible recipient to find other (including less costly) alternatives.

(c) The related goods must not be available through another source and the eligible recipient must not have the personal funds needed to purchase the goods.

(d) These items are purchased from the eligible recipient's AAB.

(e) Experimental or prohibited treatments and goods are excluded.

(5) **Environmental modifications:** Environmental modification services include the purchase and installation of equipment or making

physical adaptations to the eligible recipient's residence that are necessary to ensure the health, safety, and welfare of the eligible recipient or enhance the eligible recipient level of independence.

(a) Adaptations include the installation of ramps and grab-bars; widening of doorways/hallways; installation of specialized electric and plumbing systems to accommodate medical equipment and supplies; lifts/elevators; modification of bathroom facilities such as roll-in showers, sink, bathtub, and toilet modifications, water faucet controls, floor urinals and bidet adaptations and plumbing; turnaround space adaptations; specialized accessibility/safety adaptations/additions; trapeze and mobility tracks for home ceilings; automatic door openers/doorbells; voice-activated, light-activated, motion-activated and electronic devices; fire safety adaptations; air filtering devices; heating/cooling adaptations; glass substitute for windows and doors; modified switches, outlets or environmental controls for home devices; and alarm and alert systems or signaling devices.

(b) All services shall be provided in accordance with applicable federal, state, and local building codes.

(c) 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, such as fences, storage sheds or other outbuildings. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation.

(d) The environmental modification provider must: ensure proper design criteria is addressed in the planning and design of the adaptation; be a licensed and insured contractor(s) or approved vendor(s) that provides construction/remodeling services; provide administrative and technical oversight of construction projects; provide consultation to family members, [~~waiver~~] mi via providers and contractors concerning environmental modification projects to the [~~participant's~~] eligible recipient's residence; and inspect the final environmental modification project to ensure that the adaptations meet the approved plan submitted for environmental adaptation.

(e) Environmental modifications are managed by professional staff available to provide technical assistance and oversight to environmental modification projects.

(f) Environmental modification services are limited to $7,000 every five years. Environmental modifications must be approved by the TPA.

(g) Environmental modifications are paid from a funding source separate from the AAB.

[8.314.6.15 NMAC - Rp, 8.314.6.15 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.16 NON-COVERED SERVICES: Non-covered services include, but are not limited to the following:

A. services covered by the medicaid state plan (including EPSDT), MAD MAP school-based services, medicare and other third-parties;

B. any service or good, the provision of which would violate federal or state statutes, regulations, rules or guidance;

C. formal academic degrees or certification-seeking education, educational services covered by IDEA or vocational training provided by the public education department (PED), [~~division of vocational rehabilitation (DVR)~~] DVR;

D. food and shelter expenses, including property-related costs, such as rental or purchase of real estate and furnishing, maintenance, utilities and utility deposits, and related administrative expenses; utilities include gas, electricity, propane, fire wood, wood pellets, water, sewer, and waste management;

E. experimental or investigational services, procedures or goods, as defined in 8.325.6 NMAC [~~*Experimental or Investigational Procedures, Technologies or Therapies*~~];

F. any goods or services that a household that does not include a person with a disability would be expected to pay for as a routine household expense;

G. any goods or services that are to be used for recreational or diversional purposes;

H. personal goods or items not related to the disability;

I. animals and costs of maintaining animals including the purchase of food, veterinary visits, grooming and boarding but with the exception of training and certification for service dogs;

J. gas cards and gift cards;

K. purchase of insurance, such as car, health, life, burial, renters, home-owners, service warrantees or other such policies;

L. purchase of a vehicle, and long-term lease or rental of a vehicle;

M. purchase of recreational vehicles, such as motorcycles, campers, boats or other similar items;

N. firearms, ammunition or other weapons;

O. gambling, games of chance (such as bingo or lottery), alcohol, tobacco, or similar items;

P. vacation expenses, including airline tickets, cruise ship or other means of transport, guided tours, meals, hotel, lodging or similar recreational expenses;

Q. purchase of usual and customary furniture and home furnishings, *unless* adapted to the eligible recipient's disability or use, or of specialized benefit to the eligible recipient's condition; requests for adapted or specialized furniture or furnishings must include a recommendation from the eligible recipient's health care provider and, when appropriate, a denial of payment from any other source;

R. regularly scheduled upkeep, maintenance and repairs of a home and addition of fences, storage sheds or other outbuildings, *except* upkeep and maintenance of modifications or alterations to a home which are an accommodation directly related to the eligible recipient's qualifying condition or disability;

S. regularly scheduled upkeep, maintenance and repairs of a vehicle, or tire purchase or replacement, *except* upkeep and maintenance of modifications or alterations to a vehicle or van, which is an accommodation directly related to the eligible recipient's qualifying condition or disability; requests must include documentation that the adapted vehicle is the eligible recipient's primary means of transportation;

T. clothing and accessories, except specialized clothing based on the eligible recipient's disability or condition;

U. training expenses for paid employees;

V. conference or class fees may be covered for eligible recipients or unpaid caregivers, but costs associated with such conferences or class cannot be covered, including airfare, lodging or meals;

W. consumer electronics such as computers, printers and fax machines, or other electronic equipment that does not meet the criteria specified in Subsection A of 8.314.6.15 NMAC; no more than one of each type of item may be purchased at one time; and consumer electronics may not be replaced more frequently than once every three years;

X. cell phone services that include: fees for data; or more than one cell phone line per eligible recipient;

Y. if the eligible recipient requests a good or service, the consultant TPA and [~~the state~~] MAD can work with the eligible recipient to find other (including less costly) alternatives; and

Z. dental services utilizing mi via individual budgetary allotments.

[8.314.6.16 NMAC - Rp, 8.314.6.16 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.17 SERVICE AND SUPPORT PLAN (SSP) AND AUTHORIZED ANNUAL BUDGET(AAB): [~~An~~] A SSP and an annual budget request are developed at least annually by the mi via eligible recipient in

collaboration with the eligible recipient's consultant and others that the eligible recipient invites to be part of the process. The consultant serves in a supporting role to the mi via eligible recipient, assisting the eligible recipient to understand [~~mi via~~] the mi via program, and with developing and implementing the SSP and the AAB. The SSP and annual budget request are developed and implemented in accordance with the mi via program rules and service standards and submitted to the TPA for final approval. Upon final approval the annual budget request becomes an AAB.

A. **SSP development process:** For development of the participant-centered service plan, the planning meetings are scheduled at times and locations convenient to the eligible recipient. [~~The state~~] This process obtains information about eligible recipient strengths, capacities, preferences, desired outcomes and risk factors through the LOC assessment and the planning process that is undertaken between the consultant and eligible recipient to develop the [~~participant's~~] his or her SSP. If the [~~participant~~] eligible recipient chooses to purchase personal plan facilitation services, that assessment information would also be used in developing the SSP.

(1) **Assessments:**

(a) Assessment activities that occur prior to the SSP meeting assist in the development of an accurate and functional plan. The functional assessments conducted during the LOC determination process address the following needs of a person: medical, behavioral health, adaptive behavior skills, nutritional, functional, community/social and employment; LOC assessments are conducted in person and take place in the [~~or the~~] eligible recipient's home, an agreed upon location or an inpatient setting.

(b) Assessments occur on an annual basis or during significant changes in circumstance or at the time of the LOC determination. After the assessments are completed, the results are made available to the eligible recipient and [~~his/her~~] his or her consultant for use in planning.

(c) The eligible recipient and the consultant will assure that the SSP addresses the information and concerns, if any, identified through the assessment process.

(d) [~~Eligible recipient/employer~~] When an eligible recipient is also the employer, self assessments are completed prior to SSP [~~meetings (eligible recipient/employer) self~~] . These assessments may be revised during the year to address any life changes). The SSP must address areas of need, as recognized in the eligible [~~recipient/employer~~] recipient employer's self-assessment.

(2) **Pre-planning:**

(a) The consultant contacts the eligible recipient upon [~~his/her choosing mi via~~] his or her choosing enrollment in the mi via program to provide information regarding [~~mi via~~] this program, including the range and scope of choices and options, as well as the rights, risks, and responsibilities associated with self-direction.

(b) The consultant discusses areas of need to address on the eligible recipient's SSP. The consultant provides support during the annual [~~recertification~~] re-determining process to assist with completing medical and financial eligibility in a timely manner.

(c) Personal plan facilitators are optional supports. To assist in pre-planning, the eligible recipient is also able to access an approved provider to develop a personal plan.

(3) **SSP components:** The SSP contains:

(a) the [~~waiver~~] mi via services that are furnished to the mi via eligible recipient, the projected amount, frequency and duration, and the type of provider who furnishes each service;

(i) the SSP must describe in detail how the services or goods relate to the eligible recipient's qualifying condition or disability;

(ii) the SSP must describe how the services and goods support the eligible recipient to remain in the community and reduce [~~his/her~~] his or her risk of institutionalization; and

(iii) the SSP must specify the hours of services to be provided and payment arrangements;

(b) other services needed by the mi via eligible recipient regardless of funding source, including state plan services;

(c) informal supports that complement [~~waiver~~] mi via services in meeting the needs of the eligible recipient;

(d) methods for coordination with state plan services and other public programs;

(e) methods for addressing the eligible recipient's health care needs when relevant;

(f) quality assurance criteria to be used to determine if the services and goods meet the eligible recipient's needs as related to [~~his/her~~] his or her qualifying condition or disability;

(g) information, resources or training needed by the mi via eligible recipient and service providers;

(h) methods to address the eligible recipient's health and safety, such as 24-hour emergency and back-up services; and

(i) the IBA.

(4) **Service and support plan meeting:**

(a) The eligible recipient receives an LOC assessment and local resource manual prior to the SSP meeting.

(b) The eligible recipient may begin planning and drafting the SSP utilizing those tools prior to the SSP meeting.

(c) During the SSP meeting, the consultant assists the eligible recipient to ensure that the SSP addresses the eligible recipient's goals, health, safety and risks. The eligible recipient and the consultant will assure that the SSP addresses the information and concerns identified through the assessment process. The SSP must address the eligible recipient's health and safety needs before addressing other issues. The consultant ensures that:

(i) the planning process addresses the eligible recipient's needs and goals in the following areas: health and wellness and accommodations or supports needed at home and in the community;

(ii) services selected address the eligible recipient's needs as identified during the assessment process; needs not addressed in the SSP will be addressed outside the mi via program;

(iii) the outcome of the assessment process for assuring health and safety is considered in the plan;

(iv) services do not duplicate or supplant those available to the eligible recipient through the medicaid state plan or other programs;

(v) services are not duplicated in more than one service code;

(vi) job descriptions are complete for each provider and employee in the plan; job descriptions will include frequency, intensity and expected outcomes for the service;

(vii) the quality assurance section of the SSP is complete and specifies the roles of the eligible recipient, consultant and any others listed in this section;

(viii) the responsibilities are assigned for implementing the plan;

(ix) the back-up plans are complete; and

(x) the SSP is submitted to the TPA after the SSP meeting, in compliance with mi via [~~waiver~~] rules and service standards.

B. **Individual budgetary allotment (IBA):** Each mi via eligible recipient's annual IBA is determined by [~~the state~~] MAD or its designee as follows.

(1) Budgetary allotments are based on calculations developed by [~~the state~~] MAD for each mi via population group, [~~including AIDS, CoLTS (c), DD or MF waiver, and BI category of eligibility,~~] utilizing historical traditional waiver care plan authorized budgets within the

population, minus the case management costs, and minus a 10 percent discount.

(2) The determination of each mi via eligible recipient's sub-group is based on a comprehensive assessment. The eligible recipient then receives the IBA available to that category of need, according to the eligible recipient's age.

(3) A mi via eligible recipient has the authority to expend the IBA through an AAB that is to be expended on a monthly basis and in accordance with the mi via rules and program service standards.

(a) The current mi via rate schedule, available on the HSD/MAD website under fee schedules as well as on the DOH website under mi via, shall be used as a guide in evaluating proposed payment rates for services that are currently covered or similar to currently covered services. The eligible recipient must justify in writing the rate that [~~he/she~~] he or she wishes to pay when that rate exceeds the rate schedule. The eligible recipient must include this justification with the SSP and annual budget request when it is submitted for approval.

(b) The AAB shall contain goods and services necessary for health and safety (i.e., direct care services and medically related goods) which will be given priority over goods and services that are non-medical or not directly related to health and safety. This prioritization applies to the IBA, AAB, and any subsequent modifications.

C. **SSP review criteria:** Services and related goods identified in the eligible recipient's requested SSP may be considered for approval if the following requirements are met:

(1) the services or goods must be responsive to the eligible recipient's qualifying condition or disability; and

(2) the services or goods must address the eligible recipient's clinical, functional, medical or habilitative needs; and

(3) the services or goods must accommodate the eligible recipient in managing [~~his/her~~] his or her household; or

(4) the services or goods must facilitate activities of daily living; or

(5) the services or goods must promote the eligible recipient's personal health and safety; and

(6) the services or goods must afford the eligible recipient an accommodation for greater independence; and

(7) the services or goods must support the eligible recipient to remain in the community and reduce his/her risk for institutionalization; and

(8) the services or goods must be documented in the SSP and advance the desired outcomes in the eligible recipient's SSP; and

(9) the SSP contains the quality assurance criteria to be used to determine if the service or goods meet the eligible recipient's need as related to the qualifying condition or disability; and

(10) the services or goods must decrease the need for other MAD services; and

(11) the eligible recipient receiving the services or goods does not have the funds to purchase the services or goods; or

(12) the services or goods are not available through another source; the eligible recipient must submit documentation that the services or goods are not available through another source, such as the medicaid state plan or medicare; and

(13) the service or good is not prohibited by federal regulations, state rules and instructions; and

(14) each service or good must be listed as an individual line item whenever possible; when services or goods are 'bundled' the SSP must document why bundling is necessary and appropriate.

D. **Budget review criteria:** The eligible recipient's proposed annual budget request may be considered for approval, if all of the following requirements are met:

(1) the proposed annual budget request is within the eligible recipient's IBA; and

(2) the proposed rate for each service is within the mi via range of rates for that chosen service; and

(3) the proposed cost for each good is reasonable, appropriate and reflects the lowest available cost for that chosen good; and

(4) the estimated cost of the service or good is specifically documented in the eligible recipient's budget worksheets; and

(5) no employee exceeds 40 hours paid work in a consecutive seven-day period.

E. **Modification of the SSP:**

(1) The SSP may be modified based upon a change in the eligible recipient's needs or circumstances, such as a change in the eligible recipient's health status or condition or a change in the eligible recipient's support system, such as the death or disabling condition of a family member or other individual who was providing services.

(2) If the modification is to provide new or additional services than originally included in the SSP, these services must not be able to be acquired through other programs or sources. The eligible recipient must document the fact that the services are not available through another source.

(3) The eligible recipient must provide written documentation of the change in needs or circumstances as specified in the mi via service standards. The eligible recipient submits the documentation to the consultant. The consultant initiates the process to modify the SSP by forwarding the request for modification to the TPA for review.

(4) The SSP must be modified before there is any change in the AAB.

(5) The SSP may be modified once the original SSP has been submitted and approved. Only one SSP revision may be submitted at a time, e.g., [~~an~~] a SSP revision may not be submitted if an initial SSP request or prior SSP revision request is under initial review by the TPA. This requirement also applies to any [~~re-review or~~] re-consideration of the same revision request. Other than for critical health and safety reasons, neither the SSP nor the AAB may be modified within 60 calendar days of expiration of the current SSP.

F. **Modifications to the annual budget:** Revisions to the AAB may occur within the SSP year, and the eligible recipient is responsible for assuring that all expenditures are in compliance with the most current AAB in effect. The SSP must be amended first to reflect a change in the eligible recipient's needs or circumstances before any revisions to the AAB can be requested.

(1) Budget revisions involve requests to add new goods or services to a budget or to reallocate funds from any line item to another approved line item. Budget revisions must be submitted to the TPA for review and approval. Other than for critical health and safety reasons for the eligible recipient, budget revisions may not be submitted to the TPA for review within the last 60 calendar days of the budget year.

(2) The amount of the AAB cannot exceed the eligible recipient's annual IBA. The rare exception would be the eligible recipient whose assessed or documented needs, based on [~~his/her~~] his or her qualifying condition, cannot be met within the annual IBA, in which case the eligible recipient would initiate a request for an adjustment through [~~his/her~~] his or her consultant.

(3) If the eligible recipient requests an increase in [~~his/her~~] his or her budget above [~~his/her~~] his or her annual IBA, the eligible recipient must show one of the following circumstances:

(a) chronic physical condition: the eligible recipient has one or more chronic physical conditions, which are identified during the initial or reevaluation of the LOC, that result in a prolonged dependency on medical services or care,

for which daily intervention is medically necessary; the eligible recipient's needs cannot be met within the assigned IBA or other current resources, including natural supports, medicaid state plan services, medicare or other sources; and which are characterized by at least one of the following:

(i) a life-threatening condition with frequent or constant periods of acute exacerbation that places the eligible recipient at risk for institutionalization; that could result in the eligible recipient's inability to remember to self-administer medications accurately even with the use of assistive technology devices; that requires a frequency and intensity of assistance, supervision, or consultation to ensure the eligible recipient's health and safety in the home or in the community; or which, in the absence of such skilled intervention, assistance, medical supervision or consultation, would require hospitalization or admission to [~~an~~] a NF or ICF/IID;

(ii) the need for administration of specialized medications, enteral feeding or treatments that[~~:~~] are ordered by a medical doctor, doctor of osteopathy, certified nurse practitioner or physician's assistant; and require frequent and ongoing management or monitoring or oversight of medical technology;

(b) change in physical health status; the eligible recipient has experienced a deterioration or permanent change in [~~her/her~~] his or her health status such that the eligible recipient's needs for services and supports can no longer be met within the AAB or other current resources, including natural supports, are not covered under the medicaid state plan, medicare or other sources; these are the types of changes that may necessitate an increase in the AAB; the eligible recipient now requires the administration of medications via intravenous or injections on a daily or weekly basis; the eligible recipient has experienced recent onset or increase in aspiration of saliva, foods or liquids; the eligible recipient now requires external feedings, e.g. naso-gastric, percutaneous endoscopic gastrostomy, gastric-tube or jejunostomy-tube; the eligible recipient is newly dependent on a ventilator; the eligible recipient now requires suctioning every two hours, or more frequently, as needed; the eligible recipient now has seizure activity that requires continuous monitoring for injury and aspiration, despite anti-convulsant therapy; the eligible recipient now requires increased assistance with activities of daily living;

(i) the eligible recipient must submit a written, dated, and signed evaluation or letter from a medical specialist either a medical doctor, doctor of osteopathy, certified nurse practitioner or physician's assistant that documents the change in the eligible recipient's health status relevant to the above criteria; the evaluation or letter must have been completed since the last LOC assessment or less than one year from the date the request is submitted, whichever is most recent;

(ii) the eligible recipient may submit additional supportive documentation by others involved in the eligible recipient's care, such as a current individual service plan if the eligible recipient is transferring from another waiver, a recent evaluation from a specialist or therapist, a recent discharge plan, relevant medical records or other documentation or recent statements from family members, friends or other support individuals;

(c) chronic or intermittent behavioral conditions or cognitive difficulties: the eligible recipient has chronic or intermittent behavioral conditions or cognitive difficulties, which are identified during the initial or reevaluation LOC assessment, or the eligible recipient has experienced a change in [~~his/her~~] his or her behavioral health status, for which the eligible recipient requires additional services, supports, assistance, or supervision to address the behaviors or cognitive difficulties in order to keep the eligible recipient safe; these behaviors and cognitive difficulties are so severe and intense that they result in considerable risk to the eligible recipient, caregivers or the community; require a frequency and intensity of assistance, supervision or consultation to ensure the eligible recipient's health and safety in the home or the community; are likely to lead to incarceration or admission to a hospital, [~~NF~~] nursing facility or ICF/IID; require intensive intervention or medication management by a doctor or behavioral health practitioner or care practitioner; and cannot be effectively addressed within the AAB or other resources, including natural supports, the medicaid state plan, medicare or other sources;

(i) examples of chronic or intermittent behaviors or cognitive difficulties are that the eligible recipient injuries [~~him/herself~~] him or herself frequently or seriously; has uncontrolled physical aggression toward others; disrupts most activities to the extent that [~~his/her~~] his or her SSP cannot be implemented or routine activities of daily living cannot be carried out; withdraws personally from contact with most others; leaves or wanders away from the home, work or service delivery environment in a way that puts [~~him/herself~~] him or herself or others at risk;

(ii) the eligible recipient must submit a written dated and signed evaluation or letter from a medical doctor, doctor of osteopathy, certified nurse practitioner, physician's assistant, psychiatrist or psychologist with a doctorate of psychology that documents the eligible recipient's or behavioral health status relevant to the criteria; if the need for additional budgetary allotment is identified during the LOC assessment, it must be reflected in the assessment ; if there has been a change in the eligible recipient's behaviors or cognitive difficulties, additional documentation is required ; with a change in the eligible recipient's behavior or cognitive difficulties, the evaluation or letter must have been completed since the last LOC assessment or less than one year from the date the request is submitted, whichever is more recent;

(iii) the eligible recipient may submit additional supportive documentation including a current individual service plan if the eligible recipient is transferring from another waiver, a positive behavioral support plan or assessment, recent notes, a summary or letter from a behavioral health practitioner or professional with expertise in developmental disabilities, [~~brain injury or geriatrics,~~] recent discharge plan, recent recommendations from a rehabilitation facility, any other relevant documentation or recent statements from family members, friends or other support individuals involved with the eligible recipient;

(d) change in natural supports: the eligible recipient has experienced a loss, as a result of situations such as death, illness, or disabling condition, of [~~his/her~~] his or her natural supports, such as family members or other community resources that were providing direct care or services, whether paid or not; this absence of natural supports or other resources is expected to continue throughout the period for which supplemental funds are requested; the type, intensity or amount of care or services previously provided by natural supports or other resources cannot be acquired within the IBA and are not available through the medicaid state plan, medicare, other programs or sources in order for the eligible recipient to live in a home and community-based setting.

(4) A mi via eligible recipient is responsible for tracking all budget expenditures and assuring that all expenditures are within the AAB. The eligible recipient must not exceed the AAB within any SSP year. The eligible recipient's failure to properly allocate the expenditures within the SSP year resulting in the depletion of the AAB, due to mismanagement of or failure to track the funds, prior to the calendared expiration date does not substantiate a claim for a budget increase (i.e., if all of the AAB is

expended within the first three months of the SSP year, it is not justification for an increase in the annual budget for that SSP year). Amendments to the AAB may occur within the SSP year and the eligible recipient is responsible for assuring that all expenditures are in compliance with the most current AAB in effect. Amendments to the AAB must be preceded by an amendment to the SSP.

(5) The AAB may be revised once the original annual budget request has been submitted and approved. Only one annual budget revision request may be submitted at a time, e.g., an annual budget revision request may not be submitted if a prior annual budget revision request is under initial review by the TPA. The same requirement also applies to any reconsideration of the same revision request.

G. **SSP and annual budget supports:** As specified in the mi via program rules and service standards, the mi via eligible recipient is assisted by the consultant in development and implementation of the SSP and AAB. The FMA assists the eligible recipient with implementation of the AAB. Once implemented, a debit card will be utilized for related good listed on an IBA. The process for loading funding on the debit card is as follows:

(1) following the approval of the SSP by the TPA, the eligible recipient must submit an invoice to the FMA;

(2) the FMA will verify the accuracy of the invoice, then load the funding onto the debit card for use by the eligible recipient;

(3) the eligible recipient must utilize the funding for the approved related good(s) only and maintain the receipt of purchase for a period of up to six years;

(4) the FMA shall schedule and perform random audits of purchases;

(5) if requested, the eligible recipient must provide verification of the purchase to the FMA within three business days.

H. **Submission for approval:** The TPA must approve the SSP and associated annual budget request (resulting in an AAB). The TPA must approve certain changes in the SSP and annual budget request, as specified in the mi via program rules and service standards and in accordance with 8.302.5 NMAC [~~*prior authorization and utilization review*~~].

(1) At any point during the SSP and associated annual budget utilization review process, the TPA may request additional documentation from the eligible recipient. This request must be in writing and submitted to both the eligible recipient and the consultant provider. The eligible recipient has 15 working days from the date of the request to respond to the request for additional documentation. Failure by the eligible recipient to submit the requested information may subject the SSP and annual budget request to denial.

(2) Services cannot begin and goods may not be purchased before the start date of the approved SSP and AAB or approved revised SSP and revised AAB.

(3) Any revisions requested for other than critical health or safety reasons within 60 calendar days of expiration of the SSP and AAB are subject to denial for that reason.

[8.314.6.17 NMAC - Rp, 8.314.6.17 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.18 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: All medicaid services, including services covered under [~~this waiver~~] the mi via program, are subject to utilization review for medical necessity and program requirements. Reviews by [~~HSD/MAD~~] MAD or its designees may be performed before services are furnished, after services are furnished, before payment is made, or after payment is made in accordance with 8.302.5 NMAC [~~*prior authorization and utilization review*~~].

A. **Prior authorization:** Services, supports, and goods specified in the SSP and AAB require prior authorization from HSD/MAD or its designee. The SSP must specify the type, amount and duration of services. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** To be eligible for mi via program services, eligible recipients must require the LOC of services provided in an ICF/IID [~~for eligible recipients identified as DD and MF, or in an NF for participants identified as CoLTS (c), diagnosed with AIDS, or BI~~]. Prior authorization of services does not guarantee that [~~applicants/eligible~~] applicants or eligible recipients are eligible for [~~medicaid~~] MAP services.

C. **Reconsideration:** If there is a disagreement with a prior authorization denial or other review decision, the consultant provider on behalf of the eligible recipient, can request a reconsideration from the TPA that performed the initial review and issued the initial decision. A reconsideration must be requested within 30-calendar days of the date on the denial notice. Reconsideration requests must be in writing and provide additional documentation or clarifying information regarding the eligible recipient's request for the denied services or goods.

D. **Denial of payment:** If a service, support, or good is not covered under the mi via program, the claim for payment may be denied by [~~HSD/ MAD~~] MAD or its designee. If it is determined that a service is not covered before the claim is paid, the claim is denied. If this determination is made after payment, the payment amount is subject to recoupment or repayment.

[8.314.6.18 NMAC - Rp, 8.314.6.18 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

8.314.6.19 REIMBURSEMENT:

A. Mi via eligible recipients must follow all billing instructions provided by the FMA to ensure payment of service providers and vendors.

B. Claims must be billed to the FMA per the billing instructions. Reimbursement to service providers and vendors in the mi via program is made, as follows:

(1) mi via service providers and vendors must enroll with the FMA;

(2) mi via eligible recipients receive instructions and documentation forms necessary for service providers' and vendors' claims processing;

(3) mi via eligible recipients must submit claims for payment of mi via service providers and vendors to the FMA for processing; claims must be filed per the billing instructions provided by the FMA;

(4) mi via eligible recipients and mi via service providers and vendors must follow all FMA billing instructions; and

(5) reimbursement of mi via service providers and vendors is made at a predetermined reimbursement rate negotiated by the eligible recipient with the service provider or vendor, approved by the TPA contractor, and documented in the SSP and in the [~~provider/vendor~~] provider or vendor agreement; at no time can the total expenditure for services exceed the eligible [~~recipients~~] recipient's AAB.

C. The FMA must submit claims that have been paid by the FMA on behalf of mi via eligible recipient to the [~~HSD/MAD~~] MAD fiscal contractor for processing.

D. Reimbursement may not be made directly to the eligible recipient, either to reimburse [~~him/her~~] him or her for expenses incurred or to enable the eligible recipient to pay a service provider directly.

[8.314.6.19 NMAC - Rp, 8.314.6.19 NMAC, 10-15-12; A, 2-14-14]

8.314.6.20 RIGHT TO A HSD ADMINISTRATIVE HEARING:

A. [~~The HSD/MAD~~] MAD must grant an opportunity for an administrative hearing as described in this section in the following circumstances and pursuant to 42 CFR Section 431.220(a)(1) and (2), NMSA 1978, Section 27-3-3 and

8.352.2 NMAC [~~*Recipient Hearings*~~]:

(1) when a mi via applicant has been determined not to meet the LOC requirement for [~~waiver~~] mi via program services;

(2) when a mi via applicant has not been given the choice of HCBS as an alternative to institutional care;

(3) when a mi via applicant is denied the services of [~~his/her~~] his or her choice or the provider of [~~his/her~~] his or her choice;

(4) when a mi via eligible recipient's services are denied, suspended, reduced or terminated;

(5) when a mi via eligible recipient has been involuntarily terminated from the program;

(6) when a mi via eligible recipient's request for a budget adjustment has been denied.

B. DOH and its counsel, if necessary, shall participate in any [~~fair~~] HSD administrative hearing involving a DD or MF eligible recipient [~~, or an eligible recipient diagnosed with AIDS. HSD/MAD, and its counsel, if necessary, may participate in fair hearings~~]. HSD's office of general counsel may elect to participate in the hearing. See 8.352.2 NMAC for a complete description, instructions, and hearing and continuation of benefits process of a HSD administrative hearing for a mi via eligible recipient.

[8.314.6.20 NMAC - Rp, 8.314.6.20 NMAC, 10-15-12; A, 2-14-14]

8.314.6.21 CONTINUATION OF BENEFITS PURSUANT TO TIMELY APPEAL:

A. Continuation of benefits may be provided to eligible recipients who request a hearing within 13 calendar days of the notice. The notice will include information on the right to continued benefits and on the eligible recipient's responsibility for repayment if the hearing decision is not in the eligible recipient's favor. See 8.352.2 NMAC for a complete description, instructions, and hearing and continuation of benefits process of a HSD administrative hearing for a mi via eligible recipient.

B. Once the eligible recipient requests a continuation of benefits, [~~his/her~~] his or her current AAB and SSP at the time of the request is termed a 'continuation of benefits. The continuation budget may not be revised until the conclusion of the [~~fair~~] administrative hearing process unless one of the criteria to modify the budget in [~~Paragraph (3) of~~] Subsection F of 8.314.6.17 NMAC is met. See 8.352.2 NMAC for a complete description, instructions and process of a HSD administrative hearing and continuation of benefits process of a MAP eligible recipient.

[8.314.6.21 NMAC - Rp, 8.314.6.21 NMAC, 10-15-12; A, 2-14-14]

8.314.6.22 GRIEVANCE/COMPLAINT SYSTEM: [~~HSD/MAD and DOH operate a grievance/complaint system that affords eligible recipients the opportunity to register grievances or complaints concerning the provision of services under the mi via program. HSD/MAD administers the grievance/complaint process for eligible recipient's in the mi via NF LOC waiver who are brain injured or disabled or elderly. DOH administers the grievance/complaint process for eligible recipients in the ICF/IID level of care (LOC) waiver and for eligible recipients in the AIDS program who are in the NF LOC waiver. Eligible recipients may register complaints with either department via e-mail, mail or phone.~~] HSD thru DOH administers a grievance or complaint system that affords eligible recipients the opportunity to register grievances or complaints concerning the provision of services that are administered by DOH under the mi via program. Eligible recipients may register complaints with DOH via e-mail, mail or phone. Complaints will be referred to the appropriate [~~department~~] DOH division or as appropriate referred to MAD for resolution. The filing of a complaint or grievance does not preclude an eligible recipient from pursuing a HSD administrative hearing. The eligible recipient is informed that filing a grievance or complaint is not a prerequisite or substitute for a [~~fair~~] HSD administrative hearing.

A. A grievance or complaint is required to be addressed within 30 calendar days from the date it was received.

B. Upon receipt of the grievance or complaint, DOH [~~or HSD/MAD~~] enters it into the complaint tracker and informs the contractor or provider of the grievance or complaint. DOH [~~or HSD/MAD~~] notifies the eligible recipient within one working day of receipt of the grievance or complaint who will be responsible for resolution of the grievance or complaint.

C. DOH [~~or HSD/MAD~~] gives the contractor or provider 14 calendar days to resolve the grievance or complaint. If the grievance or complaint contains an issue that may compromise the health or safety of the [~~participant, DOH or HSD/MAD~~] eligible recipient, DOH remains involved with the parties until the grievance or complaint is resolved.

D. The contractor or provider shall notify [~~HSD/MAD~~] DOH of [~~their~~] its progress toward resolution of the grievance or complaint. If the grievance or complaint has not been resolved in 14 calendar days, DOH [~~or HSD/MAD~~] becomes involved to ensure that an initial response is issued within 30 calendar days of receipt of the grievance or complaint.

[8.314.6.22 NMAC - Rp, 8.314.6.22 NMAC, 10-15-12; A, 6-28-13; A, 2-14-14]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.12.3 NMAC, Sections 7, 16, 18, 19, and 20 and Section 17 is new, effective February 16, 2014.

14.12.3.7 DEFINITIONS: The following terms shall have the meaning indicated when used in this standard.

A. "Act" means the Construction Industries Licensing Act (Sections 60-13-1 through 60-13-59, NMSA 1978) and the LP Gas Act (Sections 70-5-1 through 70-5-22, NMSA 1978).

B. "Code" means the codes set forth in 14.12.3.8 NMAC.

C. "Commercial use" shall have the same meaning as that given it in the New Mexico commercial building code.

D. "Commission" means the construction industries commission.

E. "Department" means the regulation and licensing department.

F. "Director" means the administrative head of the division.

G. "Division" means the construction industries division of the regulation and licensing department.

H. "Dwelling" means any building that contains one or two *dwelling units* used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

I. "Dwelling unit" means a single unit providing complete independent living facilities, for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

[~~H.~~] J. "Foundation inspection" means the subsequent on-site inspection of the foundation, utility connections, and other items related to the permanent placement of a modular structure set in New Mexico for code compliance pursuant to the requirements of this part by a certified inspector.

[~~I.~~] K. "Inspection"

(1) "In-plant inspection" means the inspection of a modular structure for code compliance pursuant to the requirements of this part by an approved

inspector or a division inspector.

(2) "Placement inspection" means the subsequent on-site inspection of the foundation, hook-ups, and other items related to the permanent placement of a modular structure set in New Mexico for code compliance pursuant to the requirements of this part by a division inspector or a local inspector.

[~~J.~~] L. **"Inspector"**

(1) "Division inspector" means an inspector employed by the division to conduct building inspections.

(2) "Approved inspector" means an inspector other than a division inspector approved by the division to perform in-plant inspections of modular structures pursuant to this part.

[~~K.~~] M. **"Manufacturer"** means any person engaged in the manufacture, construction and assembly of modular structures.

[~~L.~~] N. **"Modular structure"** means any structure built for use or occupancy by persons or property, whether or not designed to be placed on a permanent foundation. Modular structures include factory-built buildings and subassemblies for manufactured residential and commercial units. Modular structure does not include non-assembled component parts that are subject to all permit and inspection requirements, or to manufactured housing structures that are subject to federal regulation.

[~~M.~~] O. **"Plans"** means those design documents and related specifications required for the manufacture of any given modular structure as required by code.

[~~N.~~] P. **"Residential use"** shall have the same meaning as that given it in the currently adopted New Mexico building code.

[~~O.~~] Q. **"Modular non-assembled components"** means constructed components of a residential building, built out of state but assembled on site.

R. **"Storage shed"** means any accessory structure, either freestanding or attached to another structure, that is not classified for human habitation or occupancy and is intended to be used to store personal property.

[14.12.3.7 NMAC - Rp, 14.12.3.7 NMAC, 9-1-13; A, 2-16-14]

14.12.3.16 EXCEPTIONS:

A. A modular structure that carries a UL or other ANSI approved testing laboratory's label as a rated assembly shall be exempt from Paragraphs (1) and (2) of Subsection B of 14.12.3.13 NMAC. The foundation and accessibility to these structures shall be subject to all applicable codes.

B. One story detached accessory structures used as tool and storage sheds, playhouses, and similar uses are exempt from the provisions of the manufacturing code provided the floor area does not exceed 120 square feet [~~for commercial use and 200 square feet for residential use~~]. This exemption shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of the currently adopted New Mexico building codes. All work must be done in a manner that will comply with the code requirements.

[14.12.3.16 NMAC - Rp, 14.12.3.16 NMAC, 9-1-13; A, 2-16-14]

14.12.3.17 PROHIBITED USES AND OCCUPANCY OF CONVERTED STRUCTURES:

A. Storage sheds and similar structures shall not be used as a dwelling or dwelling unit, and therefore cannot be used for human habitation or occupancy unless the storage shed or similar structure has been subject to plan review, permitting and inspection and constructed or altered in a manner that converts a storage shed or similar structure so that it may be safely used as a dwelling for human habitation and occupancy. Any storage shed or similar structure safely converted for use as a dwelling for human habitation and occupancy shall be issued a certificate of occupancy prior to human habitation and occupancy.

B. Any storage shed or similar structure safely converted for use as a dwelling for human habitation and occupancy shall be subject to all applicable codes and standards as provided in 14.12.3.8 NMAC and NM state construction codes, rules and guidelines.

C. A new storage shed or similar structure offered for sale shall not be advertised or represented to be safe for human habitation or occupancy, and unless converted in accordance with Subsection A of 14.12.3.17 NMAC.

D. Any storage shed or similar structure safely converted for use as a dwelling for human habitation and occupancy shall have a permanent foundation and be subject to all requirements as provided in 14.12.3.15 NMAC.

[14.12.3.17 NMAC - N, 2-16-14]

[~~14.12.3.17~~] 14.12.3.18 REVOCATION, SUSPENSION OR OTHER DISCIPLINE:

A. Violations of this part or any other applicable code are cause for disciplinary action by the commission against a manufacturer or an approved inspector. Such discipline may include suspension or revocation of a modular certificate of authority, withdrawal of inspector approval and an administrative penalty in accordance with Sections 60-13-23 and 23.1 of the Construction Industries Licensing Act, NMSA 1978.

B. Any disciplinary action taken by the commission against a registrant shall be taken in accordance with the Uniform Licensing Act, NMSA 1978.

[14.12.3.18 NMAC - Rp, 14.12.3.18 NMAC, 9-1-13; 14.12.3.18 NMAC - Rn, 14.12.3.17 NMAC, 2-16-14]

[~~14.12.3.18~~] 14.12.3.19 TEMPORARY INSTALLATION:

A. Modular units may be installed on a temporary foundation for a period of up to one year. Units installed as temporary and remaining in place after the one-year period must be placed on a permanent foundation.

B. Modular units installed as temporary shall meet all currently adopted New Mexico building codes, and accessibility requirements.

[14.12.3.19 NMAC - N, 9-1-13; 14.12.3.19 NMAC - Rn, 14.12.3.18 NMAC, 2-16-14]

[~~14.12.3.19~~] 14.12.3.20 MODULAR NON-ASSEMBLED COMPONENTS:

A. Modular non-assembled component panels will meet all the requirements of this rule with the exception of Sections 14, 15 and 18 of 14.12.3 NMAC.

B. Assembly of component panels on site are subject to all building permitting and inspection requirements for site built construction.

[14.12.3.20 NMAC - Rn, 14.12.3.19 NMAC, 2-16-14]

NEW MEXICO DEPARTMENT OF TRANSPORTATION

18.21.5 NMAC - Outdoor Advertising Requirements (filed 9/16/1998) repealed and replaced by 18.21.5 NMAC -Outdoor Advertising Requirements, effective 2/14/2014.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 21 TRAFFIC CONTROL SIGNAGE
PART 5 OUTDOOR ADVERTISING REQUIREMENTS

18.21.5.1 ISSUING AGENCY: New Mexico Department of Transportation.
[18.21.5.1 NMAC - Rp, 18 NMAC 21.5.1,

02/14/14]
[P.O. Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5460]

18.21.5.2 SCOPE: This part applies to all state agencies and the general public.
[18.21.5.2 NMAC - Rp, 18 NMAC 21.5.2, 02/14/14]

18.21.5.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the New Mexico Highway Beautification Act, Sections 67-12-1 et seq., NMSA 1978; and Sections 67-3-6, 67-3-11 and 67-3-14 NMSA 1978.
[18.21.5.3 NMAC - Rp, 18 NMAC 21.5.3, 02/14/14]

18.21.5.4 DURATION: Permanent.
[18.21.5.4 NMAC - Rp, 18 NMAC 21.5.4, 02/14/14]

18.21.5.5 EFFECTIVE DATE: February 14, 2014, unless a later date is cited at the end of a section.
[18.21.5.5 NMAC - Rp, 18 NMAC 21.5.5, 02/14/14]

18.21.5.6 OBJECTIVE: The purpose of this part is to implement and enforce the New Mexico Highway Beautification Act, Sections 67-12-1 et seq., NMSA 1978.
[18.21.5.6 NMAC - Rp, 18 NMAC 21.5.6, 02/14/14]

18.21.5.7 DEFINITIONS:

A. "Abandoned sign" or **"discontinued sign"** means any outdoor advertising device that:

(1) is without copy for a period of six (6) months; or

(2) where the permit holder no longer has the right to occupy or possess the site on which the outdoor advertising device is located.

B. "Advertisement" means copy, information or content on an outdoor advertising device designed, intended or used to advertise or inform.

C. "Apron support" means paneling on the exterior of an outdoor advertising device which serves as a decorative/ornamental feature; an apron support shall not include advertisements, but may include a sign owner name plate.

D. "Beautification Act" means the New Mexico Highway Beautification Act, Sections 67-12-1 et seq., NMSA 1978.

E. "Bona fide commercial or industrial activity" means a commercial or industrial activity which is carried on for profit and which operates for at least six (6) continuous months of the year and with a valid twelve (12) month business license issued by a city, county, or state whether or not a permanent structure is located where the commercial or industrial activity takes place.

F. "Centerline of highway" means a line equidistant from the edges of the median separating the main-traveled way of a divided interstate, NHS or primary highway or the centerline of the main-traveled way of a non-divided interstate, NHS or primary highway.

G. "Changeable electronic variable message sign" or "CEVMS" means an outdoor advertising device that changes the advertisement on the sign electronically or mechanically, or by remote control, by movement or rotation of panels or slats, light emitting diodes (LED), or an electronic sign that utilizes changeable electronic variable message technology through a programmable display of variable text or symbolic imagery to form multiple advertisements. Changeable electronic variable message signs include, but are not limited to, tri-vision and other rotating slat technology. The use of changeable electronic variable message sign (CEVMS) technology, shall not, in itself, constitute the use of flashing, intermittent or moving light or lights.

H. "Commercial or industrial activity" means those activities generally recognized as commercial or industrial by zoning authorities in New Mexico, except that none of the following shall be considered a commercial or industrial activity:

(1) outdoor advertising devices;

(2) agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands;

(3) transient or temporary activities;

(4) activities not visible from the main-traveled way;

(5) activities conducted in a building principally used as a residence;

(6) railroad track and minor sidings and supporting building and fixtures, except for depots open to the public at least six (6) hours per day;

(7) activities located in their entirety more than six hundred sixty (660) feet from the nearest edge of the right-of-way line outside urban areas;

(8) feeder pens and dairy activities;

(9) camping or overnight parking unless such facilities are equipped with adequate parking accommodations, modern sanitary facilities and drinking water, and which are licensed or approved by an appropriate governmental agency.

I. "Commission" means the state transportation commission.

J. "Copy" means an advertisement which depicts activities or advertising which may include gas price, lottery and other add-ons where such add-ons are fully contained within the physical boundaries of the advertising face and reference the static advertisement to which they are attached. Add-ons shall display only numbers, shall remain static for no less than eight (8) seconds in duration, shall achieve a transition to another static display in less than two (2) seconds, and shall not contain or utilize transitional elements or any movement at all between copy changes. Copy may also include self-promotion or public service messages as long as the entire advertising face of the outdoor advertising device is covered.

K. "Customary maintenance" means the usual state of maintaining a sign in order to keep it in a good state of repair while not changing the general structure of the sign significantly. Customary maintenance of a non-conforming sign means maintaining the sign so that it remains substantially the same as it was on the effective date of the Beautification Act. Reasonable repair and maintenance of the sign, including a change in advertising content, is not a change which would terminate non-conforming rights.

L. "Department" means the New Mexico department of transportation.

M. "Directional signs" means signs containing directional information about public places owned or operated by federal, state or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, education, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

N. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way establish or bring a sign into being.

O. "Face" means the advertising surface on a sign. Each sign may contain more than one face; each face shall require a separate permit.

P. "Freeway" means a divided arterial highway for through traffic with full control of access.

Q. "Interstate system" means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to 23 U.S.C. Section 103.

R. "Legible" means

capable of being read without visual aid by a person of normal visual acuity.

S. "Maintain" means to allow to exist.

T. "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways or parking areas.

U. "Mobile type sign" means an outdoor advertising device that is attached or placed on mobile vehicles or trailers or other mobile devices or objects outside of the right-of-way, and is not permanently affixed to real property or a sign structure.

V. "National highway system" or "NHS" means the federal aid system which includes the interstate system; the National Highway System consists of the highway routes and connections to transportation facilities that serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and major travel destinations that meet national defense requirements, and that serve interstate and interregional travel and commerce.

W. "Non-conforming sign" means an outdoor advertising device lawfully in existence on the effective date of the Beautification Act, whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, which continues to exist and complies with customary maintenance requirements, but which currently does not meet all requirements of 18.21.5 NMAC or the Beautification Act due to state law passed at a later date or due to changed conditions. A non-conforming sign may also include an outdoor advertising device whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, which continues to exist and complies with customary maintenance requirements, but which currently does not meet all requirements of 18.21.5 NMAC or the Beautification Act. Illegally erected or maintained outdoor advertising devices shall not be considered non-conforming outdoor advertising devices.

X. "Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with authorization contained in federal, state or local law for the purpose of carrying out an official duty or responsibility. Historical markers authorized by law and erected by state or local government agencies or non-profit historical societies shall be considered official signs.

Y. "Off-premise sign" means any outdoor advertising device which advertises an activity, service or product not conducted on the property upon which the outdoor advertising device is located.

Z. "On-premise sign" means an outdoor advertising device, which advertises activities, conducted on the property upon which the sign is located, and which is located within the area actually utilized for the purpose of the activity it advertises.

AA. "Outdoor advertising device" means any surface and supporting structure, visible from the main-traveled way of the interstate system, NHS or primary system, and designed, intended, or used to advertise or inform, and includes, but is not limited to, a sign, billboard, changeable electronic variable message sign (CEVMS), device, display, face, surface, light, figure, person, animal, painting, drawing, posting, plaque, poster, banner, graffiti, art, sculpture, statue, building structure, wall, fence, utility system, tower, bridge, motor vehicle, trailer, marine craft, holding tank, natural feature (such as a tree or rock), object, or other thing, whether permanently affixed to the real estate or mobile, portable, or temporary in nature, and regardless of size, which may support multiple faces. Each advertising surface shall be considered a separate face. Any structure used or intended to be used to support such a face shall be considered a part of the outdoor advertising device.

BB. "Primary system" means the federal and primary system in existence on June 1, 1991.

CC. "Public service signs" means signs located on school bus stop shelters, which signs:

(1) identify the donor, sponsor, or contributor of the shelters;

(2) contain public service messages;

(3) contain no other content;

(4) are located on school bus shelters which are authorized or approved by city, county, or state law, regulation or ordinance and at places approved by the city, county, or state agency controlling the highway involved; and

(5) may not exceed thirty-two (32) square feet in area, and not more than one sign on each shelter shall face in any one direction.

DD. "Ranch/farm notices", "service club notices" and "religious notices" mean signs and notices which do not exceed eight (8) square feet, are erected and authorized by law, and relate to the name of ranch/farm, service club, charitable organization or religious services and directions to it.

EE. "Roadway" means an open, generally public way for the passage of vehicles, people and animals.

FF. "Safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right of way of the interstate system, NHS or primary system.

GG. "Sign" means any outdoor advertising device as defined in 18.21.5.7 NMAC.

HH. "State law" means a state constitutional provision or statute, or an ordinance or rule enacted or adopted by a state agency or political subdivision of a state pursuant to the state constitution or to a state statute.

II. "Unzoned land" means an area which has not been zoned by a properly constituted zoning authority according to legally prescribed procedure.

JJ. "Unzoned commercial or industrial area" means unzoned lands upon which there is located a bona fide commercial or industrial activity and the area along the highway extending outward one thousand (1,000) feet from and beyond the edge of such commercial or industrial activity and extending perpendicular from the centerline of highway to a depth of six hundred sixty (660) feet from the nearest edge of the right-of-way line on the same side of the highway as the commercial or industrial activity.

KK. "Urban area" means an area including and adjacent to a municipality or other urban place having a population of five thousand (5000) or more, as determined by the latest available federal census, within boundaries to be fixed by the commission, subject to any necessary approval by any federal agency, department or personnel.

LL. "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity, except that within urban areas, "visible" means within six hundred sixty (660) feet of the nearest edge of the right-of-way line.

MM. "Zoned commercial or industrial area" means an area which is reserved for business, commerce, trade, manufacturing, or industry, pursuant to a validly promulgated state law or regulation or local ordinance whose validity for outdoor advertising purposes is determined by the department pursuant to the provisions of 18.21.5.28 NMAC.
[18.21.5.7 NMAC - Rp, 18 NMAC 21.5.7, 02/14/14]

18.21.5.8 SIGNS ALLOWED: Only the following outdoor advertising devices may be erected or maintained:

A. directional signs and other official signs and notices;

B. signs on a piece of property giving notice that the specific land or improvements alone are offered for sale or lease;

C. on-premise signs that are in compliance with 18.21.5.12 NMAC;

D. signs located within six hundred sixty (660) feet of the nearest edge of the right-of-way, in zoned commercial or industrial areas;

E. signs located within six hundred sixty (660) feet of the nearest edge of the right-of-way in unzoned commercial or industrial areas;

F. signs located beyond six hundred sixty (660) feet of the right-of-way, located outside of urban areas, visible from the main-traveled way of the interstate system, NHS or primary system and erected with the purpose of the content being read from such main-traveled way;

G. signs lawfully in existence on October 22, 1965, determined by the commission, subject to any necessary federal approval, to be landmark signs of historic or artistic significance worthy of preservation including signs on farm structures or natural surfaces, and which requirements are set forth in 18.21.5.15 NMAC;

H. signs lawfully in existence on the effective date of the Beautification Act, whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, and which continue to exist and be maintained lawfully, but which currently do not meet all requirements of 18.21.5 NMAC or the Beautification Act due to state law passed at a later date or due to changed conditions. Illegally erected or maintained outdoor advertising devices shall not be considered non-conforming outdoor advertising devices;

I. signs whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, which continues to exist and complies with customary maintenance requirements, but which currently does not meet all requirements of 18.21.5 NMAC or the Beautification Act. Illegally erected or maintained outdoor advertising devices shall not be considered non-conforming outdoor advertising devices.

[18.21.5.8 NMAC - Rp, 18 NMAC 21.5.8, 02/14/14]

18.21.5.9 RECLASSIFICATION OF HIGHWAYS:

A. Any sign lawfully erected along a highway which is not part of the interstate system, NHS or primary system at the time of the sign's erection and which sign becomes subject to the provisions of the Beautification Act and this rule due to the reclassification of the highway as part of the NHS system, shall remain a legal non-conforming and compensable sign so long as all permits for the sign are timely obtained and all permit fees timely paid. The failure to timely obtain permits and timely pay permit fees shall render such a sign illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

B. Permits and permit fees for the class of signs described in this section are timely obtained and timely paid if obtained and paid for the next calendar year following the reclassification, notification of which shall be sent to the sign owner by the department.

[18.21.5.9 NMAC - Rp, 18 NMAC 21.5.9, 02/14/14]

18.21.5.10 SIGNS PROHIBITED: No outdoor advertising device may be erected or maintained which:

A. physically intrudes upon the right-of-way or by being of such a distracting nature so as to dangerously divert driver's attention from the roadway;

B. attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device;

C. prevents the driver of a vehicle from having a clear and unobstructed view of pre-existing official signs and approaching or merging traffic;

D. contains, includes or is illuminated by any flashing, intermittent or moving light or lights;

E. is lighted in any way unless the lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the interstate system, NHS or primary system, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle;

F. moves or has any animated or moving parts;

G. is erected or maintained upon trees or painted or drawn upon rocks or other natural features;

H. is structurally unsafe or in disrepair as determined by the department;

I. is an abandoned sign as defined in 18.21.5.7 NMAC;

J. is located in an area zoned by a local government, but which local zoning does not amount to or come within a comprehensive zoning plan, or which is created primarily to permit outdoor advertising, as determined by the department pursuant to the provisions of 18.21.5.28 NMAC;

K. is a mobile type sign as defined in 18.21.5.7 NMAC; or

L. violates any of the provisions of 18.21.5 NMAC.

[18.21.5.10 NMAC - Rp, 18 NMAC 21.5.10 & 39, 02/14/14]

18.21.5.11 SIGN CONTENTS PROHIBITED: Signs containing the following copy are prohibited:

A. the imitation or simulation of official U.S. interstate, state or county highway sign shields within advertising displays; and

B. any words that could be construed as a command, such as "stop, turn right (or left)," or any such words whether used alone or in combination on signs which duplicate or resemble official signs and notices so as to cause a motorist to be misled in any manner.

[18.21.5.11 NMAC - Rp, 18 NMAC 21.5.11, 02/14/14]

18.21.5.12 ON-PREMISE SIGNS: On-premise signs are limited to signs advertising on-premise activities only and shall adhere to the following requirements.

A. Signs must be used only to advertise the activities conducted on the property where the sign is located.

B. There must be a regularly used building, service, repair, processing, storage, or parking area used in conjunction with the on-premise activity.

C. Land, whether contiguous or not, and whether owned or not, that is not used as part of the major activity as set forth herein, but is surplus if held for future use, shall not qualify as a part of the immediate on- premise area, including railroad mainline tracks, siding, spurs and loading docks.

D. The lands that are directly used as an integral part of the principal activity of the subject advertised, even though the sign site and principal activity are separated by a roadway, shall be deemed to be contiguous.

E. On-premise parking lots, storage areas, and servicing areas are those areas regularly used in conjunction with on-premise activity and in which surfacing and lighting are continuously maintained.

F. Upon the termination or cessation for twelve (12) consecutive months of the activities, services or products advertised by an on-premise sign along the interstate system, NHS or primary system, the sign advertising that activity

shall no longer qualify as an on-premise sign and shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.
[18.21.5.12 NMAC - Rp, 18 NMAC 21.5.42, 02/14/14]

18.21.5.13 OFF-PREMISE CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS) – SPECIFICATIONS:

A. The use of changeable electronic variable message sign (CEVMS) technology, shall not, in itself, constitute the use of flashing, intermittent or moving light or lights.

B. Off-premise changeable electronic variable message signs (CEVMS) shall be allowed, regardless of the technology used, provided such signs shall:

(1) utilize only one (1) advertisement at any given time for each advertising face, and do not display, contain or utilize multiple advertisements or displays;

(2) contain a static display that shall remain for no less than eight (8) seconds in duration;

(3) achieve a transition to another static display in less than two (2) seconds and shall not contain or utilize transitional elements or any movement at all between copy changes, except tri-vision signs;

(4) not incorporate or display any illumination that changes in intensity during the static display or transition period as described above;

(5) change copy uniformly in a fluid, seamless transition not capable of being detected, except tri-vision signs;

(6) not exceed a maximum surface area of six hundred seventy-two (672) square feet per advertising face, with a maximum length of forty-eight (48) feet and a maximum height of fourteen (14) feet; length and height measurements shall include border and trim, but shall not include any ornamental base or apron support;

(7) not be placed within one thousand (1,000) feet of another off-premise changeable electronic variable message sign on the same side of the highway, regardless of face orientation, except for those tri-visions signs lawfully permitted and erected prior to the effective date of this rule;

(8) not contain or include any advertisements that employ the use of intermittent or flashing light or lights or that are illuminated by intermittent or flashing light or lights;

(9) not include animated, flashing, scrolling, or full-motion video elements, and may not incorporate or display segmented or traveling advertisements;

(10) be shielded so as to prevent light from being directed at any portion of the main-traveled way, or if not so shielded, are of such low intensity or brilliance so as not to cause glare or impair the operation of a motor vehicle or violate the New Mexico Night Sky Protection Act, Sections 74-12-1 et seq., NMSA 1978, to the extent it applies;

(11) have brightness levels capable of being measured and such brightness shall be limited to an acceptable, safe level or measurement, as follows: CEVMS shall utilize automatic dimming technology to adjust the brightness of the sign relative to ambient light so that at no time shall a sign exceed a brightness level of three tenths (0.3) foot candles above ambient light, as measured using a foot candle meter and in conformance with the following process: light measurements shall be taken with the meter aimed directly at the advertisement or sign face, or at the area of the sign emitting the brightest light if that area is not the advertisement or sign face; measurements shall be taken as follows:

Table: CEVMS Sign Brightness	
Sign Face Area	**Distance of Measurement**
681-1200 sq. ft.	350 feet
385-680 sq. ft.	250 feet
300-384 sq. ft.	200 feet
200-299 sq. ft.	150 feet
150-199 sq. ft.	136 feet
125-149 sq. ft.	118 feet
100-124 sq. ft.	107 feet
75-99 sq. ft.	96 feet
50-74 sq. ft.	83 feet
35-49 sq. ft.	67 feet
25-34 sq. ft.	56 feet
15-24 sq. ft.	47 feet
1-14 sq. ft.	36 feet

(12) not incorporate, utilize or emit any sound or noise capable of being detected or emit any smoke, scent or odors;

(13) not contain, incorporate or utilize any interactive component or medium, and not interact or interface with drivers, pedestrians or the general public;

(14) not interfere with or direct, or attempt to direct, the movement of traffic, or resemble or simulate any warning or danger signal, or any official traffic control device, and not contain wording, color, shapes or likenesses of official traffic control devices;

(15) contain a default mechanism so that in the event 50% or more of a sign has failed, the sign will immediately revert to a black screen and remain in such condition until the malfunction is corrected; in all such cases, the malfunctioning sign must be expediently repaired;

(16) utilize sufficient safeguards to prevent unauthorized access, use or hacking of changeable electronic variable message signs and related technology, including infrastructure, hardware, software and networks, by unauthorized users;

(17) be continuously monitored twenty-four (24) hours per day by the device owner or the permit holder, including monitoring of hardware, software, network and other infrastructure; and

(18) comply with all applicable provisions, restrictions and prohibitions regarding outdoor advertising devices contained in federal and state law.

C. With the exception of tri-vision signs legally permitted and erected prior to the effective date of this rule, any changeable electronic variable message sign existing prior to the effective date of this rule, 18.21.5 NMAC, shall conform with this section within sixty (60) days of the effective date of this section or such changeable electronic variable message sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.13 NMAC - N, 02/14/14]

18.21.5.14 OFF-PREMISE CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS) - ADDITIONAL REQUIREMENTS:

A. Permit required. A person desiring to erect, install, convert or maintain an off-premise changeable electronic variable message sign shall obtain a new permit from the department pursuant to this rule for that use prior to erection, installation, conversion or maintenance of the sign.

B. Location. No sign utilizing changeable electronic variable message technology may be erected, installed, converted or maintained outside the limits of any municipality, town or village, or within the boundaries or limits of any designated scenic byway, or outside the boundaries or limits of any designated scenic byway where the intent or result is that the changeable electronic variable message advertisements are oriented to, or visible or legible from, the scenic byway.

C. Modification. The permit holder and the owner of the sign are responsible for any changes, alterations or modifications to the advertisements or to the use of the changeable electronic variable message sign made by an unauthorized user, or by an advertiser authorized to facilitate such changes, alterations or modifications.

D. Conversion.

(1) An existing static outdoor advertising device may be converted to a changeable electronic variable message sign, provided the existing sign:

(a) has been approved by the local government;

(b) is a legal, conforming sign;

(c) is in good repair;

(d) has had all permit fees timely paid; and

(e) does not violate any applicable sections of this rule or of the Beautification Act.

(2) No existing static outdoor advertising device may be converted to changeable electronic variable message sign technology if the existing sign has a non-conforming or grandfathered status.

(3) The conversion of a static outdoor advertising device to a changeable electronic variable message sign must be approved by the applicable local governmental entity.

(4) The application shall include written assurance from the applicant that the sign structure will meet or exceed current engineering standards or practices and all applicable building codes.

(5) The conversion of a static outdoor advertising device to a changeable electronic variable message sign must be accomplished within one hundred twenty (120) days after the issuance of the applicable permit.

[18.21.5.14 NMAC - N, 02/14/14]

18.21.5.15 LANDMARK SIGNS:

A. An outdoor advertising device shall qualify as a landmark sign of historical or artistic significance under 23 U.S.C. Section 131 upon presentation, to the department, of satisfactory proof as determined by the department, that the sign has been lawfully in place and maintained at the same location for a period of twenty-five (25) years or more, and that the sign:

(1) has not substantially changed in size, lighting or advertising content after designation as a landmark sign;

(2) has not been significantly altered from its historic appearance, or, if it has been altered, is potentially restorable to its historic function and appearance;

(3) is structurally safe or can be made safe without significantly altering its historical appearance; and

(4) complies with all applicable requirements of this rule.

B. Any substantial change or significant alteration, as determined by the department, after designation as a landmark sign shall result in termination of the sign's landmark status.

[18.21.5.15 NMAC - Rp, 18 NMAC 21.5.12, 02/14/14]

18.21.5.16 DIRECTIONAL SIGN REQUIREMENTS:

A. Directional signs prohibited. The following signs are prohibited:

(1) signs advertising activities that are illegal under federal or state laws in effect at the location of those signs or at the location of those activities;

(2) signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging or intersection traffic;

(3) signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features;

(4) obsolete signs;

(5) signs which are structurally unsafe or in disrepair;

(6) signs which move or have any animated or moving parts; and

(7) signs located in safety rest areas, parklands or scenic areas.

B. Size requirement of directional signs. No sign shall exceed the following limits:

(1) maximum area - one hundred fifty (150) square feet;

(2) maximum height - twenty (20) feet; and

(3) maximum length - twenty (20) feet.

C. Dimensions. All dimensions include border and trim, but exclude supports.

D. Lighting of directional signs. Signs may be illuminated, subject to the following:

(1) signs, which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited;

(2) signs which are not effectively shielded so as to prevent beams or rays of light from being directed by any portion of the traveled way of an interstate system, NHS or primary system or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited; and

(3) no sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device or signal.

E. Spacing of directional signs.

(1) Each location of a directional sign must be approved by the department.

(2) No directional sign may be located within two thousand (2,000) feet of an interchange or intersection at grade along the interstate system or other freeways (measured along the interstate system or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

(3) No directional sign may be located within two thousand (2,000) feet of the safety rest area, parkland or scenic area.

(4) No two directional signs

facing the same direction of travel shall be spaced less than one (1) mile apart.

(5) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.

(6) Signs located adjacent to the interstate system shall be within seventy-five (75) air miles of the activity.

(7) Signs located adjacent to the primary system shall be within fifty (50) air miles of the activity.

F. Permitted content of directional signs. The content of directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers or exit numbers. Descriptive words or phrases, and pictorial or photograph representations of the activity or its environs are prohibited.

[18.21.5.16 NMAC - Rp, 18 NMAC 21.5.20, 02/14/14]

18.21.5.17 LANDOWNER PERMISSION: No outdoor advertising device shall be erected or maintained without documentation that the applicant or permit holder has the legal right to occupy or possess the site on which the outdoor advertising device is to be located or currently resides. Violation of this provision shall render the outdoor advertising device illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.17 NMAC - N, 02/14/14]

18.21.5.18 MAXIMUM SIZE AND AREA LIMITATIONS:

A. The maximum area of the face of any outdoor advertising device, including any embellishments, extensions or add-ons, shall be eight hundred (800) square feet, except as otherwise provided in this rule. Length and height measurements shall include border and trim, but shall not include any ornamental base or apron support.

B. Exceptions to the maximum size and area limitations are:

(1) stacked signs, which shall be limited to three hundred fifty (350) square feet per face;

(2) directional signs, which shall be limited to a maximum area of one hundred fifty (150) square feet and no more than twenty (20) feet in any dimension;

(3) public service signs, which shall be limited to thirty-two (32) square feet;

(4) ranch/farm notices, service club notices and religious notices, which shall not exceed eight (8) square feet; and

(5) CEVMS signs, which shall not exceed a maximum surface area of six hundred seventy-two (672) square feet per advertising face, with a maximum length of forty-eight (48) feet and a maximum height of fourteen (14) feet; length and height measurements shall include border and trim, but shall not include any ornamental base or apron support.

C. The areas shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the basic advertising face.

D. A sign may have two or more faces that are placed back-to-back, side-by-side, stacked, or in a “V” type construction with not more than two (2) faces presented in each direction, and each face must be separately permitted.

E. The maximum area of any single advertisement on a single face shall not exceed eight hundred (800) square feet, or, in the case of stacked signs, no more than three hundred fifty (350) square feet.

F. Two (2) sign faces presented in the same direction may be presented as one (1) face on legal conforming signs by covering both faces and the area between the faces with an advertisement, as long as the size limitations of Subsection A of this section are not exceeded.

[18.21.5.18 NMAC - Rp, 18 NMAC 21.5.13, 02/14/14]

18.21.5.19 MINIMUM SPACING REQUIREMENTS: For all signs other than directional signs and CEVMS signs.

A. Interstate systems and access-controlled freeways. No two (2) signs on the same side of the right-of-way shall be spaced less than five hundred (500) feet apart inside and outside villages and cities.

B. NHS or primary systems. Outside of incorporated villages and cities, no two (2) signs on the same side of the right-of-way shall be spaced less than three hundred (300) feet apart. Inside incorporated villages and cities, no two (2) signs on the same side of the right-of-way shall be spaced less than one hundred (100) feet apart.

C. Interstate systems, NHS and primary systems. Any sign adjacent to an interstate, NHS or primary system which is located within the control area of the interstate system must meet the minimum spacing requirements of the interstate system specified in Subsection A of this section.

D. Exceptions.

(1) On-premise, directional signs and official signs and notices or illegal signs within the right-of-way shall not be counted nor shall measurements be made from them for purposes of determining compliance with the five hundred (500), three hundred (300) or one hundred (100) foot spacing requirements.

(2) CEVMS signs shall comply with minimum spacing requirements contained in 18.21.5.13 NMAC.

E. Intersections, interchanges and safety rest areas. Outside of incorporated villages and cities, no sign shall be placed within five hundred (500) feet of an interchange, or an intersection at grade, or a roadside safety rest area on any portion of an interstate system or primary system which is an access-controlled highway. The five hundred (500) feet shall be measured from the beginning or ending of the pavement widening at the exit from the entrance to the main-traveled way. The minimum spacing requirement provisions do not apply to signs separated by buildings or other obstructions in such a manner that only one (1) sign located within the minimum spacing requirement distance of this subsection is visible from the highway system at a time.

[18.21.5.19 NMAC - Rp, 18 NMAC 21.5.15 & 16, 02/14/14]

18.21.5.20 UNZONED COMMERCIAL OR INDUSTRIAL AREAS:

A. Measurements. An unzoned commercial or industrial area shall be measured from the outer edge of the regularly used buildings, parking lots, storage or processing areas of the activities, and not from the property line of the activity, unless the property line and outer edge of the building, parking lots, storage or processing areas of the activities coincide. Such measurements shall be along or parallel to the edge of the right-of-way on the same side of the highway as the sign site.

B. Temporary unzoned commercial or industrial areas. Buildings or open sales areas actively used for commercial or industrial activities for six (6) or more consecutive months shall qualify an area as an unzoned commercial or industrial area, provided a twelve (12) month business license for that activity is obtained from the local governing authority.

C. Simulated commercial activity. Buildings or activities constructed or initiated to simulate legitimate commercial or industrial activity but not constituting commercial or industrial activity, shall not be used as a basis for determining unzoned commercial or industrial areas.

D. Farming-agriculture and related activities. The following shall

not constitute an unzoned commercial or industrial area:

(1) use of feeder pens and dairy activities; and

(2) roping arenas, rodeo grounds, or fair grounds, unless the activities are open to the public and are conducted continuously for six (6) consecutive months or more during each calendar year.

E. Municipal land ownership. Municipal property located in an area governed by these rules that is not zoned, whether within or outside city, town or village limits, must conform to these rules in every respect concerning the unzoned commercial or industrial area. This requirement also applies to signs intended to advertise the local community or local community services.

[18.21.5.20 NMAC - Rp, 18 NMAC 21.5.17, 18, 19, 40 & 41, 02/14/14]

18.21.5.21 LIGHTING RESTRICTIONS: Signs shall not be placed with illumination that interferes with the effectiveness of any official traffic sign or device. Signs shall not contain, include or be illuminated by flashing, intermittent or moving light or lights (except that part necessary to give public service information such as time, date, temperature, weather or similar information). The term flashing lights is not limited to actual lighting, and includes stationary and moving reflective disks and rotating slats that reflect light in a flashing or moving manner, and that create the effect of flashing or moving light. No sign shall cause beams or rays of light of such intensity or brilliance to be mistaken for a warning or danger signal as to cause glare or impair the vision of any driver's operation of a motor vehicle.

[18.21.5.21 NMAC - Rp, 18 NMAC 21.5.21, 02/14/14]

18.21.5.22 APPLICATION FOR SIGN PERMIT:

A. Permit required. No outdoor advertising device or face allowed under Subsections A, D, E, F and G of 18.21.5.8 NMAC may be erected or maintained unless the owner of the outdoor advertising device or face first obtains a permit for the device or face from the department. Exceptions to this requirement are:

(1) signs on a piece of property giving notice that said specific land or improvements alone are offered for sale; generalized real estate signs are not excepted; and

(2) on-premise signs that are in compliance with 18.21.5.12 NMAC.

B. Change in size, location or materials. Any change, reconfiguration, conversion to CEVMS, addition of lighting, or change in location or upgrade in size or materials of the outdoor advertising device shall require a new application. The outdoor advertising device shall match the permit description.

C. New highway construction. A permit will not be issued for a sign to be located along a new interstate system, NHS or primary system, until the system is accepted by the department and is open to traffic in accordance with federal and state law.

D. Application form. To obtain a permit for an outdoor advertising device a person shall first file an application with the department. A person may obtain an application by contacting the department at 505-827-5460 or accessing the department's website at www.dot.state.nm.us.

E. Contents of application and fee. An application for an outdoor advertising device permit shall contain:

(1) the applicant's name, mailing address, telephone number, fax number and e-mail address;

(2) a description and location of the outdoor advertising device;

(3) documentation that the applicant has the legal right to possess and occupy the site upon which the outdoor advertising device will be located or currently resides; and

(4) a non-refundable application fee of seven hundred fifty dollars ($750) for changeable electronic variable message signs, or four hundred dollars ($400) for all other outdoor advertising devices, except that directional sign applications need not be accompanied by a fee.

F. Completeness. When the department receives an application for an outdoor advertising device permit, the department shall check the application for completeness.

(1) If the application is not complete, the department shall contact the applicant for additional information. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the application shall be deemed denied.

(2) If the application is complete, the department shall review the application.

[18.21.5.22 NMAC - Rp, 18 NMAC 21.5.22, 23 & 29, 02/14/14]

18.21.5.23 ISSUANCE OF SIGN PERMIT:

A. Site review. In reviewing an application for an outdoor advertising device permit, the department shall conduct a site review and inspection to ensure that the description, location and other information contained in the application are in compliance with this rule.

B. Permit. If the site review and inspection results are satisfactory to the department, and all other applicable requirements, standards and specifications have been met, the department shall issue a permit and send an approval letter to the applicant. The department shall otherwise issue a denial letter stating the reasons for denial of the permit.

C. Term. The department shall issue a sign permit on a calendar year basis, January 1 through December 31; sign permits shall be valid from the date of their issuance until the following December 31.

D. Transfer permitted. A holder of a sign permit may transfer the permit to a new holder, upon filing with the department a transfer form signed by the current and future permit holders within ninety (90) days of the transfer of legal interest in the outdoor advertising device that is subject to the permit. The transfer form shall include any change of address and contact information, and a photocopy of any lease or sale agreement pursuant to such transfer. Any change in size, location, or materials of the outdoor advertising device shall require a new application.

[18.21.5.23 NMAC - N, 02/14/14]

18.21.5.24 RENEWAL OF SIGN PERMIT: Every permit shall be renewed annually and accompanied by a renewal fee in the amount of twenty-five dollars ($25.00) for the calendar year. Effective January 1, 2015, the annual renewal fee for every permit shall be forty dollars ($40.00). The department shall issue renewal invoices, which shall be paid within thirty (30) days of receipt. The failure to timely renew a permit shall render the permit invalid and subject to revocation. In that event, the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.24 NMAC - Rp, 18 NMAC 21.5.25, 02/14/14]

18.21.5.25 SIGN PERMIT TAGS:

A. Upon the approval of an application for a permit, the department shall issue a sign permit tag for the specific sign at a given location.

B. A sign permit tag shall be valid from the date of its issuance until the following December 31 unless otherwise notified by the department. Upon annual renewal of the permit pursuant to the provisions of 18.21.5.24 NMAC, the validity of the sign permit tag shall continue for that calendar year.

C. Permit tags are

transferable with the ownership of signs, but shall not be relocated from one (1) site to another. A permit tag shall be issued to a specific sign at a specific location and shall not be transferred from one (1) location to another. Any change in size, location, or materials of the outdoor advertising device shall require a new permit tag.

D. Permit tags shall be displayed, legible and visible at all times. If a permit tag is lost or stolen, the sign owner shall contact the department for a replacement. There shall be a twenty-five ($25) charge for each replacement.

E. Within thirty (30) days of issuance of the sign permit tag (one hundred twenty (120) days should the sign not be constructed at the date of such issuance), the sign permit tag shall be affixed to the sign on its face in the lower corner nearest the highway right-of-way line, or to the surface of the upright leg or pole of the sign nearest the right-of-way line.

[18.21.5.25 NMAC - Rp, 18 NMAC 21.5.24 & 27, 02/14/14]

18.21.5.26 SIGN OWNER NAME PLATES: All signs must have affixed the sign owner's name on a separate name panel of durable material fastened to the sign. A commercial sign company shall limit the name plate to its trade name only, provided that the trade name is as indicated on all the company's outdoor advertising permit applications.

[18.21.5.26 NMAC - Rp, 18 NMAC 21.5.30, 02/14/14]

18.21.5.27 SIGN CONSTRUCTION TIME LIMITS: When a sign which is the subject of the issuance of a permit and tag is not erected at the date of such issuance, such sign must be erected within one hundred twenty (120) days after such issuance, with the tag properly affixed, or the permit and tag shall be void. Upon written request to the department, a one-time sixty (60) day extension to erect a previously permitted sign may be granted.

[18.21.5.27 NMAC - Rp, 18 NMAC 21.5.26, 02/14/14]

18.21.5.28 LOCAL ZONING AUTHORITIES: Local political subdivisions shall have authority under their own zoning laws to create zoned commercial or industrial areas, and the valid action of such local political subdivision in this regard will be accepted for the purposes of these rules. The department will not issue permits for the erection of new signs in areas where county and municipal zoning ordinances are in effect and which require a permit to be issued for such signs by the county or municipal authority, unless the applicant has received a local permit for the sign from the governmental authority promulgating such ordinances, and a photocopy of the approved local permit application or a letter granting approval is attached to the department's sign permit application. If the department determines that the local zoning does not amount to or come within a comprehensive zoning plan, or that it is created primarily to permit outdoor advertising devices, a permit for the erection of the outdoor advertising device shall be denied. In determining whether a zoning action is created primarily to permit outdoor advertising devices, the department may consider various factors, such as, but not limited to, the expressed reasons for the zoning change; the zoning for the surrounding area; the actual land uses nearby; the existence of plans for commercial or industrial development; the availability of utilities (such as water, electricity and sewage) in the newly zoned area; and the existence of access roads or dedicated access to the newly zoned area.

[18.21.5.28 NMAC - Rp, 18 NMAC 21.5.28, 02/14/14]

18.21.5.29 CUSTOMARY MAINTENANCE OF SIGNS:

A. Customary maintenance shall be performed on all permitted signs. For the purpose of this section, a sign owner shall be allotted six (6) months to restore and replace copy, at which time the department may give a thirty (30) day notice to the owner to revitalize the sign or remove it as an abandoned sign. If the owner fails to revitalize the sign or remove it as an abandoned sign within thirty (30) days, the permit shall be revoked and the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

B. No sign owner shall erect, maintain, dismantle or remove any outdoor advertising device from or in the right-of-way of any interstate system, NHS or primary system. Any sign owner violating this subsection shall have the sign permit revoked whether or not the sign is conforming and such action shall render the sign illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.29 NMAC - Rp, 18 NMAC 21.5.35, 02/14/14]

18.21.5.30 CUSTOMARY MAINTENANCE OF NON-CONFORMING SIGNS:

A. Customary maintenance of non-conforming signs may only include the following:

(1) changing existing non-structural external light fixtures for energy efficiency;

(2) replacing structural components with the same materials consistent with this rule, including replacement of poles, but only if not more than 1/2 of the total number of poles of the sign are replaced in any twelve (12) month period and the same material is used for the replacement poles;

(3) nailing, cleaning and painting, and replacement of nuts and bolts;

(4) changes in the advertisement; and

(5) plumbing or leveling the structure.

B. Customary maintenance of non-conforming signs shall not include the following:

(1) any increase in the size of the sign from the date of its non-conformance, or increasing the size or dimension of the sign face, or adding a face;

(2) any structural change resulting in an increase in the sign's value; any such increase in value shall be deemed non-compensable should the sign be acquired by the department through the condemnation process;

(3) adding CEVMS or other changeable message capability, except that gas price, lottery and other add-ons utilizing changeable message technology may be allowed where the use of that technology would not result in a change to the physical structure of the outdoor advertising device, such as the addition of electrical or other power, including solar power, guy wires and bracing where the structure did not have such features at the time of its non-conformance, and where the gas price, lottery and other add-ons are included within the structure's copy;

(4) adding lighting, attached or unattached, to a sign that previously did not have lights;

(5) adding bracing, guy wires or other reinforcing devices;

(6) changing the vertical support materials, such as replacing wooden supports with metal, or replacing I-beams with a monopole;

(7) changing the configuration of the sign structure, such as changing a "V" sign to a stacked or back-to-back sign, or a single-face sign to a double face or back-to-back sign;

(8) merging or consolidating multiple faces into a single face, whether on the same or separate outdoor advertising devices; and

(9) except at the request of a governmental authority, removing and erecting the structure, or changing the physical location of the sign or the direction of the sign face.

C. A non-conforming sign destroyed by natural causes, such as, but not limited to, wear and tear, deterioration and weather, may not be reconstructed and its permit shall be revoked. Reconstruction shall render the sign a new structure and result in revocation of its permit and the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

D. Non-conforming signs which have been destroyed due to vandalism and other criminal or tortious acts may be re-erected in kind.

E. For purposes of this section, "destroyed" means completely down, or where more than 50% of the upright supports of a sign structure are physically damaged such that normal repair practices of the industry would, in the case of wooden sign structures, require replacement of the broken supports, and, in the case of metal sign structures, require replacement of at least 25% of the length above ground of each broken, bent or twisted support.

[18.21.5.30 NMAC - Rp, 18 NMAC 21.5.36, 02/14/14]

18.21.5.31 RIGHT-OF-WAY:

A. It is unlawful for any sign owner or his agents to damage the landscape of any right-of-way. These damages are more specifically described as follows:

(1) cutting trees or vegetation on the right-of-way for the purpose of facilitating the readability of an outdoor advertising device;

(2) damage to any landscaping, such as grass, shrubs, rocks, gravel or cement; or

(3) damage to any improvements in the right-of-way such as fences, ditches and structures.

B. Access gates shall not be installed in any right-of-way or access control fencing, nor shall right-of-way or access control fencing be cut, altered or damaged in any way.

C. The sign owner shall reimburse the state for the costs of replacing any damaged improvements or features or for returning all features to their original condition, and the sign owner's permits shall be revoked for any signs involved in such acts and the involved signs shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

D. Any outdoor advertising device which has been erected in such a manner that all or part of the device encroaches into or upon the right-of-way of any interstate system, NHS or primary system, as defined by the Beautification Act, shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

E. Stopping or parking on the right-of-way of any access-controlled highway, or violation of the access control line to service any outdoor advertising device, is unlawful and may constitute grounds for revocation of the permit as to such outdoor advertising device. In the event of such revocation the outdoor advertising device which is the subject of the revoked permit shall be deemed illegal and non-compensable and subject to removal at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

F. If vegetation on the right-of-way must be cut or otherwise maintained for the purpose of facilitating the readability of an outdoor advertising device, the owner of the outdoor advertising device, or the permit holder or landowner shall contact the department's office of the district engineer for the district where the device is located and request cutting or other maintenance of the vegetation.

[18.21.5.31 NMAC - Rp, 18 NMAC 21.5.32, 37, 38 & 43, 02/14/14]

18.21.5.32 LOCATION VIOLATIONS: Any outdoor advertising device which has been erected and maintained under permit, but is at variance from the location set forth in the permit application, and which location variation has not resulted from department's actions, may have its permit revoked and the sign deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC. Where a location variation results from department's actions, the department's permit file may be amended to reflect the actual location of the outdoor advertising device.

[18.21.5.32 NMAC - Rp, 18 NMAC 21.5.32, 02/14/14]

18.21.5.33 REMOVAL OF SIGNS:

A. Compensable signs. Any outdoor advertising device that meets the requirements of Subsection A of Section 67-12-6 NMSA 1978 may be acquired by the commission by agreement or condemnation in the manner provided by law, with just compensation paid pursuant to Subsection B of Section 67-12-6 NMSA 1978.

B. Non-compensable signs. Any outdoor advertising device, which has been erected or maintained:

(1) in violation of the permit and permit fee requirements of the Beautification Act or this rule; or

(2) in accordance with all permit and permit fee requirements of the Beautification Act and this rule, but which violates the standards, specifications and requirements of the Beautification Act and this rule; shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of this section.

C. Notice. Any such removal under Subsection B of this section shall be preceded by notice via certified mail, to the owner of the outdoor advertising device and to the owner of the land upon which the device is located, if known, of the failure to conform and that if the device is not brought into conformity within thirty (30) days, the device must be removed within thirty (30) days or will be subject to removal by the department at the owner's expense. If the defects are not corrected and the outdoor advertising device is not removed within thirty (30) days after the date of notice, the department shall revoke the permit and the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of this section.

D. State immunity. Agents or employees of the department who remove illegal outdoor advertising devices in compliance with the Beautification Act and these rules shall be immune from criminal prosecution or civil liability for the injury, loss or destruction of any property which occurs in connection with the removal.

E. Interference. Landowners who interfere with the removal of signs from their property, preventing either the sign owner or the department from removing same, may be liable for the additional costs of removal associated with the landowner's interference.

[18.21.5.33 NMAC - Rp, 18 NMAC 21.5.31, 32, 33 & 34, 02/14/14]

18.21.5.34 PENALTIES FOR REPEATED VIOLATIONS:

A. In addition to the specific penalties set forth in this rule, the department may suspend permitting privileges if repeated violations by a permit holder, sign owner or landowner establish a pattern or practice of disregard for these rules, as determined by the department. A notification of such intent to suspend permitting privileges will be sent to the permit holder, sign owner or landowner stating the grounds upon which the proposed suspension is based.

B. Upon receipt of a notice of intent to suspend, the permit holder, sign

owner or landowner shall have a right to a hearing before the department on whether the suspension should be imposed. To request a hearing, the permit holder, sign owner or landowner shall submit a written request within fourteen (14) days from the date of receipt of the notice.

C. The department shall assign a hearing officer within fifteen (15) days of receipt of the hearing request, and the hearing officer shall schedule a hearing within thirty (30) days of being assigned as hearing officer, and shall notify the requesting party of the time, date and place of the hearing.

D. The requesting party may present information orally and in writing at the hearing. The requesting party may at their own expense be represented by legal counsel.

E. After considering all written and oral views presented at the hearing, the hearing officer shall within thirty (30) days after the date of the hearing make a written explanation and determination and submit it to the department's chief engineer for consideration and final decision. Within thirty (30) days from the hearing officer's determination, the department's chief engineer shall make a final decision and the department shall furnish the requesting party with the final decision in writing.

F. A party aggrieved by the chief engineer's decision shall have the right to seek judicial review through the appropriate court system.
[18.21.5.34 NMAC - Rp, 18 NMAC 21.5.44, 02/14/14]

History of Repealed Material: 18 NMAC 21.5, Outdoor Advertising Requirements, filed 9/16/98 - Repealed effective 02/14/14.

End of Adopted Rules Section

Submittal Deadlines and Publication Dates
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