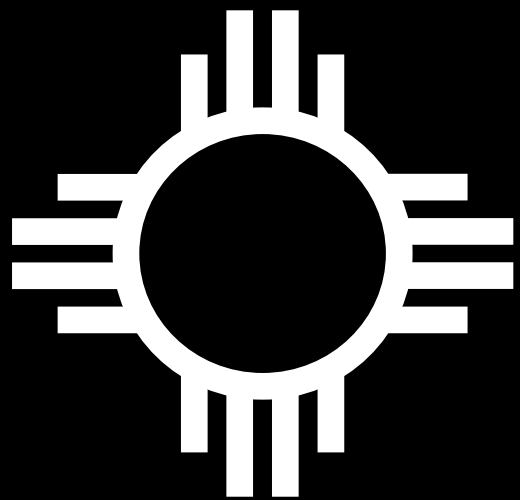


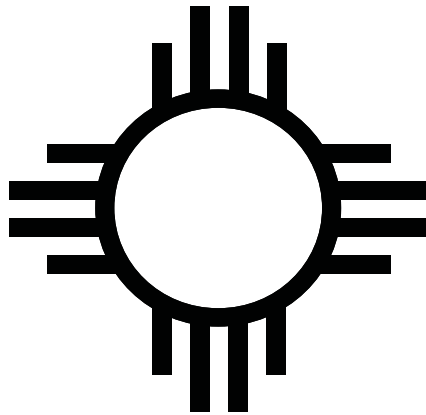
**NEW
MEXICO
REGISTER**



Volume XXV
Issue Number 4
February 28, 2014

New Mexico Register

**Volume XXV, Issue Number 4
February 28, 2014**



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2014

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New Mexico Register

Volume XXV, Number 4

February 28, 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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Auditor, Office of the State		
2.2.2 NMAC	R	Requirements for Contracting and Conducting Audits of Agencies
2.2.2 NMAC	N	Requirements for Contracting and Conducting Audits of Agencies
Children, Youth and Families Department		
8.26.6 NMAC	N	Community Home Licensing Standards
Human Services Department		
Medical Assistance Division		
8.315.4 NMAC	R	Personal Care Option Services.....
Mining Commission		
19.10.3 NMAC	A	Minimal Impact Operations
Osteopathic Medical Examiners, Board of		
16.17.5 NMAC	N	Prescribing and Distribution of Controlled Substances.....
16.17.8 NMAC	N	Licensure for Military Service Members, Spouses and Veterans
Pharmacy, Board of		
16.19.26 NMAC	A	Pharmacist Prescriptive Authority
Podiatry, Board of		
16.21.6 NMAC	N	Licensure for Military Service Members, Spouses and Veterans

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Notices of Rulemaking and Proposed Rules

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, March 20, 2014**, beginning at 8:00 a.m., in the **New Mexico Farm & Ranch Heritage Museum, Ventana Room 2**, located at **4100 Dripping Springs Road, Las Cruces, NM 88011**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Election of Chair and Vice Chair of State Game Commission, Revocations, Initiation of Migratory Game Bird Rule Development 19.31.6 NMAC for the 2014-2015 Seasons, Initiation of Turkey Rule Development 19.31.16 NMAC for the 2015-2019 Seasons, Initiation of Pronghorn Antelope Rule Development 19.31.15 NMAC for the 2015-2019 Seasons, Initiation of Bighorn Sheep Rule Development 19.31.17 NMAC for the 2015-2019 Seasons, Nuisance Bear Management & Diversionary Bear Feeding Policy, Renaming the Mora Campground, Vendor Fee Requirements and Restrictions, Department Equipment Disposal Request, Presentation of Fiscal Year 2013 Statement and Audit Report, and Availability of Director's Draft of the Biennial Review. Additionally they will hear and consider action as appropriate on proposed and final amendments to the following rules: Amendments to the Game and Fish Open Meetings Rule 19.30.3 NMAC, Javelina Rule Development 19.31.21 NMAC for the 2015-2019 Seasons, and Barbary Sheep Oryx and Persian Ibex Rule Development 19.31.12 NMAC for the 2015-2019 Seasons. They will hear general public comments (comments are limited to three minutes). A closed executive session is planned to discuss matters related to litigation.

Obtain a copy of the agenda from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

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

meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend the following rules that are part of the New Mexico Administrative Code (NMAC): 8.308.14 NMAC, *Managed Care Program, Cost Sharing*. The amendment is proposing to update the language to reflect that the family co-payment cap will be calculated quarterly rather than monthly. The register for the amendment of this rule and the proposed amendment 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 Tuesday, April 1, 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 Tuesday, April 1, 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 amend the following rules that are part of the New Mexico Administrative Code (NMAC): 8.314.5 NMAC, *Long Term Care Services - Waivers, Developmental Disabilities Home and Community-Based Services Waiver*. MAD is proposing changes to Section 13, *Recipient Standardized Assessment*; Section 14, *Covered Waiver Services*, and Section 19, *Right To A Hearing*. Other changes in the rule are to update language, incorporate standardized rule language and provide additional clarification for providers and recipients in sections of the rules. The register for the amendment of this rule and the proposed amendment 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 Rio Grande Conference Room, Toney Anaya Building, 2055 Cerrillos Road, Santa Fe on Monday, March 31, 2014 at 9 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 31, 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

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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 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 31, 2014, from 10:00 a.m. to noon. The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
6.30.5 NMAC	OPTIONAL FULL-DAY KINDERGARTEN PROGRAM	Amend rule
6.30.9 NMAC	PRE-KINDERGARTEN PROGRAM	Amend rule
6.30.12 NMAC	K-3 PLUS PROGRAM	Adopt new rule

Interested individuals may provide comments at the public hearing and/or submit written comments to Melinda Webster, Director, Literacy and Early Childhood Bureau, via email at rule.feedback@state.nm.us, fax (505) 827-6597 or directed to Ms. Webster, Literacy and Early Childhood Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, 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 under the “Public Notices” link (<http://ped.state.nm.us/ped/PublicNotices.html>), or obtained from Ms. Webster by calling (505) 827-6567.

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 Ms. Webster as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, March 18, 2014, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by March 4, 2014. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 72 hours before the meeting.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendment

- 1.18.420 NMAC ERRDS, Regulation and Licensing Department
- 1.18.665 NMAC ERRDS, Department of Health
- 1.18.630 NMAC ERRDS, Human Services Department

Repeal

- 1.18.760 NMAC ERRDS, Adult Parole Board

Replacement

- 1.18.760 NMAC ERRDS, Adult Parole Board

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
AND MANUFACTURED HOUSING
DIVISIONS**

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
AND MANUFACTURED HOUSING
DIVISIONS
of the
Regulation and Licensing Department**

NOTICE OF PUBLIC HEARINGS

Public hearings on the proposed changes to the following CID Rule: Subsection B of 14.7.3.11 NMAC - Chapter 3- Building Planning; Subsection B of 14.7.6.12 NMAC - Chapter 4 - Residential Energy Efficiency; 14.5.8 NMAC - Investigations and Enforcement; 14.5.9 NMAC - Code Bond Determinations; Subsection C of 14.6.3.8 NMAC - License and Qualifying Party Requirements will be held as follows:

March 14, 2014, 9:00 a.m. - 12:00 p.m.:
SANTA FE, NM - CID Conference Room, 2550 Cerrillos Road, Santa Fe, NM.

March 14, 2014, 9:00 a.m. - 12:00 p.m.:
LAS CRUCES, NM - CID Conference Room, 505 South Main Street, Suite 118, Las Cruces, NM.

March 14, 2014, 9:00 a.m. - 12:00 p.m.:
ALBUQUERQUE, NM - CID Conference Room, 5200 Oakland Avenue NE, Albuquerque, NM.

Copies of the proposed rules are currently available on the Construction Industries and Manufactured Housing Division’s website: www.rld.state.nm.us/construction and at the CID/MHD office in Santa Fe. You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction

Industries and Manufactured Housing Division, 2550 Cerrillos Road, Santa Fe, New Mexico 87505, Attention: Public Comments. FAX (505) 476-4619. **All comments must be received no later than 5:00 p.m., on March 13, 2014. If you require special accommodations to attend the hearing,** please notify the Division by phone, email, or fax, of such needs no later than **March 10, 2014**. Telephone: 505-476-4700 (option "0"). Email: martin.romero@state.nm.us Fax No. 505-476-4619.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO OFFICE OF THE STATE AUDITOR

The Office of the State Auditor is repealing 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies* effective February 28, 2014. It will be replaced with 2.2.2 NMAC, *Requirements for Contracting and Conducting Audit of Agencies*, which will become effective February 28, 2014.

NEW MEXICO OFFICE OF THE STATE AUDITOR

TITLE 2 PUBLIC FINANCE
CHAPTER 2 AUDITS OF
GOVERNMENTAL ENTITIES
PART 2 REQUIREMENTS
FOR CONTRACTING AND
CONDUCTING AUDITS OF
AGENCIES

2.2.2.1 ISSUING AGENCY:

Office of the State Auditor.

[2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 2-28-14]

2.2.2.2 SCOPE: Agencies as defined by the Audit Act and independent public accountants (IPAs) interested in contracting to perform audit services for those agencies.

[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 2-28-14]

2.2.2.3 STATUTORY

AUTHORITY: The Audit Act, Section 12-6-12 NMSA 1978, requires the state auditor to promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with auditing standards generally accepted in the United States of America. The regulations become effective upon filing in accordance with the State Rules Act, Chapter 14, Article 4 NMSA 1978. The Audit Act, Chapter 12, Article 6 NMSA 1978, requires the state auditor to conduct financial and compliance audits of every agency in accordance with governmental auditing, accounting and financial reporting standards, and local, state and federal laws, rules, and regulations. The Audit Act further establishes a tiered system of financial reporting for local public bodies in which the amount of a local public body's annual revenue determines whether the local public body is subject to an agreed upon procedures engagement. The Audit Act also gives the state auditor the authority to cause the financial affairs and transactions of an agency to be audited in whole or in part, in addition to the annual audit.

[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 2-28-14]

2.2.2.4 DURATION:

Permanent

[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 2-28-14]

2.2.2.5 EFFECTIVE DATE:

February 28, 2014, unless a later date is cited at the end of a section.

[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 2-28-14]

2.2.2.6 OBJECTIVE:

The objective is to establish policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, and attestation engagements of governmental agencies of the state of New Mexico and to establish procedures for the notification process regarding late reports.

[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 2-28-14]

2.2.2.7 DEFINITIONS:

A. "Agency" means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation, or other special districts; and school districts; any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority and every office or officer of any entity listed in Paragraphs (1) through (3) of Subsection A of Section 12-6-2 NMSA 1978.

B. "Auditor" means state auditor or independent public accountant.

C. "AICPA" means American institute of certified public accountants.

D. "AUP" means agreed upon procedures.

E. "CPA" means certified public accountant.

F. "CPE" means continuing professional education.

G. "DFA" means the New Mexico department of finance and administration.

H. "ERB" means the New Mexico education retirement board.

I. "FCD" means financial control division of the department of finance and administration.

K. "FDIC" means federal deposit insurance corporation.

L. "FDS" means financial data schedule.

M. "GAAP" means accounting principles generally accepted in the United States of America.

N. "GAGAS" means generally accepted government auditing standards.

O. "GASB" means governmental accounting standards board.

P. "GAAS" means auditing standards generally accepted in the United States of America.

Q. "GSD" means the New Mexico general services department.

R. "HED" means the New Mexico higher education department.

S. "HUD" means U.S. department of housing and urban development.

T. "IPA" means independent public accountant.

U. "IRC" means internal revenue code.

V. "LGD" means local government division of the New Mexico department of finance and administration.

W. "Local public body" means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district.

X. "NCUSIF" means national credit union shares insurance fund.

Y. "NMAC" means New Mexico administrative code.

Z. "NMSA" means New Mexico statutes annotated.

AA. "Office" or "OSA" means the New Mexico office of the state auditor.

BB. "OMB" means the United States office of management and budget.

CC. "PED" means the New Mexico public education department.

DD. "PERA" means the New Mexico public employee retirement association.

EE. "PHA" means public housing authority.

FF. "REAC" means real estate assessment center.

GG. "REC" means regional education cooperative.

HH. "RSI" means required supplemental information.

II. "SAS" means the AICPA's statement on auditing standards.

JJ. "SHARE" means statewide human resources accounting and management reporting system.

KK. "State auditor" may refer to either the elected state auditor of the state of New Mexico, personnel of his office designated by him, or independent auditors designated by him.

LL. "STO" means state treasurer's office.

MM. "Tier" is established based on the amount of each local public body's annual revenue, pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.16 NMAC.

NN. "UFRS" means uniform financial reporting standards.

OO. "U.S. GAO" means the United States government accountability office.
[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 2-28-14]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. Section 12-6-3 NMSA 1978 (Annual and Special Audits) mandates that: (1) the financial affairs of every agency be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him, or by independent auditors approved by him; (2) the comprehensive annual financial report for the state be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him; and (3) the audits be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. Subsection B of Section 12-6-3 NMSA 1978 establishes a tiered system of financial reporting for local public bodies in which the amount of a local public body's annual revenue determines whether the local public body is subject to an agreed upon procedures engagement. See 2.2.2.16 NMAC for information applicable to local public bodies. Section 12-6-14 NMSA 1978 (Contract Audits) states that "the state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however that a state-chartered charter school subject to oversight by the PED or an agency subject to oversight by the HED shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within 60 days of notification by the state auditor to contract for the year being audited, and the agency being audited shall

pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section." Section 61-28B-13(B) of the 1999 Public Accountancy Act states that a firm with an office in New Mexico must hold a permit issued pursuant to this section of the 1999 Public Accountancy Act (61-28B-1 NMSA 1978) in order to provide attest services including audits of financial statements. A permit is also required for a firm that does not have an office in New Mexico but performs attest services for a client whose principal place of business is in New Mexico. Pursuant to Subsection A of 16.60.3.14 NMAC, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from another state shall be presumed to have qualifications substantially equivalent to New Mexico's requirements if the person meets the requirements of Section 26, Subsection A of the Act. Except as otherwise provided in 2.2.2.16 NMAC, IPAs shall submit a firm profile to the state auditor. Firms are required to notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts only with IPAs who have submitted a complete and correct firm profile that has been approved by the office and who have complied with all the requirements of this rule including but not limited to:

(1) 2.2.2.14 NMAC, continuing education and quality control requirements;

(2) listed professional service contracts the firm entered into pursuant to Subsection M of 2.2.2.8 NMAC, independence requirements;

(3) for IPAs who have previously audited agencies under this rule, they must have previously complied with:

(a) 2.2.2.9 NMAC, report due dates;

(b) 2.2.2.13 NMAC, review of audit reports and working papers; and

(c) Paragraph (5) of Subsection A of 2.2.2.9 NMAC, notifying the state auditor regarding why audit reports will be late.

B. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts and agreed upon procedures engagements with agencies. The state auditor's list of approved audit firms shall be reviewed and updated on an annual basis. The office shall annually send written notification to IPA firms to submit their firm profiles for consideration

to be included on the state auditor's list of approved firms. The state auditor shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency's annual financial audit. For an IPA to be included on the state auditor's list of approved firms:

(1) an IPA shall submit its annual firm profile in accordance with the guidelines set forth herein;

(2) the office shall review each firm profile for compliance with the requirements set forth in Subsection A of 2.2.2.8 NMAC; and

(3) the state auditor may approve contracts only with IPA firms that have submitted a complete and correct firm profile complying with all the requirements set forth in this rule and that has been approved by the office;

(4) the office shall inform all IPAs whose firm profiles were submitted by the deadline whether they are on the list of approved firms; and

(5) concurrent with publication of the list of approved firms, the office shall inform government agencies and local public bodies that they are to select an IPA to perform their audit or agreed upon procedures engagement. The notification shall inform the agency or local public body that it should consult its prospective IPA to determine whether the prospective IPA has been restricted by the office as to the type of engagement or number of contracts it is eligible to perform.

C. Conditional approval: An IPA firm may be added to the list of approved firms even though the firm has one or more of the deficiencies of its firm profile listed below, except that the office shall not approve any contracts for the deficient IPA until the office receives documentation demonstrating all deficiencies have been cured:

(1) the firm profile does not include at least one CPA with a current CPA certificate;

(2) the firm does not have at least one CPA that meets the 80 hour GAGAS CPE requirement of Subsection A of 2.2.2.14 NMAC;

(3) the firm profile does not include a copy of the IPA's current proof of insurance;

(4) the IPA employs only one CPA qualified to sign a GAGAS audit report and the firm has not submitted the completed original contingency subcontractor form required by Subsection L of 2.2.2.8 NMAC;

(5) the IPA's peer review is scheduled to be completed on or before publication of the list of approved firms, but is missing from the firm profile; or

(6) the firm profile does not include either the signed attestation form

regarding CPE or the signed attestation form regarding the firm profile.

D. Disqualified firms: An IPA firm shall not be included on the list of approved firms if any of the following applies to that IPA:

- (1) the firm received a peer review rating of "failed";
- (2) the firm does not have a current New Mexico firm permit to practice;
- (3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of 2.2.2.14 NMAC, to perform GAGAS audits; or
- (4) the IPA has been restricted in the past and has not demonstrated improvement; or
- (5) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

E. Restriction:

(1) IPAs may be placed on contract restriction based on the office's review of the firm profile and deficiency considerations as described below. Contract restriction may take the form of limiting either the type of engagement or number of audit contracts, or both, that the IPA may hold. The office may impose a corrective action plan associated with the contract restriction. The deficiency considerations include, but are not necessarily limited to:

- (a) failure to submit reports in accordance with Paragraph (1) of Subsection A of 2.2.2.9 NMAC, or the terms of their individual agency contract(s) whichever applies;
- (b) failure to submit late report notification letters in accordance with Paragraph (5) of Subsection A of 2.2.2.9 NMAC;
- (c) failure to comply with Paragraphs (1) and (2) of Subsection M of 2.2.2.8 NMAC;
- (d) poor quality reports as determined by the office;
- (e) poor quality working papers as determined by the office;
- (f) a peer review rating of "pass with deficiencies" with the deficiencies being related to governmental audits;
- (g) failure to submit to the office a dated signed engagement letter within 30 days of execution;
- (h) lack of compliance with the Procurement Code;
- (i) failure to inform agency in prior years that the IPA is restricted;
- (j) failure to comply with confidentiality requirements of Subsection D of 2.2.2.15 NMAC; or
- (k) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

(2) The office shall notify IPAs

that are under restriction. If the restriction includes a limitation on the number of engagements the IPA is eligible to hold, the IPA shall not enter into audit contracts with new government agencies if the number of multi-year proposals the IPA possesses at the time of restriction is equal to or exceeds the limitation on the number of engagements for which the IPA is restricted.

(3) An IPA under restriction is responsible for informing the agency whether the restricted IPA is eligible to engage in the proposed contract.

(4) If an agency or local public body submits an IPA recommendation letter to the office for an IPA that was ineligible to perform that contract due to its restriction, the office shall immediately reject the IPA recommendation in accordance with Subparagraph (f) of Paragraph (6) of Subsection G of 2.2.2.8 NMAC.

F. Procedures for imposition of contract restrictions:

(1) The state auditor may place an IPA under contract restriction in accordance with Subsection E of 2.2.2.8 NMAC.

(a) The state auditor or his designee shall cause written notice of the contract restriction to be sent by certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction. The letter shall contain the following information: (i) the office has placed a restriction on either the type of engagement or the number of audit contracts, or both, that the IPA is eligible to enter into; (ii) the conditions of the contract restriction; (iii) the reasons for the contract restriction; (iv) the action to place the IPA on restriction is brought pursuant to Section 12-6-3(A) NMSA 1978 and these regulations; (v) the IPA may request, in writing, reconsideration of the proposed contract restriction which must be received by the office within 15 calendar days from the day the IPA receives the letter of restriction; and (vi) the email or street address where the IPA's written request for reconsideration shall be delivered, and the name of the person to whom the request shall be sent.

(b) The IPA's written request for reconsideration shall include sufficient facts to rebut on a point for point basis each deficiency noted in the office's letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide supplemental argument as to why the office's determination should be modified or withdrawn. The IPA may be represented by an attorney licensed to practice law in the state of New Mexico.

(c) The IPA shall have forfeited its opportunity to request reconsideration of the contract restriction(s) if the office does not receive a written request for reconsideration

within the 15 calendar days of the date of receipt of the letter of restriction. The state auditor may grant, for good cause shown, an extension of time within which the IPA has to submit a request for reconsideration.

(2) The office shall review an IPA's request for reconsideration and shall make a determination on reconsideration within 15 calendar days of receiving the request unless the IPA has asked to present its request for reconsideration in person, in which case the office shall make a determination within 15 calendar days from the date of the personal meeting. The office may uphold, modify or withdraw its contract restriction pursuant to its review of the IPA's request for reconsideration, and shall notify the IPA of its final decision in writing, which shall be sent to the IPA via certified mail, return receipt requested.

G. If the agency's notification letter referred to above in Paragraph (5) of Subsection B of 2.2.2.8 NMAC, indicates that the agency's audit is to be conducted by an IPA, the agency shall comply with the following procedures to obtain professional services from an IPA for an audit.

(1) Upon receipt of written notification to proceed from the office, the agency shall identify all elements or services to be solicited pursuant to Subsection A of 2.2.2.10 NMAC, and request quotations or proposals for each applicable element of the annual financial audit as follows:

- (a) financial statement audit;
- (b) federal single audit (if applicable);
- (c) financial statement preparation so long as the IPA has considered any threat to independence and mitigated it;
- (d) other nonaudit services (if applicable and allowed by current government auditing standards); and
- (e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(2) IPA services that cost no more than \$60,000 excluding gross receipts tax on each year's contract should be considered small purchases. The agency may procure audit services for one year only. The agency is encouraged to procure the audit services using a multiple year proposal (not to exceed three years) in which the cost of audit service is \$60,000 or less in each year (excluding gross receipts taxes). The agency is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. Section 13-1-191.1 NMSA 1978, requires prospective contractors to complete a standard campaign contribution disclosure form and file it with the state agency or local public body as part of the

competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

(3) For IPA services that cost over \$60,000 excluding gross receipts tax for each year of the contract, the agency shall seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (Chapter 13, Article 1 NMSA 1978); GSD rule 1.4.1 NMAC, *Procurement Code Regulations*, if applicable; and DFA rule 2.40.2 NMAC, *Governing the Approval of Contracts for the Purchase of Professional Services*. Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency as part of the competitive sealed proposal. In addition, if the agency intends to allocate a portion of the audit cost to federal funds as direct or indirect charges, the agency should comply with procurement requirements stated in the federal office of management and budget's *Grants and Cooperative Agreements with State and Local Governments*, (OMB Circular A-102). Institutions of higher education and state and local hospitals should comply with procurement standards stated in OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*.

(4) The agency may, and is strongly encouraged to, request a multiple year proposal to provide services not to exceed a term of three years including all extensions and renewals. The term of the contract shall be one-year with the option to extend for two successive one-year terms at the same price, terms and conditions as stated on the original proposal. Exercising the option to extend must be by mutual agreement of the parties to the contract and with the approval of the state auditor. In the event that either of the parties to the contract elects not to extend, or the state auditor disapproves the recommendation for renewal, the agency shall use the procedures described above in Paragraphs (2) and (3) of Subsection G of 2.2.2.8 NMAC to solicit services.

(5) The agency shall evaluate all competitive sealed proposals or quotations received pursuant to Paragraphs (2) and (3) of Subsection G of 2.2.2.8 NMAC using an evaluation process, preferably executed by a selection committee. Members of component units such as charter schools, housing authorities, etc., are encouraged to be included in the IPA selection process. As part of their evaluation process, agencies may and are strongly encouraged to consider the following criteria when selecting an IPA:

(a) the capability of the IPA, including: (i) whether the IPA has the resources to perform the type and size of the audit required; (ii) the results of the IPA's most recent external quality control review (peer review); and (iii) the organization and completeness of the IPA's proposal or bid for audit services;

(b) the work requirements and audit approach of the IPA, including: (i) the IPAs knowledge of the agency's need and the product to be delivered; (ii) whether the IPA's proposal or bid contains a sound technical plan and realistic estimate of time to complete the audit; (iii) plans for using agency staff, including internal auditors; and (iv) if the proposal or bid is for a multi-year contract, the IPA's approach for planning and conducting the work efforts of subsequent years;

(c) the IPA's technical experience, including: (i) the governmental audit experience of the IPA and the specialization in the agency's type of government (e.g., state agencies, schools, hospitals, counties, cities, etc.), including component units (housing authorities, charter schools, foundations); and (ii) the IPA's attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and the agency.

(6) After completing the evaluations for each IPA and making the IPA selection, each agency shall submit the completed IPA recommendation form for audits and the completed and signed audit contract to the state auditor by the deadline indicated in Subparagraph (c) below. In the event that the due date falls on a weekend or holiday the due date will be the next business day. Agencies with a fiscal year end other than June 30 must use a due date 30 days before the end of the fiscal year:

(a) agencies shall complete the IPA recommendation form for audits provided at www.osanm.org; agencies shall print the form on agency letterhead;

(b) agencies shall complete the applicable audit contract form provided at www.osanm.org, obtain the IPA's signature on the contract, and submit the completed and signed audit contract to the office with the completed IPA recommendation form;

(c) the agency shall deliver the fully completed and signed IPA recommendation form for audits and the completed audit contract to the state auditor by the deadlines shown below; if a completed IPA recommendation form and audit contract are not delivered to the state auditor by these deadlines, the auditor must include a finding of noncompliance with Paragraph (6) of Subsection G of 2.2.2.8 NMAC in the audit report: (i) regional education cooperatives, independent housing authorities, hospitals

and special hospital districts - April 15; (ii) school districts, counties, and higher education - May 1; (iii) local workforce investment boards and combined county/municipality governments - May 15; (iv) local public bodies that do not qualify for the tiered system - May 15; (v) councils of governments, district courts, district attorneys, and state agencies - June 1; (vi) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC should follow the procedures at Subsection D of 2.2.2.16 NMAC, and submit the required recommendation form for tiered system local public bodies and the completed signed agreed upon procedures contract to the state auditor - July 1; and (vii) component units on the primary government's due date;

(d) schools that are chartered by PED and agencies that are subject to oversight by HED have the additional requirement of submitting their IPA recommendation to PED or HED for approval prior to submitting the recommendation to the state auditor (Section 12-6-14(A) NMSA 1978);

(e) IPA recommendation forms for audits and the related audit contracts that are submitted to the office with errors or omissions will be rejected by the office; the office will return the rejected contract and IPA recommendation form for audits to the agency with a checklist indicating the reason(s) for the rejection; the office will first process the correct IPA recommendation forms and related contracts that were submitted timely; the office will then process any IPA recommendation forms and audit contracts that were submitted late or were rejected by the office and not resubmitted correctly by the deadline; and

(f) in the event the agency's recommendation and related contract are submitted without errors or omissions, but are not approved by the state auditor for reasons described at Subsection H of 2.2.2.8 NMAC, the state auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency; at which time the agency shall promptly submit a different recommendation; this process may continue until the state auditor approves a recommendation and related contract; during this process, whenever a recommendation and related contract are not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval; the agency shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation; the state auditor may hold an informal meeting to discuss the request;

the state auditor may set the meeting in a timely manner with consideration given to the agency's circumstances.

(7) If the agency fails to make an IPA recommendation by the deadline contained in Subparagraph (c) of Paragraph (6) of this subsection, the state auditor may conduct the audit. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA 1978.

(8) If the agency fails to submit an IPA recommendation within 60 days of notification from the state auditor to engage an IPA (pursuant to Paragraph (5) of this subsection), the state auditor may select the IPA for that agency. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA 1978.

(9) In selecting an IPA for an agency (pursuant to Paragraph (8) of this subsection), the state auditor shall at a minimum consider the following factors, but may consider other factors in the state auditor's discretion that serve the best interest of the state of New Mexico and the agency:

- (a) the state auditor's IPA selection shall be drawn from the list of approved IPAs maintained by the state auditor;
- (b) an IPA subject to contract restriction pursuant to Subsection E of 2.2.2.8 NMAC, is ineligible to be selected under this paragraph;
- (c) whether the IPA has conducted one or more audits of similar government agencies;
- (d) the physical proximity of the IPA to the government agency to be audited;
- (e) whether the resources and expertise of the IPA are consistent with the audit requirements of the government agency to be audited;
- (f) the IPA's cost profile, including examination of the IPA's fee schedule and blended rates;
- (g) the state auditor shall not select an IPA in which a conflict of interest exists with the agency or that may be otherwise impaired, or that is not in the best interest of the state of New Mexico.

(10) The state auditor shall consider, at a minimum, the following factors when considering which government agencies will be subject to the state auditor's selection of an IPA whether the agency:

- (a) is demonstrating progress in its own efforts to select an IPA;
- (b) has funds to pay for the audit;
- (c) is on the state auditor's "at risk" list;
- (d) is complying with the requirements imposed on it by virtue of being on the state auditor's "at risk" list;

(e) has failed to timely submit its IPA recommendation in accordance with the audit rule on one or more occasions;

(f) has failed to make necessary corrections to its IPA recommendation in accordance with the audit rule or comments from office staff on one or more occasions; or

(g) has failed to timely submit its annual financial audit report in accordance with the audit rule deadlines on one or more occasions.

(11) The state auditor may appoint a committee of the state auditor's staff to make recommendations for the state auditor's final determination as to which IPAs will be selected for each government agency subject to the discretion of the state auditor pursuant to Paragraph (8) of this subsection.

(12) Upon selection of an IPA to audit a government agency subject to the discretion of the state auditor pursuant to Paragraph (8) of this subsection, the state auditor shall notify the agency in writing regarding the selection of an IPA to conduct its audit. The notification letter shall include, at a minimum, the following statements:

(a) the agency was notified by the state auditor to select an IPA to perform its audit or agreed upon procedures engagement;

(b) 60 days or more have passed since such notification, and the agency failed to deliver its fully completed and signed IPA recommendation form for audits along with its completed audit contract in accordance with Subparagraph (c) of Paragraph (6) of this subsection;

(c) pursuant to Subsection A of Section 12-6-14 NMSA 1978, the state auditor is selecting the IPA for the agency;

(d) delay in completion of the agency's audit is contrary to the best interest of the state and the agency, and threatens the functioning of government and the preservation or protection of property;

(e) in accordance with Section 12-6-4 NMSA 1978, the reasonable costs of such an audit shall be borne by the agency unless otherwise exempted;

(f) selection of the IPA is final, and the agency should immediately take appropriate measures to procure the services of the selected IPA.

(13) The agency shall retain all procurement documentation, including completed evaluation forms, for five years and in accordance with applicable public records laws.

H. The state auditor will use discretion and may not approve:

(1) an audit recommendation or agreed upon procedures professional services contract recommendation under 2.2.2.16 NMAC that does not serve the best

interests of the public or the agency or local public body because of one or more of the following reasons:

- (a) lack of experience of the IPA;
- (b) the following criteria for required auditor rotation apply: (i) the IPA is prohibited from conducting the agency audit or agreed upon procedures engagement for a period of two years because the IPA already conducted those services for that agency for a period of: (a) six consecutive years and for at least one of those years the audit fees exceeded \$60,000, excluding gross receipts tax; or (b) 12 consecutive years and each year the audit fees did not exceed \$60,000, excluding gross receipts tax; (ii) an IPA firm that has undergone a merger or acquisition will be determined (on an individual basis) to be a new firm for the purposes of the rotation requirement based on, but not limited to, the following criteria (a) the firm is a newly registered business entity; and (b) at least 67% of the firm's ownership has changed; (iii) if the firm resulting from a merger or acquisition is determined to be the same firm, as before, and it is in the middle of multiple year award, there will be a mandatory rotation of the audit manager; (iv) if the firm resulting from a merger or acquisition is determined to be a new firm, the new firm must compete for audit services in accordance with the Procurement Code and this rule; and (v) any other consideration(s) that may be in the best interest of the public;

(c) lack of competence or staff availability;

(d) circumstances that may cause untimely delivery of the audit report or agreed upon procedures report;

(e) unreasonably high or low cost to the agency or local public body;

(f) terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) lack of compliance with the procurement code or this rule; or

(h) any other reason determined by the state auditor to be in the best interest of the state of New Mexico;

(2) audit contract recommendations or agreed upon procedures contract recommendations of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit or agreed upon procedures report on time;

(c) failed to comply with state laws or regulations of the state auditor;

(d) performed nonaudit services (including services related to fraud) for an agency or local public body it is performing an audit or an agreed upon procedures for, without prior approval of the state auditor;

(e) performed nonaudit services under a separate contract for services

that may be disallowed by GAGAS independence standards (see Subsection M of 2.2.2.8 NMAC);

(f) failed to respond, in a timely and acceptable manner, to an audit or agreed upon procedures report review or working paper review;

(g) impaired independence during an engagement;

(h) failed to cooperate in providing prior-year working papers to successor IPAs;

(i) has not adhered to external quality control review standards as defined by GAGAS and Subsections A and B of 2.2.2.14 NMAC;

(j) has a history of excessive errors or omissions in audit or agreed upon procedures reports or working papers;

(k) released the audit report or agreed upon procedures report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the agreed upon procedures report, described in Subsection G of 2.2.2.16 NMAC, was received from the office;

(l) failed to submit a completed signed contingency subcontractor form, if required;

(m) failed to submit a completed firm profile as required by Paragraph (3) of Subsection B of 2.2.2.8 NMAC;

(n) reached the limit of contracts to which the state auditor restricted the IPA;

(o) failed to respond to communications from the office or engagement clients within a reasonable amount of time; or

(p) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded or continue in a contract;

(3) an audit or agreed upon procedures contract recommendation for an IPA received by the office which the state auditor decides to perform himself or with the assistance of an IPA, and pursuant to Section 12-6-3 NMSA 1978, even if the agency or local public body was previously designated for audit or agreed upon procedures services by an IPA.

I. The agency must use the appropriate audit contract form provided by the state auditor on the website at www.osanm.org. The state auditor may provide audit contract forms to the agency via U.S. mail if specifically requested by the agency. Only contract forms provided by the state auditor will be accepted and shall:

(1) be completed and returned with the number of required copies (two copies for state agencies) and the completed IPA recommendation form for audits by the deadline indicated above at Subparagraph (c) of Paragraph (6) of Subsection G of 2.2.2.8 NMAC;

(2) bear original signatures;

(3) have the IPA's combined reporting system (CRS) number verified by the TRD for all state agencies whose contracts are approved through DFA's contracts office, prior to submission to the state auditor; and

(4) in the compensation section of the contract, include the dollar amount that applies to each element of the contracted procedures that will be performed.

J. The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile, or with the firm information if the IPA performs only engagements pursuant to 2.2.2.16 NMAC. The amount maintained should be commensurate with the risk assumed. The IPA must provide to the state auditor, prior to expiration, updated insurance information.

K. A breach of any terms of the contract shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or agreed upon procedures engagements of agencies or local public bodies in New Mexico.

L. Subcontractor requirements appear below.

(1) Audit firms that have only one individual qualified to supervise a GAGAS audit and issue the related audit report pursuant to Subsection B of Section 61-28B-17 NMSA 1978, and GAGAS Paragraph 3.76 must submit with the firm profile, a completed original contingency subcontractor form that is dated to be effective until the following notification letter goes out to IPAs requesting the updated firm profile. The form shall indicate which IPA on the state auditor's current list of approved IPAs will complete the IPA's audits in the event the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at www.osanm.org. The office will not approve audit contracts for such a firm without the required original contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on an audit, then the IPA must obtain the prior written approval of the state auditor to subcontract a portion of the audit work. The IPA may subcontract only with IPAs who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of 2.2.2.8 NMAC. The audit contract shall specify

subcontractor responsibility, who will sign the report(s), and how the subcontractor will be paid. See the related subcontractor form available at www.osanm.org.

M. The GAGAS 2011 *Revision* was issued by the United States government accountability office (GAO). It is effective for financial audits and attestation engagements for periods ending on or after December 15, 2012 (FY13), and for performance audits beginning on or after December 15, 2011. Early implementation is not permitted. Pursuant to GAGAS 3.08, "Auditors should apply the GAGAS conceptual framework at the audit organization, engagement, and individual auditor level to: identify threats to independence; evaluate the significance of the threats identified; both individually and in the aggregate; and apply safeguards as necessary to eliminate the threats or reduce them to an acceptable level." Auditors should use GAGAS Paragraphs 3.33 and 3.58 in evaluating threats to independence related to nonaudit services. Note that the old guidance on this subject, *Government Auditing Standards: Answers to Independence Standard Questions* (GAO-02-870G, July 2002), has been retired. Pursuant to GAGAS 3.40, "Auditors should establish and document their understanding with the audited entity's management or those charged with governance, the following: objectives of the nonaudit services; services to be performed; audited entity's acceptance of its responsibilities; the auditor's responsibilities; and any limitations of the nonaudit services."

(1) An IPA who performs the agency's annual financial audit shall not enter into any special audit or nonaudit service contract with the respective agency without the prior written approval of the state auditor. Requests for approval of professional service contracts should be submitted to the office with the original version of the signed agreement by the 5th of each month. The office shall review the requests and respond to the agency and the IPA by the 25th of each month. The following documentation must be submitted to the office for review and approval.

(a) The original professional services contract must be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA. The contract must include the contract fee, start and completion date, and the specific scope of services to be performed by the IPA.

(b) For nonaudit services, include the auditor's documentation of: (i) whether management has the ability to effectively oversee the nonaudit service pursuant to GAGAS 3.34; (ii) the documented assurance from the entity that management will assume all management

responsibilities, oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of the services performed; and accept responsibility for the results of the services pursuant to GAGAS 3.37; (iii) the auditor's establishment and documentation (engagement letter) of the auditor's understanding with the entity's management or those charged with governance of the objectives of the nonaudit services, the services to be performed, audited entity's acceptance of its responsibilities, the auditor's responsibilities, and any limitations of the nonaudit service, pursuant to GAGAS 3.39; and (iv) the auditor's consideration of significant threats (if applicable) to independence that have been eliminated or reduced to an acceptable level through the application of additional safeguards, and a description of those safeguards. Upon completion of the nonaudit services, the IPA must provide the state auditor with a copy of any report submitted to the agency.

(2) Except as provided in Subsection E of 2.2.2.15 NMAC, an agency and an IPA who does not perform that agency's annual financial audit shall submit a copy to the state auditor of each professional services contract entered into between the agency and the IPA for a special audit, agreed upon procedures or any other nonaudit services. The contract shall not require approval by the state auditor but shall be submitted to the state auditor within 30 days of execution.

(3) The state auditor will not approve any contract for:

(a) an agency's external auditor to perform the following nonaudit services that are management responsibilities: (i) "setting policies and strategic direction for the audited entity; (ii) directing and accepting responsibility for the actions of the audited entity's employees in the performance of their routine, recurring activities; (iii) having custody of an audited entity's assets; (iv) reporting to those charged with governance on behalf of management; (v) deciding which of the auditor's or outside third party's recommendations to implement; (vi) accepting responsibility for the management of an audited entity's project; (vii) accepting responsibility for designing, implementing, or maintaining internal control; (viii) providing services that are intended to be used as management's primary basis for making decisions that are significant to the subject matter of the audit; (ix) developing an audited entity's performance measurement system when that system is material or significant to the subject matter of the audit; and (x) serving as a voting member of an audited entity's management committee or

board of directors (GAGAS 3.36);"

(b) the following nonaudit services, pursuant to GAGAS 3.50, always impair the auditor's independence: (i) "determining or changing journal entries, account codes or classifications for transactions, or other accounting records for the entity without obtaining management's approval; (ii) authorizing or approving the entity's transactions; (iii) preparing or making changes to source documents without management approval. Source documents include those providing evidence that transactions have occurred (for example, purchase orders, payroll time records, customer orders, and contracts); such records also include an audited entity's general ledger and subsidiary records or equivalent;"

(c) the following nonaudit services, pursuant to GAGAS 3.53 and 3.54, always impair the auditor's independence: (i) "setting internal audit policies or the strategic direction of internal audit activities; (ii) performing procedures that form part of the internal control, such as reviewing and approving changes to employee data access privileges; and (iii) determining the scope of the internal audit function and resulting work; and performing or supervising ongoing internal control monitoring procedures;"

(d) the following nonaudit services, pursuant to GAGAS 3.56, always impair the auditor's independence: (i) "designing or developing a financial or other IT system that will play a significant role in the management of an area of operations that is or will be the subject matter of an audit; (ii) providing services that entail making other than insignificant modifications to the source code underlying such a system; and (iii) operating or supervising the operations of such a system;"

(e) pursuant to GAGAS 3.47, "valuation services that would have a material effect, separately or in the aggregate, on the financial statements or other information on which the audit firm is reporting, and the valuation involves a significant degree of subjectivity, would impair the auditor's independence;"

(f) the auditor's independence would also be impaired by the performance of any of the nonaudit services listed at GAGAS 3.58 regarding the entity's non tax disbursements, benefit plan administration, investment advisory or management services, listed prohibited consulting or advisory services, executive or employee personnel matters, and business risk consulting.

N. The state auditor will approve progress and final payments for the annual audit contract as follows.

(1) Subsection A Section 12-6-14

NMSA 1978 (Contract Audits) provides that "payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section."

(2) Subsection B Section 12-6-14 NMSA 1978 (Contract Audits) provides that the state auditor may authorize progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to 69% do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. The agency must monitor audit progress and make progress payments only up to the percentage that the audit is completed prior to making the 69% payment. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Progress payments from 70% to 90% require state auditor approval after being approved by the agency. When component unit audits are part of a primary government's audit contract, requests for progress payment approvals should be submitted by the primary government for both the primary government and the component unit. In this situation, the office will not process separate progress payment approvals submitted by the component unit.

(4) The state auditor may allow only the first 50% of progress payments to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A of 2.2.2.9 NMAC.

(5) Subsection B of Section 12-6-14 NMSA 1978 (Contract Audits) provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has stated, in writing, that the audit has been made in a competent manner in accordance with contract provisions and this rule. The state auditor's determination with respect to final payment shall be stated in the letter accompanying the release of the report to the agency. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14(B) NMSA 1978 and this rule and must be reported as an audit finding in the audit report of the agency. If this statute is violated, the IPA may be removed from the list of approved auditors.

O. Preparation of financial statements appears below.

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts rounded to the nearest dollar.

(2) The financial statements are the responsibility of the agency. The agency

shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date deadline imposed in Subsection A of 2.2.2.9 NMAC.

(3) If there are differences between the financial statements and the books, the IPA must provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.

(4) If the IPA prepared the financial statements for management's review and approval, in conformance with Subsection M of 2.2.2.8 NMAC, including documenting the safeguards as required by GAGAS 3.59, the fact that the auditor prepared the financial statements must be disclosed in the exit conference page of the audit report. If the IPA prepared the financial statements, the auditor must determine whether a SAS 115 related audit finding should be reported. See the SAS 115 Exhibit B, examples of circumstances that may be deficiencies, significant deficiencies, or material weaknesses.

P. Audit documentation requirements are listed below.

(1) The IPA's audit documentation must be retained for a minimum of six years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor by the deadline indicated in the request.

(3) The audit documentation of a predecessor IPA must be made available to a successor IPA in accordance with AU-C 510.07 and 510.A3 to 510.A11, and the predecessor auditor's contract. Any photocopy costs incurred will be borne by the requestor. If the successor IPA finds that the predecessor IPA's audit documentation does not comply with applicable auditing standards and this rule, or does not support the financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations and this rule, any or all of the following actions may be taken:

(a) the state auditor may require the predecessor IPA firm to correct its

working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) the state auditor may deny or limit the issuance of future audit contracts and require that the IPA to give precedence to outstanding multiple year proposals; or

(c) the state auditor may refer the predecessor IPA to the New Mexico public accountability board for possible licensure action.

Q. Auditor communication requirements appear below.

(1) The AICPA requirements for auditor communication with those charged with governance are set forth in AU-C 260, effective for periods ending on or after December 15, 2012 (FY13). The 2011 version of GAGAS also has these additional requirements at GAGAS 4.03 and 4.04.

(a) "Auditors should communicate pertinent information that in the auditors' professional judgment needs to be communicated to individuals contracting for or requesting the audit, and to cognizant legislative committees when auditors perform the audit pursuant to a law or regulation, or they conduct the work for the legislative committee that has oversight of the audited entity."

(b) "In those situations where there is not a single individual or group that both oversees the strategic direction of the audited entity and the fulfillment of its accountability obligations or in other situations where the identity of those charged with governance is not clearly evident, auditors should document the process followed and conclusions reached for identifying the appropriate individuals to receive the required auditor communications."

(2) After the agency and auditor have an approved audit contract in place, the IPA shall prepare a written and dated engagement letter during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a photocopy of the signed letter as part of the audit documentation. In addition to meeting the requirements of the AICPA guidance and the GAGAS requirements, the engagement letter should state that the engagement will be performed in accordance with 2.2.2 NMAC.

(3) Within 30 days of execution of the engagement letter, the IPA shall submit to the state auditor an electronic copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates, which should facilitate meeting the audit due date in Subsection A of 2.2.2.9 NMAC. A separate engagement letter and list of client prepared documents is required for each fiscal year audited. Failure to provide this information within 30 days of execution could result in a

restriction of contracts.

(4) All communications with management and the agency oversight officials during the audit, regarding any instances of noncompliance or internal control weaknesses, must be communicated in writing. The auditor should obtain responsible officials' views responding to the audit findings, pursuant to GAGAS 4.33. Any violation of law or good accounting practice including instances of noncompliance or internal control weaknesses must be reported as an audit finding per Section 12-6-5 NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

R. Contract amendment requirements appear below.

(1) Amendments to contracts for audit services, agreed upon procedures services, or nonaudit services may be submitted to the office regarding executed contracts. Contract amendments submitted on an expired contract will be rejected. Amendments shall be approved in writing by the state auditor. Any amendments to contracts should be made on the contract amendment form available at www.osanm.org. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. Any amendments to the contract must be in compliance with the Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978. Notwithstanding the delivery dates of the contract, audit report regulatory due dates are not subject to amendment.

(2) Contract amendments submitted for state auditor approval shall include a detailed explanation of:

(a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment;

(b) how the work to be performed is beyond the scope of work outlined in the original contract; and

(c) when the auditor or agency became aware of the work needed to be performed.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee increases will only be approved for extraordinary circumstances or a significant change in the scope of an audit. For example, if an audit contract did not include a federal single audit, a contract amendment will be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and special procedures required by a regulatory body or a local, state or federal

grantor. Contract amendments will not be approved to perform additional procedures to achieve an unqualified opinion. The state auditor shall also consider the auditor independence requirements of Subsection M of 2.2.2.8 NMAC when reviewing contract amendments for approval. Requests for contract amendments should be submitted to the office with the original version of the signed contract amendment by the 5th of each month. The office will review the requests and respond to the agency and the IPA by the 25th of each month. Requests for contract amendments submitted after the 5th of each month will not be reviewed and responded to by the office until the 25th of the following month.

(4) If a proposed contract amendment is disapproved for lack of adequate information, the IPA and agency may submit a corrected version for reconsideration.

(5) The audit engagement letter shall not include any fee contingencies. The engagement letter shall not be interpreted as amending the contract. Nothing in the engagement letter can impact or change the amount of compensation for the audit services. Only a contract amendment submitted pursuant to Paragraph (3) of Subsection R of 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

S. Contract termination requirements follow.

(1) The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed, or for any other reason, and perform the audit entirely or partially with IPAs contracted by him consistent with the October 6, 1993, stipulated order *Vigil v. King* No. SF 92-1487(C). The notice of termination of the contract will be in writing.

(2) If the agency or IPA terminate the audit or agreed upon procedures engagement contract pursuant to the termination paragraph of the contract, the office should be notified of the termination immediately. The party sending out the termination notification letter must simultaneously send a copy of the termination notification letter to the office with an appropriate cover letter, addressed to the state auditor.

(a) The agency should follow the Procurement Code and Subsection G of 2.2.2.8 NMAC, or Subsection D of 2.2.2.16 NMAC, to obtain the services of a different IPA.

(b) The IPA recommendation and completed contract for the newly procured IPA should be submitted to the office within 30 calendar days of the date of the termination notification letter.

(c) As indicated in Paragraph (3)

of Subsection A of 2.2.2.9 NMAC, the state auditor will grant no extensions of time to the established regulatory due dates.

(d) If the agency does not expect to deliver the engagement report by the regulatory due date, the agency must submit a written notification letter to the state auditor and oversight agency as required by Paragraph (5) of Subsection A of 2.2.2.9 NMAC and Paragraph (2) of Subsection H of 2.2.2.16 NMAC.

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 2-28-14]

2.2.2.9 REPORT DUE DATES:

A. The auditor shall deliver the organized and bound annual financial audit report to the state auditor by 5:00 p.m. on the date specified in the audit contract or send it post marked by the due date.

(1) The audit report due dates are as follows:

(a) regional education cooperatives, cooperative educational services and independent housing authorities, September 30;

(b) hospitals and special hospital districts, October 15;

(c) school districts, counties, and higher education: November 15;

(d) workforce investment boards and combined county/municipality governments, December 1;

(e) local public bodies, December 1 (see also Subsection H of 2.2.2.16 NMAC);

(f) councils of governments, district courts, and district attorneys, December 15;

(g) pursuant to Subsection D of Section 12-6-3 NMSA 1978, state agency reports are due no later than 60 days after the state auditor receives notice from the FCD that the agency's books and records are ready and available for audit; see Paragraph (1) of Subsection A of 2.2.2.12 NMAC for additional details regarding due dates for state agencies;

(h) agencies with a fiscal year-end other than June 30 must submit the audit report no more than five months after the fiscal year-end; and

(i) all separate audit reports prepared for component units (e.g., housing authorities, charter schools, hospitals, foundations, etc.) are due the same date the primary government's audit report is due.

(2) If an audit report is not delivered on time to the state auditor, the auditor must include this instance of noncompliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If appropriate, the finding should also be reported as an instance of deficiency, significant deficiency, or material weakness

in the operation of internal control in the agency's internal controls over financial reporting pursuant to SAS 115 Exhibit B.

(3) An organized bound hard copy of the report should be submitted for review by the office with the following: copy of the signed management representation letter; a list of the passed audit adjustments, clearly labeled "passed adjustments" (or memo stating there are none); and a copy of the completed state auditor report review guide (available at www.osanm.org). The report review guide should reference applicable page numbers in the audit report and be signed by the person completing the review guide. The audit manager or person responsible for the firm's quality control system should either complete the report review guide or sign off as having reviewed it. A report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed management representation letter, the list of passed adjustments, and the completed report review guide are also submitted to the office. All separate reports prepared for component units should also be submitted to the office for review, along with a copy of the representation letter, a list of passed audit adjustments and a completed report review guide for each separate audit report. A separate component unit report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed management representation letter, the passed adjustments, and the completed report review guide are also submitted to the office. If a due date falls on a weekend or holiday, or if the office is closed due to inclement weather, the audit report is due the following workday by 5:00 p.m. If the report is mailed to the state auditor, it should be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report shall be postmarked by the following workday. The state auditor will grant no extensions of time to the established regulatory due dates.

(4) AU-C 700.4 requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the financial statements have been prepared and the management representation letter has been signed. AU-C 580.20 requires the management representation letter to be dated the same date as the independent auditor's report.

(5) As soon as the auditor becomes aware that circumstances exist that will make an agency's audit report late, the auditor shall notify the state auditor and oversight agency of the situation in writing. This notification shall consist of a letter with official signatures, not an email. However, a scanned version of the

official letter sent via email that contains the required signatures is acceptable. There must be a separate notification for each late audit report. The notification must include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the agency. If the IPA is going to miss the expected report submission date, then the IPA should send a revised notification letter. In the event the contract was signed after the report due date, the notification letter must still be submitted to the office explaining the reason the audit report will be submitted after the report due date. A copy of the letter must be sent to the legislative finance committee and the applicable oversight agency: public education department, DFA's financial control division, DFA's local government division, or the higher education department. At the time the audit report is due, if circumstances still exist that will make the report late, the IPA or agency may consult the state auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the auditor to go beyond the scope of auditing standards generally accepted in the United States of America, or the audit report due date, to assure an unqualified opinion.

B. As in any contract, both parties can and are encouraged to negotiate a delivery date prior to the regulated due date specified in Subsection A of 2.2.2.9 NMAC. No delivery date, however, may exceed the "no later than" due date specified in Subsection A of 2.2.2.9 NMAC.

C. Audit report delivery and release requirements follow.

(1) All audit reports (and all separate reports of component units if applicable) must be organized, bound and paginated. The office does not accept facsimile or emailed versions of the audit reports for review. The IPA shall deliver to the state auditor a hard copy of the audit report for review by 5:00 p.m. on the day the report is due. Reports postmarked by the due date will be considered received by the due date. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the IPA and the office may take action in accordance with Subsection C of 2.2.2.13 NMAC.

(2) The IPA should review the report using the appropriate report review guide available on the office's website prior to submitting the report to the office. All questions in the guide must be answered, and the reviewer must sign and date the last page of the guide. The audit manager or person responsible for the IPA's quality control system must either complete the

report review guide or sign off as having reviewed the completed questionnaire. If the review guide is not accurately completed or incomplete, the report will not be accepted.

(3) The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to 2.2.2.13 NMAC, and any significant deficiencies have been corrected by the IPA, the office will indicate to the IPA that the report is ready to print. After the office review of the final version of the audit report pursuant to 2.2.2.13 NMAC, the office will authorize the IPA to submit the following items to the office within two business days: (a) the required number of hardcopies specified in the audit contract; and (b) an electronic version of the audit report, in PDF format. The office will not release the report until the electronic version of the report is received by the office. The electronic file must:

(a) be created and saved as a PDF document in a single PDF file format (simply naming the file using a PDF extension .pdf does not by itself create a PDF file;

(b) be version 5.0 or newer;

(c) not exceed 10 MB per file submitted (contact the office to request an exception if necessary);

(d) have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the office is not prevented from opening, viewing, or printing the file;

(e) not contain any embedded scripts or executables, including sound or movie (multimedia) objects;

(f) have a file name that ends with .pdf;

(g) be free of worms, viruses or other malicious content (a file with such content will be deleted by the office);

(h) be "flattened" into a single layer file prior to submission;

(i) not contain any active hypertext links, or any internal/external links (although it is permissible for the file to textually reference a URL as a disabled link);

(j) be saved at 300 DPI (lower DPI will make the file hard to read and higher DPI will make the file too large); and

(k) in addition, the office recommends that the electronic file name begin with the agency number, followed by the name of the agency and the fiscal year, and then end with .pdf.

(4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter."

Release of the audit report to the agency or the public prior to it being officially released by the state auditor will result in an audit finding. The agency or the IPA shall ensure that every member of the agency's governing authority receives a copy of the audit report.

(5) If an audit report is reissued pursuant to AU-C Section 560, Subsequent Events and Subsequently Discovered Facts, the reissued audit report must be submitted to the office with a cover letter addressed to the state auditor. The cover letter must explain that: (a) the attached report is a "reissued" report; (b) the circumstances that caused the reissuance; and (c) a summary of the changes that appear in the reissued report. The office will subject the reissued report to the report review process and upon completion of that report review process, will issue a "release letter." The contents of the reissued audit report are subject to the same confidentiality requirements described in Paragraph (3) of Subsection J of 2.2.2.10 NMAC. Agency management and the IPA are responsible for ensuring that the latest version of the report is provided to each recipient of the prior version of the report. The office will notify the appropriate oversight agencies regarding the updated report on the office website.

(6) If changes to a released audit report are submitted to the office, and the changes do not rise to the level of requiring a reissued report, the IPA shall submit a cover letter addressed to the agency, with a copy to the state auditor, that includes the following minimum elements: (a) a statement that the changes did not rise to the level of requiring a reissued report; (b) a description of the circumstances that caused the resubmitted updated report; and (c) a summary of the changes that appear in the resubmitted updated report compared to the prior released report. Agency management and the IPA are responsible for ensuring that the latest version of the resubmitted report is provided to each recipient of the prior version of the report. The office will notify the appropriate oversight agencies regarding the updated report on the office website.

D. The agency and IPA may agree to, or the state auditor may impose, a contract provision that unjustified failure to meet delivery requirements by either party to the contract may result in a liability for a specified amount of liquidated damages from the offending party.

E. IPAs are encouraged to deliver completed audit reports before the due date to facilitate the review process performed by the office. If the office rejects and returns a substandard audit report to the IPA, the office will consider the audit report late if the corrected report is not resubmitted by the due date. The IPA will also be required to report a finding for the

late audit report in the audit report.

F. For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, the state auditor may require the agency to submit a status report to the office in accordance with deadlines specified by the state auditor. The status report shall be signed by a member of the agency's governing authority, a designee of the governing authority or a member of the agency's top management. At a minimum, the report shall include:

(1) a detailed explanation of the agency's efforts to complete and submit its audit or agreed-upon procedures;

(2) an explanation of the current status of any ongoing audit or agreed-upon procedures work;

(3) a description of any obstacles encountered by the agency in completing its audit or agreed-upon procedures; and

(4) a projected completion date for the financial audit or agreed-upon procedures.

[2.2.2.9 NMAC - Rp, 2.2.2.9 NMAC, 2-28-14]

2.2.2.10 GENERAL

CRITERIA:

A. Scope of annual financial audit:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and any component units of the primary government.

(a) Entities must be reported as component units within the financial statements of the primary government, if the primary government is financially accountable for the entity (GASBS 14 Paragraph 10) or if the nature and significance of the entity to the primary government warrants inclusion (GASBS 39 Paragraphs 5 and 6). The primary government, in conjunction with its auditors, must determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14 and 39. The flowchart at GASBS 14 Paragraph 132 is useful for this determination. All agencies that meet the criteria of GASBS 14 or 39 to be a component unit of the primary government must be included with the audited financial statements of the primary government by discrete presentation unless otherwise approved by the state auditor. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government (GASBS 14 Paragraphs 44 through 50). Exceptions may occur when an agency requires presentation other than discrete. An exemption must be requested

by the agency, in writing, from the state auditor in order to present a component unit as other than a discrete component unit. The request for an exemption must include a detailed explanation, conclusion and supporting documentation justifying the request for blended component unit presentation. The approval of the state auditor for the exemption is required prior to issuing the report. Per Paragraph 1.01 of AAG-SLV, not-for-profit component units should be reported using the government financial reporting format if they have one or more of the following characteristics: popular election of officers or appointment or approval of a controlling majority of the members of the organization's governing body by officials of one or more state or local governments; the potential for unilateral dissolution by a government with the net assets reverting to the government; or the power to enact and enforce a tax levy. If a not-for-profit does not qualify to be reported using the governmental format under the above criteria, that fact should be explained in the notes to the financial statements (summary of significant accounting policies-financial reporting entity).

(b) If a primary government has no component units, that fact should be disclosed in the notes to the financial statements (summary of significant accounting policies - financial reporting entity). If the primary government has component units that are not included in the financial statement due to materiality, that fact must also be disclosed in the notes. However, if the primary government is a state agency, department or board, or public institution of higher education or public post-secondary educational institution, county, municipality or public school district, Subparagraph (a) of Paragraph (4) of Subsection B of Section 6-5A-1 NMSA 1978 requires all 501(c) 3 component unit organizations with a gross annual income in excess of \$250,000 to receive an audit. Such component units cannot be excluded from the audit based on the "materiality" criterion.

(c) The state auditor requires the component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement). Requests for exemption from this requirement must be submitted in writing by the agency to the state auditor. If the request to use a different auditor for the component unit is approved in writing by the state auditor, the following requirements must be met: (i) the primary auditor must agree to use the information from the work of the component unit auditor; (ii) the component unit auditor selected must

appear on the office of the state auditor list of eligible independent public accountants; (iii) the bid and auditor selection processes must comply with the requirements of this rule; (iv) the office of the state auditor standard contract form must be used; (v) all component unit findings must be disclosed in the primary government's audit report; and (vi) any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC.

(d) The level of planning materiality required by the state auditor for component units is at the individual fund level. College and university component units have a different materiality level. See Paragraph (3) of Subsection E of 2.2.2.12 NMAC.

(e) The following supplemental information (SI) pertaining to component units should be audited at the more detailed fund level included in the scope of the audit and opined on as illustrated in Example A-14 (AAG-SLV): (i) component unit fund financial statements, and the combining and individual fund financial statements if separately issued financial statements of the component units are not available (AAG-SLV 3.20); and (ii) individual fund budgetary comparisons when a legally adopted budget exists for a fund if separately issued financial statements are not available; the office interprets a "legally adopted budget" to exist any time the agency prepares a budget and in every case where an entity receives federal funds, state funds, or any other "appropriated" funds. If the budget comparison is presented on a framework other than GAAP, the auditor should follow AU-C 805 in performing the audit of the budgetary comparison statements.

(2) Audits of state and local governmental agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:

(a) the level of planning materiality required by the state auditor is at the individual fund level; the state auditor requires that the budgetary comparison statements be audited and included as part of the basic financial statements consistent with GASBS 34 footnote 53 and AAG-SLV 11.13;

(b) the scope of the audit includes the following statements and disclosures which the auditor is required to audit and give an opinion on, the basic financial statements consisting of: (i) the government-wide financial statements; (ii) fund financial statements; (iii) budgetary comparison statements (for only the general fund and major special revenue funds when the budget information is available on the same fund structure basis as the GAAP fund

structure); and (iv) notes to the financial statements;

(c) the auditor must audit the following required supplemental information, if applicable, and include it in the auditor's opinion (AAG-SLV 14.53); budgetary comparisons for the general fund and major special revenue fund data presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds (*GASB Statement No. 41, Budgetary Comparison Schedules-Perspective Differences an amendment of GASB Statement No. 34*);

(d) the auditor must audit the following supplemental information at the individual fund level, if applicable, and opine on it in the auditor's opinion following Example A-14 (AAG-SLV 14 Appendix A): (i) component unit fund financial statements, and the combining and individual fund financial statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.20); (ii) combining and individual fund financial statements; and (iii) individual fund budgetary comparison statements for the remaining funds that have a legally adopted budget including any major capital project or debt service funds, nonmajor governmental funds, enterprise funds and internal service funds; if the budget comparison is presented on a framework other than GAAP, the auditor should follow AU-C 805 in performing the audit of the budgetary comparison statements;

(e) the auditor shall apply procedures and report in the auditor's report on the following RSI (if applicable) pursuant to AU-C 730: (i) management's discussion and analysis (GASBS 34.8-.11); (ii) RSI data required by GASBS 25 and 27 for defined pension plans; (iii) RSI schedules required by GASBS 43 for postemployment benefit plans other than pension plans; (iv) RSI schedules required by GASBS 45 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and (v) infrastructure modified approach schedules derived from asset management systems (GASBS 34 Paragraphs 132 and 133);

(f) the audit engagement and audit contract compensation include an AU-C 725 opinion on the remaining supplemental information schedules presented in the audit report; (i) some examples of remaining SI schedules are: the schedule of expenditures of federal awards required by OMB Circular A-133, the schedule of pledged collateral required by Paragraph (3) of Subsection N of 2.2.2.10 NMAC, the schedule of changes in assets and liabilities for agency funds required

by Subsection Z of 2.2.2.10 NMAC, and the school district schedule of cash reconciliation required by Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC; (ii) the auditor shall subject the information on the remaining SI schedules to procedures required by AU-C 725; (iii) in addition, the school district schedule of cash reconciliation (SI) shall be subjected to audit procedures that ensure the cash per the schedule reconciles to the PED reports as required by Subparagraph (b) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC; (iv) the auditor shall report on the remaining supplementary information (SI) in an explanatory paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725; see also the independent auditor's report example on the office website at www.osanm.org.

B. Legislation regarding budget adjustment requests (BARs) prevents or restricts many budget transfers or increases. The IPA shall satisfy himself that these restrictions are not being violated by direct payment or other unauthorized transfers.

C. Legislation can designate a fund as reverting or non-reverting. The IPA must review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation must be reverted and to whom. The law will also indicate the deadline for the required reversion. Appropriate audit procedures must be performed to determine compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes should fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements must disclose the specific legislation that makes a fund or appropriation non-reverting. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements must disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of 2.2.2.12 NMAC and the DFA white papers "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis."

D. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

(1) GAGAS issued by the U.S. general accounting office, the 2011 revision;

(2) *U. S. Auditing Standards-AICPA (Clarified)* effective for periods ending on or after December 15, 2012;

(3) *OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organization*, as amended;

(4) *AICPA Audit Guide, Governmental Auditing Standards and Circular A-133 Audits*, latest edition;

(5) *AICPA Audit and Accounting Guide, State and Local Governments*, latest edition; and

(6) 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies*, latest edition.

E. The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the *GASB Codification*, latest edition. Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB, other applicable pronouncements, and GASB illustrations and trends for financial statements. In addition to the revenue classifications required by NCGAS 1.110, the office requires that the statement of revenues, expenditures, and changes in fund balances - governmental funds include intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

F. IPAs who perform government audits are expected to maintain professional libraries including current editions of the publications and standards noted above. The audit guides published by the practitioners publishing company (PPC) or similar authors' practice aides are not considered to be authoritative.

G. State compliance audit requirements follow. An IPA shall identify significant state statutes, rules and regulations applicable to the governmental agency under audit and perform tests of compliance. In addition to the significant state statutes, rules and regulations identified by the IPA, the following state statutes and constitutional provisions must be tested:

(1) Procurement Code (Sections 13-1-1 to 13-1-199 NMSA 1978) and state purchasing regulations, 1.4.1 NMAC;

(2) Per Diem and Mileage Act (Sections 10-8-1 to 10-8-8 NMSA 1978), Regulations Governing the Per Diem and Mileage Act, and 2.42.2.11 NMAC, Mileage-Private Conveyance, effective June 19, 2009, <http://www.nmdfa.state.nm.us/uploads/FileLinks/293b21bdbc044c04bd0dbc6de01def7e/Emergency%20Amendment%20to%20Section11%20Mileage.pdf> for state agencies. Mileage and per diem information for local public bodies see the "Per Diem and Mileage Act Rule Change of June 19, 2009," available at <http://nmdfa.state.nm.us/uploads/FileLinks/b673a3e5b3ed4bfc973799a98e2c3e1e/>

Per%20Diem%20and%20Mileage%20Act%20Rule%20Change%20of%20June%202019,%202009.pdf;

(3) Personnel Act (Sections 10-9-1 to 10-9-25 NMSA 1978) and State Personnel Administration, 1.7.1 NMAC (state agencies only);

(4) Public Money (Sections 6-10-1 to 6-10-63 NMSA 1978) including the requirements of Sections 6-10-10(A) and (B) NMSA 1978 that county and municipal treasurers deposit money in their respective counties, and the requirement of Section 6-10-17 NMSA 1978 that the agency receive a joint safe keeping receipt for pledged collateral;

(5) Public School Finance Act (Sections 22-8-1 to 22-8-48 NMSA 1978);

(6) Investment of Public Money (Sections 6-8-1 to 6-8-21 NMSA 1978);

(7) For Public Employees Retirement Act (Sections 10-11-1 to 10-11-141 NMSA 1978) auditors should test to ensure 100% of payroll is reported to PERA; PERA membership is mandatory under the PERA Act, unless membership is specifically excluded pursuant to Section 10-11-3(B) NMSA 1978;

(8) Educational Retirement Act (Sections 22-11-1 to 22-11-55 NMSA 1978);

(9) Sale of Public Property (Section 13-6-1 to 13-6-8 NMSA 1978);

(10) Anti-Donation Clause (NM Constitution Article IX, Section 14);

(11) Special, Deficiency, and Specific Appropriations (appropriation laws applicable for the year under audit);

(12) state agency budget compliance with Sections 6-3-1 to 6-3-25 NMSA 1978, and local government budget compliance with Sections 6-6-2(A) and 6-6-5 to 6-6-7 NMSA 1978;

(13) Lease Purchase Agreements (New Mexico Constitution Article IX, Sections 8 and 11; Sections 6-6-11 to 6-6-12 NMSA 1978; *Montano v. Gabaldon*, 108 NM 94, 766 P.2d 1328, 1989);

(14) 2.20.1.1 to 2.20.1.18 NMAC, *Accounting and Control of Fixed Assets of State Government* (updated for GASB 34 as applicable);

(15) 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies*;

(16) Article IX of the State Constitution limits on indebtedness;

(17) for agencies receiving general fund appropriations, Laws of 2013 Regular Session, Chapter 227, Section 3, Subsection K states, "Except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9(1) NMSA 1978, none of the appropriations contained in the General Appropriation Act

of 2013 may be expended for payment of agency-issued credit card invoices;"

(18) for Retiree Health Care Authority Act (Section 10-7C-1 to 10-7C-19 NMSA 1978) auditors should test to ensure 100% of payroll is reported to NMRHCA. RHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978; and

(19) Governmental Conduct Act (Sections 10-16-1 to 10-16-18 NMSA 1978).

H. Federal compliance audit requirements follow.

(1) The following government pronouncements establish requirements and give guidance for "Yellow Book" and single audits:

(a) *Generally Accepted Government Auditing Standards* (GAGAS) issued by the U.S. general accounting office, latest effective edition;

(b) OMB Circular A-21, *Cost Principles for Educational Institutions*, as revised May 10, 2004;

(c) OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, revised May 10, 2004;

(d) OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, revised October 7, 1994 and further amended August 29, 1997;

(e) OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, as revised November 19, 1993 and further amended September 30, 1999;

(f) OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, (June 26, 2007 revision);

(g) OMB Circular A-133, *Compliance Supplement*, latest edition; and

(h) OMB *Catalog of Federal Domestic Assistance* (CFDA), latest edition.

(2) IRS employee income tax compliance issues - noncompliance with these IRS requirements requires a current year audit finding:

(a) employee fringe benefits are presumed by the IRS to be income to the employee unless they are specifically excluded from income by the tax code; any employee fringe benefits not excluded from income by the tax code must be reported on the employee's W-2; examples of such fringe benefits could be: meal allowances paid to employees for meals away from home when overnight travel is not involved; discounted housing like school district teacherages, dues for membership in clubs organized for business, pleasure, recreation, or other social purpose (except rotary and kiwanis club); cash and non-cash awards, and employee insurance benefits

for dependents who do not meet the IRS definition of a "dependent"; personal use of a government agency vehicle is always taxable income to the employee unless the vehicle is a qualified non-personal use vehicle (Rev. 1.274-5T(k)(3)) provided to the employee as a "working condition fringe benefit": (i) examples of qualified non-personal use vehicles are: clearly marked police and fire vehicles; unmarked law enforcement vehicles (officer must be authorized to carry a firearm and have arrest authority); ambulance or hearse; vehicle with gross weight over 14,000 lbs.; 20 passenger bus and school bus; tractor and other farm equipment; and delivery truck with driver seating only; (ii) the value of commuting and other personal use of a "nonqualified vehicle" must be included on the employee's W-2; there are three rules the IRS allows to be used for valuing personal use of an employer's vehicle: automobile lease valuation rule; cents-per-mile rule; and the commuting rule (\$3 per day); for more detailed information regarding valuation of personal use of vehicles see IRS Pub. 15-B;

(b) the auditor should test to ensure that agency personal service contractors (1099 employees) meet the IRS tests to qualify as contract labor and that employees with contractor characteristics are properly classified as employees; the relevant IRS criteria for these tests are available in chapter 2 of the IRS Publication 15-A, employer's summary tax guide; in the event a personal services contractor is in substance an employee, the governmental agency could be liable for the employee's share of FICA and employer FICA match on the contract payments; PERA or ERB could expect excess retirement payments to be refunded in some circumstances; see Sections 10-11-8(C) and 22-11-25 NMSA 1978;

(c) city or county "volunteer firefighters" who are reimbursed when they provide firefighting services on state or federal land have been determined by the IRS to be employees of the respective city or county;

(d) the social security administration now requires all state and local government employers to disclose to all new employees the fact that their job is not covered by social security if they were hired for a position not covered by social security; these employees must sign a statement that they are aware of a possible reduction in their future social security benefit entitlement; see the website at www.socialsecurity.gov/form1945 for the required form and instructions;

(e) for more information regarding these and other IRS issues please contact the federal state and local government specialist with the IRS in

Albuquerque, NM at 505-837-5610.

I. Audit finding requirements appear below.

(1) Internal control related findings: pursuant to GAGAS 4.23, "auditors should communicate in the report on internal control over financial reporting and compliance, based upon the work performed: significant deficiencies and material weaknesses in internal control; instances of fraud and noncompliance with provisions of laws or regulations that have a material effect on the audit and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements that has a material effect on the audit; and abuse that has a material effect on the audit."

(a) AU-C 260.09 requires the auditor to evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses. Guidance for evaluating deficiencies is available at AU-C 260.A5 through 269.A11. Examples of circumstances that may be deficiencies, significant deficiencies, or material weaknesses are listed at AU-C 260.A37.

(b) Pursuant to Section 12-6-5 NMSA 1978, which requires that any violation of good accounting practices shall be set out in detail in the report, all findings, including those required by Section 12-6-5 NMSA 1978, regarding weaknesses in internal controls, warrant the attention of those charged with governance; therefore, all such findings must be included in the "compliance and other matters" paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards.

(2) GAGAS Section 4.05 (2011 revision) requires auditors to "evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements or financial data significant to the audit objectives. When planning the audit, auditors should ask management of the audited entity to identify previous audits, attestation engagements, and other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented; auditors should use this information in assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives." In addition to this standard, the IPA will report the status of all prior-year

findings in the current year audit report including the current year finding reference number (if repeated) followed by the original finding reference number appearing in brackets, the title of the finding, and whether the finding has been resolved or repeated in the current year; findings from special audits performed by the state auditor must be included in the findings of the annual financial and compliance audits of the related fiscal year.

(3) Current-year audit findings:

(a) the recently updated Data Collection Form requires federal award audit finding reference numbers to: have a new standard format with the four digit audit year, a hyphen and a three digit sequence number (e.g. 2013-001, 2013-002...2013-999); and match the finding reference numbers on the *data collection form* (Form SF-SAC) to those reported in the schedule of findings and questioned costs and the applicable auditor's report; therefore, all current year audit findings will follow this new required format; depending on the IPA's classification of the finding, the finding reference number should be followed by one of the following descriptions: "material weakness" in internal control; "significant deficiency" in internal control; "material noncompliance"; or "findings that do not rise to the level of a significant deficiency;" any unresolved prior-year findings must be repeated in the current year using the new format; however, as noted above, the status report of all prior year findings will include the old original finding number in brackets, following the new standardized finding reference number, to enable the report user to see what year the finding was originally written;

(b) written audit findings should be prepared and submitted to the agency management as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference; findings are not subject to negotiation; the agency should also prepare a corrective action plan as required by GAGAS 4.33 (2011 revision); the agency shall respond, in writing, to the IPA's audit findings within 10 business days; the agency's responses to the audit findings and the corrective action plan should be included in the finding after the recommendation; pursuant to GAGAS 4.38, "when the audited agency's comments are inconsistent or in conflict with findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditor's recommendations, the auditors should evaluate the validity of the audited agency's comments; if the auditors disagree with the comments, they should explain in the report their reasons for disagreement," after the agency's response; "conversely,

the auditors should modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence;" lack of agency responses within the 10 business days does not warrant a delay of the audit report; pursuant to GAGAS 4.39, "if the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited entity; in such cases, the auditors should indicate in the report that the audited entity did not provide comments;"

(c) each audit finding (including unresolved prior-year findings) shall specifically state and describe the following: (i) condition (provides a description of a situation that exists and should include the extent of the condition and an accurate perspective; the number of instances found and the dollar amounts involved, if any, should be reported in the condition); (ii) criteria (should identify the required or desired state or what is expected from the program or operation; should cite the specific section of law, regulation, ordinance, contract, or grant agreement if applicable); (iii) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks; (iv) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause will serve as a basis for the recommendation); (v) recommendation addressing each condition and cause; and (vi) agency response (agency's comments about the finding including a specific corrective action plan).

(4) If appropriate in the auditor's professional judgment, failure to submit the completed IPA recommendation form and contract by the due date at Subparagraph (c) Paragraph (6) of Subsection G of 2.2.2.8 NMAC, may be considered a current year compliance finding.

(5) If an agency has entered into any professional services contract with the IPA who performs the agency's annual financial audit, or the scope of work on any professional services contract relates to fraud, and the contract was not approved by the state auditor, this shall be reported as a finding of noncompliance with Subsection M of 2.2.2.8 NMAC.

(6) Component unit audit findings must be reported in the primary government's financial audit report.

(7) A release of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation

of Section 12-6-5(A) NMSA 1978 and will require an additional finding in the audit report.

(8) When auditors detect immaterial violations of provisions of contracts or grant agreements or abuse that are required to be reported by Section 12-6-5 NMSA 1978, that do not rise to the level of significant deficiencies or material weaknesses, those findings should be classified as warranting the attention of those charged with governance, since Section 12-6-5 NMSA 1978 requires any violation of law found by the audit to be set out in detail in the report; the auditor must communicate such violations in the "compliance and other matters" paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards (see the report on internal control examples at www.osanm.org).

(9) In the event that an agency response to a finding indicates in any way that the office is the cause of the finding, the office may require that a written response from the office of the state auditor be included in the report, below the other responses in the finding.

J. Exit conference and related confidentiality issues follow.

(1) The IPA must hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.) if applicable; if component unit representatives cannot attend the combined exit conference, a separate exit conference must be held with the component unit's governing authority and top management; the exit conference must be held in person; a telephone or webcam exit conference will not meet this requirement; if extraordinary circumstances exist that will prevent the exit conference from taking place in person, the IPA shall submit a written request for an exemption from this requirement to the state auditor at least 48 hours prior to the scheduled exit conference; the written request for the exemption must include the justification for the request and the concurring signature of the agency; the IPA may not hold a telephonic or webcam exit conference without prior written approval of the state auditor; the date of the conference(s) and the names and titles of personnel attending must be stated in the last page of the audit report.

(2) The IPA with the agency's cooperation shall deliver to the agency a complete and accurate draft of the audit report (stamped "draft"), a list of the "passed audit adjustments," and a copy

of all the adjusting journal entries before the exit conference; the draft audit report shall include the Management's Discussion and Analysis (MD&A), independent auditor's report, a complete set of financial statements, notes to the financial statements, required schedules, audit findings that include responses from agency management, status of prior-year audit findings, and the reports on internal control and compliance required by government auditing standards and the Single Audit Act.

(3) Agency personnel and the agency's IPA shall not release information to the public relating to the audit until the audit report is released by the office, and has become a public record; agencies subject to the Open Meetings Act who wish to have a quorum of the governing board present at the exit conference will have to schedule the exit conference during a closed meeting in compliance with the Act, in order to avoid disclosing audit information that is not yet public record, in a public meeting.

(a) Pursuant to the Open Meetings Act (Sections 10-15-1 to 10-15-4 NMSA 1978), any closed meetings shall be held only after reasonable notice to the public.

(b) Section 12-6-5 NMSA 1978 (Reports of Audits) provides that an audit report does not become a public record, subject to public inspection, until five calendar days after the date it is released by the state auditor to the agency being audited.

(c) Example 31 in the seventh edition of the attorney general's *Open Meetings Act Compliance Guide* states that "where the agency being audited is governed by a public body subject to the Open Meetings Act and where release of the report occurs at an exit conference at which a quorum of the members of the body is present, such exit conference need not be open to the public in order to preserve the confidentiality of the information protected by Section 12-6-5 NMSA 1978."

(d) Once the audit report is officially released to the agency by the state auditor (by an authorizing letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. The presentation of the audit report should be documented in the minutes of the meeting. See AU-C 260.12 to 260.14 for information that should be communicated to those charged with governance.

(4) At all times during the audit and after the audit report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the

release of any information relating to the audit; applicable standards include but are not limited to the *AICPA Code of Ethics Rule 301* and related interpretations and guidance, and GAGAS 4.30 to 4.32 and GAGAS 4.40 to 4.44.

K. Possible violations of criminal statutes in connection with financial affairs:

(1) GAGAS 2011 revision, Paragraphs 4.06 to 4.08 state that "in addition to the AICPA requirements concerning fraud and noncompliance with provisions of laws and regulations, when performing a GAGAS financial audit, auditors should extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements; abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances; abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate; abuse does not necessarily involve fraud, or noncompliance with provisions of laws, regulations, contracts, or grant agreements; because the determination of abuse is subjective, auditors are not required to detect abuse in financial audits; however, as part of a GAGAS audit, if auditors become aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, auditors should apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives; after performing additional work, auditors may discover that the abuse represents potential fraud or noncompliance with provisions of laws, regulations, contracts, or grant agreements;"

(2) Pursuant to Section 12-6-6 NMSA 1978 (Criminal Violations), an agency or IPA shall notify the state auditor immediately, in writing, upon discovery of any violation of a criminal statute in connection with financial affairs; the notification shall include an estimate of the dollar amount involved, and a complete description of the violation, including names of persons involved and any action taken or planned; if warranted, the state auditor may cause an audit of the financial affairs and transactions of the agency in whole or in part pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.15 NMAC; if the state auditor does not designate an agency for audit, an agency shall follow the provisions of Subsection E of 2.2.2.15

NMAC when entering into a professional services contract for a special audit, performance audit or attestation engagement regarding the financial affairs and transactions of the agency relating to financial fraud, waste and abuse.

(3) Section 12-6-6 NMSA 1978 states that the state auditor, immediately upon discovery of any violation of a criminal statute in connection with financial affairs, shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

L. Special revenue funds authority: the authority for creation of special revenue funds must be shown in the audit report (i.e., cite the statute number, code of federal regulation, executive order, resolution number, or other specific authority) on the divider page before the combining financial statements or in the notes to the financial statements.

M. Public monies:

(1) Definition - all monies coming into all agencies (i.e., vending machines, fees for photocopies, telephone charges, etc.) shall be considered public monies and be accounted for as such; for state agencies, all revenues generated must be authorized by legislation (Section 6-4-2 NMSA 1978 and MAPS FIN 11.4).

(2) If the agency has material derivatives or securities investments the auditor should seek the assistance of audit firm staff or of a specialist from outside the firm, that has the skill or knowledge required to plan and perform auditing procedures for specific assertions about derivatives and securities; see the related requirements at: *AU-C 501, Audit Evidence-Specific Considerations for Selected Items*, Paragraphs .04 through .10; and *AU-C 620, Using the Work of an Auditor's Specialist*.

(3) List of individual deposit accounts and investment accounts required by Section 12-6-5(A) NMSA 1978; each audit report shall include a list of individual deposit and investment accounts held by the agency; the information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council) and the SHARE fund number (state agencies only);

(b) account name;

(c) type of deposit or investment account (also required in separate component unit audit reports): (i) types of deposits are non-interest bearing checking, interest bearing checking, savings, money market accounts, certificates of deposit; and (ii) types of investments are state treasurer general fund investment pool (SGFIP), state treasurer local government investment pool (LGIP); U.S. treasury bills, notes, bonds and strips; and U.S. agencies such as FNMA, FHLMC, GNMA, Sallie Mae, SBA, FHA, federal financing bank, federal farm credit, financial assistance corporation, including the specific name of each bond, stock, commercial paper, bankers acceptances, mutual fund, foreign currency, etc;

(d) account balance of deposits and investments as of the balance sheet date; and

(e) reconciled balance of deposits and investments as of the balance sheet date as reported in the financial statements.

(f) with the implementation of the SHARE system, both the "book" and "bank" information reside on this unified system; there are no longer stand-alone systems providing single-source information; bank balance information is now available and retrievable at each state agency being audited; this information is identical to what DFA or STO can obtain from the system. STO no longer can act in the capacity of an independent third-party to provide account balance confirmations to other agencies or auditors, IPAs can now access account balance information by having the agency run a query or a trial balance report from SHARE; therefore, IPAs and state agencies should not request bank confirmations from STO (state agencies only).

(4) Pledged collateral:

(a) all audit reports should disclose the collateral requirements in the notes to the financial statements; in addition, there should be a supplementary schedule or note to the financial statements that discloses the collateral pledged by each bank and savings and loan association (S&L) that is a depository for public funds; the schedule should disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, CUSIP number, fair market value and maturity date;

(b) if the pledged collateral for deposits in banks, savings and loan associations, or credit unions, in an aggregate amount is not equal to one half of the amount of public money in each account (Section 6-10-17 NMSA 1978), there should be a finding in the audit report; no security is required for the deposit of public money that is insured by the FDIC or NCUSIF, according to Section 6-10-16 NMSA 1978; the collateral requirements should be calculated separately for each bank and disclosed in the notes as follows to show compliance and GASB 40 disclosure information (for line items iv-viii, delete the line items if custodial credit risk category does not apply):

(i)	Total on deposit in bank or credit union	\$ 450,000
(ii)	Less: FDIC or NCUSIF coverage *	250,000
(iii)	Uninsured public funds	<u>200,000</u>
(iv)	Pledged collateral held by agency's agent in agency's name	(50,000)
(v)	Pledged collateral held by the pledging bank's trust department in agency's name	(75,000)
(vi)	Pledged collateral held by the pledging financial institution	(12,500)
(vii)	Pledged collateral held by pledging bank's trust department or agent but not in agency's name	<u>(12,500)</u>
(viii)	Uninsured and uncollateralized	<u>(\$ 50,000)</u>

(c) *beginning January 1, 2013, noninterest-bearing transaction accounts will no longer be insured separately from depositors' other accounts at the same FDIC-insured depository institutions (IDI); instead, noninterest-bearing transaction accounts will be added to any of a depositor's other accounts in the applicable ownership category, and the aggregate balance insured up to at least the standard maximum deposit insurance amount of \$250,000 per depositor, at each separately chartered IDI; see the FDIC website at <http://www.fdic.gov/deposit/deposits/unlimited/expiration.html>, for more information;

(d) custodial credit risk is defined as the risk that the government's deposits may not be returned to it in the event of a bank

failure; per GASBS 40.8, the notes to the financial statements should disclose the amount of deposits subject to custodial credit risk for categories (vi), (vii) or (viii) above;

(e) to determine compliance with the 50% pledged collateral requirement of Section 6-10-17 NMSA 1978, the following disclosure must be made for each financial institution:

50% pledged collateral requirement per statute	\$ 100,000
Total pledged collateral	(150,000)
Pledged collateral (over)under the requirement	<u>\$ (50,000)</u>

(f) repurchase agreements must be covered by 102% of pledged collateral per Subsection H of Section 6-10-10 NMSA 1978; disclosure similar to that shown above is also required for the 102% pledged collateral requirement;

(g) per Subsection A of Section 6-10-16 NMSA 1978, “deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten by a member of the national association of securities dealers, known as “N.A.S.D.”, and are rated “BAA” or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank;”

(h) securities which are of obligations of the state of New Mexico, its agencies, institutions, counties, municipalities or other subdivisions shall be accepted as securities at par value; all other securities shall be accepted as security at market value pursuant to Subsection C of Section 6-10-16 NMSA 1978;

(i) state agency investments in the office of the state treasurer’s general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer; however, the notes to the financial statements should refer the reader to the state treasurer’s separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments; see Paragraph (14) of Subsection A of 2.2.2.12 NMAC for related GASBS 40 disclosure requirements;

(j) if an agency has other “authorized” bank accounts, pledged collateral information should be obtained from the bank and disclosed in the notes to the financial statements; the state treasurer monitors pledged collateral related to most state agency bank accounts; state agencies should not request the pledged collateral information from the state treasurer; in the event pledged collateral information specific to the state agency is not available, the following note disclosure should be made; detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds; however, the office of the state treasurer’s collateral bureau monitors pledged collateral for all state funds held by state agencies in such “authorized” bank accounts;

(5) State treasurer’s external investment pool (local government investment pool); agencies that have investments in the state treasurer’s short-term investment fund must disclose the information required by GASB Statement No. 31 Paragraph 15 in the notes to the financial statements; the following information may be helpful for this disclosure:

(a) the investments are valued at fair value based on quoted market prices as of the valuation date;

(b) the state treasurer local government investment pool is not SEC registered; the state treasurer is authorized to invest the short-term investment funds, with the advice and consent of the state board of finance, in accordance with Subsections I through O of Section 6-10-10 and Paragraph (1) of Subsection A and E of Sections 6-10-10 NMSA 1978;

(c) the pool does not have unit shares; per Paragraph (1) of Subsection F of Section 6-10-10 NMSA 1978, at the end of each month all interest earned is distributed by the state treasurer to the contributing entities in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts were invested;

(d) participation in the local government investment pool is voluntary;

(e) the current credit risk rating per the state treasurer’s website at http://www.nmsto.gov/gasb_40_disclosure; and

(f) the end of the fiscal year weighted average maturity (interest rate risk in number of days) also available on the state treasurer’s website.

N. Budgetary presentation:

(1) Prior year balance included in budget:

(a) if the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of fund balance on the budgetary basis required to balance the budget;

(b) if the agency prepares its budget on the cash basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of prior-year cash balance required to balance the budget (or fund balance on the cash basis);

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures should be reconciled; this reconciliation is required at the individual fund level; if the required budgetary comparison information is included in the basic financial statements, the reconciliation should be included on the statement itself (preferred) or in the notes to the financial statements; if the budgetary comparison is presented as supplemental information as required by Subparagraph (c) of Paragraph (3) of Subsection O of 2.2.2.10 NMAC below, the reconciliation to GAAP basis should be presented at the bottom of the budgetary comparison; if the required budgetary comparison is presented as RSI (for reasons described below in Subparagraph (b) of Paragraph (3) below) the reconciliation should appear in either a separate schedule or in notes to RSI according to the *AICPA Audit and Accounting Guide, State and Local Governments*, (AAG-SLV 11.14); also, the notes to the financial statements should disclose the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level of budgetary control; the legal level of budgetary control for local governments is at the fund level; the legal level of budgetary control is at the function level for school districts; the legal level of budgetary control for state agencies is explained at Paragraph (11) of Subsection A of 2.2.2.12 NMAC; for additional information regarding the legal level of budgetary control, the IPA should contact the applicable oversight agency, DFA, HED, or PED.

(3) Budgetary comparisons must show the original and final appropriated budget (same as final budget approval by DFA, HED or PED), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a) The basic financial statements must include budgetary comparison statements for only the general fund and major special

revenue funds if the budget structure for those funds is similar enough to the GAAP fund structure to provide the necessary information;

(b) The required supplemental information section is the place where the budgetary comparisons should appear for the general fund and major special revenue funds if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for the general fund and major special revenue funds. An example of this “perspective difference” would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data. See GASB Statement No. 41, *Budgetary Comparison Schedules -Perspective Differences*, Paragraphs 3 and 10. When budgetary comparisons have to be presented as required supplemental information (RSI) due to such perspective differences it is a requirement of the state auditor that they be audited and included in the auditor’s opinion. See AAG-SLV 14.65 in the *AICPA Audit and Accounting Guide, State and Local Governments (latest edition)*;

(c) Supplemental information (SI) is the place where all other budgetary comparison information should appear except the general and major special revenue fund budgetary comparisons. Nonmajor governmental funds and proprietary funds that have legally adopted budgets (including budgets approved by a resolution) should have budgetary comparisons appearing in the SI section of the report. It is a requirement of the state auditor that budgetary comparison statements presented in the basic financial statements or as required supplemental information (RSI) or supplemental information (SI) be audited and included in the auditor’s opinion. For an example of an opinion that includes SI or RSI see Example A-14 in the *AICPA Audit and Accounting Guide, State and Local Governments (latest edition)*.

O. Appropriations to agencies:

(1) Budget related findings:

(a) If actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact must be reported in a finding and disclosed in the notes to the financial statements;

(b) If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables required to balance the budget), that fact must also be reported in a finding

after the auditor confirms the finding with the agency’s budget oversight entity (if applicable), since budget deficits are generally not allowed;

(2) Special, deficiency, specific, and capital outlay appropriations:

(a) Special, deficiency, and specific appropriations and capital outlay appropriations funded by severance tax bonds or general obligation bonds of the state must be disclosed in the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances and unencumbered balances should be shown in a supplementary schedule or in a note to the financial statements. This is a special requirement of the state auditor;

(b) The accounting treatment of any unexpended balances should be fully explained in the supplementary schedule or in a note to the financial statements regarding the special appropriations.

P. consideration of internal control and risk assessment in a financial statement audit: all financial audits performed under this rule are required to include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. Inquiry alone is not sufficient testing of internal controls; the requirement to test internal controls applies even in circumstances when the auditor has assessed control risk at maximum; this is a special requirement of the state auditor; this requirement does not require an auditor to retest controls previously tested during the performance of an AU-C 402 (previously SAS 70) audit, when the auditor is relying on the AU-C 402 audit report.

Q. Lease purchase agreements:

(1) The New Mexico supreme court has held that it is unconstitutional for agencies to enter into lease purchase agreements after January 9, 1989, unless special revenue funds are the designated source of payments for the agreement. (Any agreements executed prior to that date may not be extended or amended without compliance with the guidelines of Montano v. Gabaldon, 108 N.M. 94, 766 P.2d 1328);

(a) The attorney general interpreted Montano to mean that long-term contracts for professional services, leases, and real property rental agreements may still be entered into within the constraints of the Bateman Act and the Procurement Code; however, any agreement which is in effect for more than one fiscal year, including leases of real property, must have a provision allowing the agency to terminate the agreement at will at any time, or at least at the end of each fiscal year, without penalty; furthermore, the agency

must have no “equitable or moral” duty to continue to make payments under the contract; the agreements must also contain a non-appropriation clause allowing for termination of the agreement in the event the agency decides not to appropriate funds for each fiscal year;

(b) The attorney general subsequently opined that if the source of funds to repay the debt is solely repaid from the project revenue or from a special non-general-tax fund and not from any general tax revenue, then the debt, be it in the form of bonds or a lease purchase agreement, is not the sort of debt which triggers the constitutional requirement of approval by the voters. This is the teaching of the Connelly case relied on by the court in Montano. Montano did not reverse Connelly, Seward and the other cases which have consistently limited the application of constitutional restrictions to debts which are paid out of general tax revenues;

(2) If specific questions as to the constitutionality of a particular lease agreement remain, an independent legal opinion should be obtained from the attorney general.

R. Required auditor’s reports:

(1) The independent auditor’s report should follow the examples contained in the *AICPA Audit and Accounting Guide, Government Auditing Standards and Circular A-133 Audits* (latest edition), Chapter 4 Example 4-4 (including the reference to the schedule of expenditures of federal awards when applicable), and the *AICPA Audit and Accounting Guide State and Local Governments* (latest edition), Chapter 14, Appendix A - Illustrative Auditor’s Reports, Example A-14 which illustrates how to opine on the basic financial statements and the combining and individual fund financial statements presented as supplementary information; see also the guidance provided in Chapter 14, Appendix A, Footnote 4 regarding wording that should be used when opining on budgetary statements on the GAAP basis; budgetary comparisons presented on a non-GAAP basis should follow the AU-C 805, Illustration 2 report example; all independent auditor’s reports should include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America and with applicable *Government Auditing Standards* per GAGAS 4.18; this statement should be modified in accordance with GAGAS 2.24b, if some GAGAS requirements were not followed. As applicable, the first sentence of the AU-C 725 opinion paragraph should state that the audit was conducted for the purpose of forming opinions on the basic financial statements, the combining and individual

financial statements, and the budgetary comparisons; see also the report example on the office website at www.osanm.org.

(2) The report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with *government auditing standards* should follow the applicable AICPA report example available in the *AICPA Audit and Accounting Guide, Government Auditing Standards and Circular A-133 Audits*, (latest edition) Chapter 4; pursuant to Section 12-6-5 NMSA 1978, which requires that any violation of good accounting practices shall be set out in detail in the report, all findings, including those required by Section 12-6-5 NMSA 1978, regarding noncompliance or weaknesses in internal controls, warrant the attention of those charged with governance; therefore, all such findings must be included in the "compliance and other matters" paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with *Government Auditing Standards*; see the report examples on the office website at www.osanm.org.

(a) The state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be dated the same date as the independent auditor's report;

(b) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency will be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Paragraph (4) of Subsection Q of 2.2.2.8 NMAC above, regarding this issue.

(3) The report on compliance for each major federal program: report on internal control over compliance - report examples are available in Appendix - Illustrative Auditor's Reports under Circular A-133 of Chapter 13 in the current version of the *AICPA Audit and Accounting Guide, Government Auditing Standards and Circular A-133 Audits*.

(4) One report cover: the state auditor requires the following reports to be included under one report cover: the independent auditor's report including the AU-C 725 report on supplemental information (except for the separate report on PERA and ERB supplementary information described at Paragraph (3) of Subsection of DD of 2.2.2.10 NMAC); the AU-C 805 on budgetary comparisons presented on a framework other than

GAAP; the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards (required by Section 12-6-5 NMSA 1978, GAGAS 4.17 and AU-C 265.11 to 265.16); and the report on compliance for each major federal program, report on internal control over compliance; if applicable, the independent auditor's report must include the AU-C 725 opinion on the schedule of expenditures of federal awards and the HUD financial data schedule (required by HUD guidelines on reporting and attestation requirements of uniform financial reporting standards); the report must also contain a table of contents and an official roster; the IPA should submit a written request for an exemption from the "one report cover," and receive prior written approval from the state auditor in order to present any of the above information under a separate cover.

S. Service organizations:
If the agency uses a service organization to process certain transactions, the auditor should follow the applicable guidance provided in AU-C 402; the AU-C Section has been updated to: (1) allow the IPA to make reference to the work of the service auditor, to explain a modification of the IPA's opinion (AU-C 402.22), if applicable; and (2) require the IPA to inquire of management of the user entity regarding whether the user entity is aware of any service organization fraud, noncompliance with laws and regulations, or uncorrected misstatements that affect the financial statements of the user entity (AU-C 402.19).

T. Disposition of property:
(1) Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of obsolete, worn-out or unusable tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions; pursuant to Subsection A of Section 13-6-4 NMSA 1978, municipalities are exempt from this requirement; at least 30 days prior to any such disposition of property on the agency inventory list described below in Subsection Y of 2.2.2.10 NMAC, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action must be sent to the state auditor;

(2) In the event a computer is included in the planned disposition, the agency shall "sanitize" or effectively make "inaccessible," all licensed software and any electronic media pertaining to the agency; hard drive erasure or destruction certification is still required even if the asset originally cost less than the capitalization threshold at the time of purchase, and the asset was not included in the capital asset

inventory; according to the May 5, 2002 memorandum from the chief information technology security and privacy office, "ordinary file deletion procedures do not erase the information stored on hard disks or other magnetic media; sanitizing erases or overwrites totally and unequivocally, all information stored on the media; there are three basic approaches:

(a) purchasing and using a commercial degaussing product to erase magnetic disks;

(b) overwriting stored data a minimum of five times; or

(c) reformatting the drives (F diskling)."

(3) Agencies and local governments disposing of any digital equipment with storage capabilities should take care to properly erase stored data prior to the intended disposition; agencies subject to the notification requirements of Subsection B of Section 13-6-1 NMSA 1978, must certify in writing the proper erasure or destruction of the hard drive and submit the written certification along with the notification of the proposed disposition of property, to the state auditor at least 30 days prior to taking action to dispose of the asset; the IPA shall test for compliance with this requirement; this is a special requirement of the state auditor and it applies even if the original purchase price of the digital equipment was less than \$5,000.

U. Joint powers agreements and memorandums of understanding:

(1) All joint powers agreements (JPA) and memorandums of understanding (MOU) must be listed in a supplementary schedule in the audit report; the schedule should include the following information for each JPA or MOU:

(a) participants;
(b) party responsible for operations;
(c) description;
(d) beginning and ending dates of the JPA or MOU;
(e) total estimated amount of project and portion applicable to the agency;
(f) amount the agency contributed in current fiscal year;
(g) audit responsibility;
(h) fiscal agent if applicable; and
(i) name of government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under joint powers agreements or memorandums of understanding, see the GASB Codification Section J50.113.

V. Capital asset inventory:

(1) The Audit Act (Section 12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment that

cost over \$5,000; all agencies are required to update their capitalization policy and implement it in accordance with the law; this change in capitalization threshold should be accounted for prospectively from June 17, 2005 forward, as a change in estimate per GASBS 62.69; older capital assets that were capitalized under previous lower capitalization thresholds should not be removed from the capital assets list during the implementation of the most recent capitalization threshold increase; any new items received after June 17, 2005 should be added to the inventory list only if they meet the new capitalization threshold; regarding safeguarding and management of assets that do not meet the capitalization threshold, the state auditor encourages agencies to maintain a separate accountability report for those items that cost \$5,000 or less;

(2) Subsection A of Section 12-6-10 NMSA 1978 requires each agency to conduct an annual physical inventory of movable chattels and equipment on the inventory list at the end of each fiscal year; the agency shall certify the correctness of the inventory after the physical inventory; this certification should be provided to the agency's auditors.

W. Schedule of changes in assets and liabilities for the agency funds: Agency funds are excluded from the statement of changes in fiduciary net position (GASBS 34 Paragraph 110 as amended by GASBS 63) because they have no "net assets;" therefore it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the agency funds be included as supplemental information (SI) for all agencies that have agency funds; the schedule should show additions and deductions for each agency fund except for school districts; school districts should see Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC for more information regarding the presentation of the statements of changes in assets and liabilities - agency funds for school districts; the schedule should appear toward the end of the table of contents and requires an AU-C 725 opinion in the independent auditor's report.

X. Accounting for forfeited property:

(1) Seized property should be accounted for in an agency fund before the "judgment of forfeiture" per Section 31-27-6 NMSA 1978 judgment of forfeiture;

(2) Once the judgment of forfeiture is made, the property should be accounted for in a special revenue fund because the revenues are legally restricted for specified purposes; the balance sheet of such a special revenue fund that accounts for seized property may have zero balances at the end of a fiscal year because net

balance amounts may have been transferred to the general fund of the governing body of the seizing law enforcement agency, or the general fund to be used for drug abuse treatment services, for drug prevention and education programs, for other substance abuse demand-reduction initiatives or for enforcing narcotics law violations; exceptions are forfeitures of property arising from: violations of hunting or fishing regulations that must be deposited in the game protection fund; and violations against cultural properties that must be used for the restoration of the affected cultural property, with net balances being deposited into the general fund;

(3) Seized property resulting in forfeiture proceeds creates revenue for the governmental agency that seized the property. That revenue and related expenditures must be included in the budget process of the governmental agency;

(4) See Section 31-27-1 NMSA 1978 and related cross references for guidance on various types of seizures and forfeitures; Section 31-27-7 NMSA 1978 provides statutory guidance for proper disposition of forfeited property and use (allowable expenditures) of all related proceeds.

Y. Tax increment development districts: Pursuant to Subsection C of Section 5-15-9 NMSA 1978, tax increment development districts (TIDDs) are political subdivisions of the state, and they are separate and apart from the municipality or county in which they are located; Section 5-15-10 NMSA 1978, states that the district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges; however, in the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors; therefore, a TIDD and its audit firm will have to apply the criteria of GASB 14 Paragraph 132 (as amended by GASBS 61) to determine whether the TIDD is a component unit of the municipality or county that approved it, or whether the TIDD is a related organization of the municipality or county that approved it; if the TIDD is determined to be a related organization per the GAAP requirements, then the TIDD will have to contract separately for an audit separate from the audit of the municipality or county that approved it.

Z. SAS 127: *Omnibus*

Statement on Auditing Standards - 2013: This statement was issued January 2013, and is effective for audits of group financial statements, and for audits of financial statements, for periods ending on or after December 15, 2012 (FY13); it amends SAS No. 122 Section 600, "Special Considerations-Audits of Group Financial Statements (Including the Work of Component Auditors);" the amendment permits making reference to the audit of a component auditor in the auditor's report on the group financial statements when the component's financial statements are prepared using a different financial reporting framework than that used for the group financial statements, if certain conditions are met; it also requires the auditor of the group financial statements to take responsibility for evaluating the appropriateness of the adjustments to convert the component's financial statements to the financial reporting framework used by the group; this statement also amends SAS No. 122 Section 800, "Special Considerations-Audits of Financial Statements Prepared in Accordance With Special Purpose Frameworks," to include in the bases of accounting defined as special purpose frameworks, another basis of accounting that uses a definite set of logical, reasonable criteria that is applied to all material items appearing in financial statements.

AA. GASBS 65, *Items Previously Reported as Assets and Liabilities:* This statement is effective for financial statements for periods beginning after December 15, 2012, (FY14) with earlier application encouraged; this statement establishes: (1) accounting and financial reporting standards regarding deferred outflows of resources (previously assets) and deferred inflows or resources (previously liabilities); (2) changes in the determination of the major fund calculations; and (3) limits on the use of the term "deferred" in financial statements.

BB. GASBS 66, *Technical Corrections - 2012, An Amendment of GASBS Statements No. 10 and No. 62:* The effective date of this statement is for periods beginning after December 15, 2012 (FY14) with early application encouraged; the purpose of this statement is to resolve conflicting guidance regarding: the reporting of risk financing activities; reporting of certain operating lease transactions; reporting the acquisition of a loan or a group of loans; and recognition of servicing fees related to mortgage loans that are sold.

CC. GASBS 67, *Financial Reporting for Pension Plans - An Amendment of GASBS Statement No. 25:* This statement is effective for financial statements for fiscal years beginning

after June 15, 2013 (FY14), with earlier application encouraged; this statement replaces the requirements of GASBS 25, Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans, and No. 50, Pension Disclosures, as they relate to pension plans that are administered through trust or equivalent arrangements; the requirements of GASBS 25 and 50 remain applicable to pension plans that are not administered through trusts covered by the scope of this statement and to defined contribution plans that provide postemployment benefits other than pensions.

DD. GASBS 68, Accounting and Financial Reporting for Pensions-An Amendment of GASBS Statement No. 27:

(1) this statement is effective for financial statements for fiscal years beginning after June 15, 2014 (FY15); this statement replaces the requirements of GASBS 27, Accounting for Pensions by State and Local Governmental Employers, and the requirements of GASBS 50 Pension Disclosures, as they relate to pensions that are provided through pension plans administered as trusts; the requirements of GASBS 27 and 50 remain applicable for pensions that are not covered by GASBS 68;

(2) employers that participate in PERA and ERB should consult their oversight agencies (DFA, LGD, PED and HED), regarding the measurement date that each employer should use in implementing GASBS 68 in FY15; note that GASBS 68.34 and 68.57 require that "contributions to the pension plan from the employer subsequent to the measurement date of the net pension liability and before the end of the reporting period should be reported as a deferred outflow of resources related to pensions;"

(3) after their FY14 audit reports are audited and released, PERA and ERB plan to provide each of their participant employers with their allocated pension liability information as of June 30, 2014; the state auditor is requiring that:

(a) prior to distribution of this information to the participant employers, the PERA and ERB will obtain an audit of the schedules of allocated pension liability information, pursuant to AU-C 805, *Special Considerations - Audits of Single Financial Statement and Specific Elements, Accounts, or Items of a Financial Statement*;

(b) pursuant to AU-C 805.16, the PERA and ERB auditors will provide PERA and ERB with a separate report on the AU-C 805 audit performed;

(c) the AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of allocated pension liability information must be submitted to the office

for review and release pursuant to 2.2.2.13 NMAC, prior to distribution to the PERA and ERB participant employers; and
(d) as soon as the AU-C 805 reports, including the allocated pension information, become public record, PERA and ERB will make the information available to the participant employers.

EE. GASBS 70, *Accounting and Financial Reporting for Nonexchange Financial Guarantees*: This statement establishes accounting and financial reporting standards for financial guarantees that are Nonexchange transactions extended or received by a state or local government. A nonexchange financial guarantee is a guarantee of an obligation of a legally separate entity or individual, including a blended or discretely presented component unit, which requires the guarantor to indemnify a third-party obligation holder under specified conditions. This statement is effective for financial statements for reporting periods beginning after June 15, 2013 (FY14).

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 2-28-14]

2.2.2.11 THE ACCOUNTABILITY IN GOVERNMENT ACT:

A. This section applies to agencies that have performance measures associated with their budgets; the purpose of the Accountability in Government Act (Sections 6-3A-1 to 6-3A-9 NMSA 1978) is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

B. Agency performance measures are included in the General Appropriations Act; the agency shall include a schedule of performance data (outcomes, outputs, efficiency, etc.) if the schedule is required by the agency's oversight agency such as DFA, HED and PED and preparation guidelines are issued by the oversight agency.

C. The auditor's responsibilities for performing procedures and reporting on supplemental information (SI) are provided in *AU-C Section 725, Supplementary Information in Relation to the Financial Statements as a Whole*; the auditor should apply the procedures required by *AU-C 725* to the agency's performance data included in the schedule in order to determine whether it is fairly stated, in all material respects, in relation to the financial statements as a whole.

D. The IPA should include this schedule in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information

is fairly stated in all material respects in relation to the financial statements as a whole.

[2.2.2.11 NMAC - Rp, 2.2.2.11 NMAC, 2-28-14]

2.2.2.12 SPECIFIC CRITERIA: The specific criteria should be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, the state statutes (NMSA) and regulations (NMAC) should be reviewed while planning governmental audits.

A. PERTAINING TO AUDITS OF STATE AGENCIES:

(1) due dates for agency audits: Subsection D of Section 12-6-3 NMSA 1978 states that state agency reports are due no later than 60 days after the state auditor receives notice from the financial control division of DFA that the agency's books and records are ready and available for audit; the financial control division requires that each agency submit a management representation letter documenting management's responsibility for the accounting records, the agency has recorded all transactions properly in SHARE, and the agency is ready and available for audit; in addition, the financial control division mandates that each agency, with the help of its independent auditor, identify and submit with the management representation letter a schedule of deliverables and agreed to milestones for the audit; the milestones ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time; once the financial control division receives the management representation letter, the schedule of deliverables and milestones, the financial control division will notify the state auditor in writing regarding the expected audit deadline for the agency; the 60 days to the audit deadline will be based on the date of the financial control division's notification to the state auditor, which will be based on input from the agency to the financial control division and the agency's schedule of deliverables and milestones;

(2) materiality at the individual fund level means at the individual SHARE fund level for state agencies; all the individual SHARE funds should be reported in the financial statements and opined on in the independent auditor's report;

(3) accounts payable at year-end: If goods and services were received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable should be reported for the respective amount due in both the government-wide financial statements and the fund financial statements (NCGAS 1

Paragraph 70); per Section 6-10-4 NMSA 1978, the “actual” expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of current year budget; they will be paid out of the budget of the following fiscal year; an agency’s reversions should be calculated using the budgetary basis expenditures because the agency does not have the legal authority to obligate the state for liabilities once the appropriation period has lapsed; thus the agency cannot keep the cash related to accounts payable that were not paid timely; this will result in a negative fund balance in the modified accrual basis financial statements of a reverting fund;

(4) net position/fund balance:

(a) pursuant to GASBS 63.8 the government-wide statement of net position and the proprietary fund statement of net position should show net position as: (i) net investment in capital assets; (ii) restricted (distinguishing between major categories of restrictions); and (iii) unrestricted; pursuant to GASBS 63.10, “restricted component of net position consists of restricted assets reduced by liabilities and deferred inflows of resources related to those assets; generally, a liability relates to restricted assets if the asset results from a resource flow that also results in the recognition of a liability or if the liability will be liquidated with the restricted assets reported;” pursuant to GASBS 63.11, “the unrestricted component of net position is the net amount of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the determination of net investment in capital assets or the restricted component of net position;”

(b) governmental fund financial statement fund balances should be reported in accordance with GASBS 54; this statement is effective for financial statements for periods beginning after June 15, 2010 (FY11);

(c) the statement of fiduciary net position (fiduciary fund financial statement) should show net position as “held in trust for” (GASBS 34 Paragraph 108 as amended by GASBS 63).

(5) Book of record:

(a) The state maintains the centralized accounting system, SHARE; the SHARE data and reports are the original book of record that the auditor is auditing; each fiscal year, the agency is required to record all audit adjusting journal entries in SHARE; the financial information in SHARE is to agree to the agency’s audited financial statements, with the exception of accounts payable as explained in Paragraph (3) Subsection A of 2.2.2.12 NMAC (accounts payable); if the independent auditor finds that the agency

did not record all audit adjusting journal entries, the auditor must include this instance of noncompliance with Sections 6-5-2.1 and 6-5-4.1 NMSA 1978; if the agency maintains a separate accounting system, it should be reconciled with the SHARE system and all applicable adjustments should be recorded in SHARE periodically throughout the fiscal year; the financial control division provides to agencies: the manual of model accounting practices (MAPs), various white papers, yearly closing instructions, and various accounting guideline memos. These documents provide guidance for an auditor regarding policy and procedure requirements and they are available on the financial control division’s website at <http://www.nmdfa.state.nm.us> “resource information.”

(b) The SHARE chart of accounts reflects the following appropriation unit levels. The statement of revenues and expenditures in the audit report should be presented in accordance with GAAP, by function or program classification and object code. However, the budgetary comparison statements must be presented using the level of appropriation reflected in the final approved budget.

Appropriation unit code	Appropriation unit description
200	Personal services & employee benefits
300	Contractual services
400	Other
500	Other financing uses
600	Non-budgeted

(c) Revenue categories of appropriations to state agencies are listed below; the budgetary comparison statements for state agencies must be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency’s final approved budget: (i) state general fund; (ii) other state funds; (iii) internal service funds/inter-agency transfers; or (iv) federal funds. For more detail about the chart of accounts see the DFA website.

(6) Reversions to state general fund:

(a) All reversions to the state general fund must be identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - (FY 14); the gross amount of the appropriation and the gross amount of the reversion must be shown separately.

(b) Subsection A of Section 6-5-10 NMSA 1978 requires “all unreserved, undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30 to the general fund; the division may adjust the reversion within 45 days of release of the audit report for that fiscal year;” failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(7) Nonreciprocal (not payments for materials or services rendered) interfund (internal) activity includes (a) transfers and (b) reimbursements (GASBS 34 Paragraph 410).

(a) intra-agency transfers between funds within the agency should offset; reasons for intra-agency transfers should be fully explained in the notes to the financial statements; in the separate audit reports of state agencies, transfers between their internal funds should be shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements;

(b) inter-agency transfers (between an agency’s internal funds and other funds of the state that are outside the agency such as state general fund appropriations, special appropriations, bond proceeds appropriations, reversions to the state general fund, and transfers to/from other state agencies) should be segregated from intra-agency transfers and should be fully explained in the notes to the financial statements along with the agency number and SHARE fund number to whom and from whom transferred; the transfers may be detailed in supporting schedules rather than in the notes, but agency and SHARE fund numbers must be shown; the schedule should be presented on the modified accrual basis; the IPA is responsible for performing audit procedures on all such inter-agency transfers;

(c) regarding inter-agency transfers between legally separate component units and the primary government (the state of New Mexico): (i) component units of the state of New Mexico for statewide CAFR purposes are the New Mexico lottery authority (blended), the New Mexico finance authority (discretely presented) and the New Mexico mortgage finance authority (discretely presented); (ii) if the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit’s separately issued financial statements should report such activity between itself and the primary government as revenues and expenses; when the blended component unit is included in the primary government’s financial statements, such inter-agency transfers would be reclassified as transfers (GASBS 34 Paragraph 318); (iii) all resource flows between a discretely presented component unit of the state and other funds of the state

are required to be reported as external transactions-revenues and expenses in the primary government's financial statements and the component unit's separately issued financial statements (GASBS 34 Paragraph 318);

(d) all transfers to and from SHARE fund 853, the state general fund appropriation account, must be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections;

(e) reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund; reimbursements should not be reported as interfund activity in the financial statements.

(8) GSD capital projects: GSD records the state of New Mexico capitalized land and buildings, for which it is responsible, in its accounting records; the cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them; the agency must capitalize those assets based on actual amounts expended in accordance with GSD instructions issued in 2.20.1.10 NMAC, *Valuation of Assets*.

(9) State-owned motor vehicle inventory: Successful management of the state-owned vehicles pursuant to the Transportation Services Act (Sections 15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory; thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(10) Independent auditor's report:

(a) the independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Section 11, must include an explanatory paragraph preceding the opinion paragraph; the explanatory paragraph should reference the summary of significant accounting principles disclosure regarding the reporting agency, and indicate that the financial statements are not intended to present the financial position and changes in financial position of the primary government, the state, but just the financial position and the changes in financial position of the department; the auditor should follow Example A-16 in Appendix A - Illustrative Auditor's Reports of the *AICPA Audit and Accounting Guide State and Local Governments* (latest edition);

(b) a statement should be included that the audit was made in accordance with

generally accepted government auditing standards per GAGAS (2011) Paragraphs 4.18, 2.24 and 2.25.

(11) Budgetary basis for state agencies: Per the General Appropriation Act Laws, 2013, Chapter 227, Section 3, item M, "For the purpose of administering the General Appropriation Act of 2013 and approving operating budgets, the state of New Mexico shall follow the modified accrual basis of accounting for governmental funds in accordance with the manual of model accounting practices issued by the department of finance and administration." The budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get accrued by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely or accrued by statutory deadline must be paid out of the next year's budget. As previously stated in Paragraph (3) of Subsection A of 2.2.2.12 NMAC (accounts payable), if goods and services were received by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable should be recorded for the respective amount due in both the government-wide financial statements and the fund financial statements (NCGAS 1 Paragraph 70). If an agency needs to recognize additional accounts payable amounts that were not accrued by the statutory deadline, then the budgetary statements and the fund financial statements will require a reconciliation of expenditures, see Paragraph (2) of Subsection O of 2.2.2.10 NMAC (budgetary presentation). Since SHARE is the book of record for the state, all transactions are recorded in SHARE under the modified accrual basis of accounting except for accounts payable not meeting the statutory deadline; therefore, the "actual" expenditures in the budgetary comparison schedules shall equal the expenditures as recorded in SHARE for the fund. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of 12 months (multiple-year appropriations). When multiple year appropriation periods lapse, the authority for the budget also lapses and encumbrances can no longer be charged to that budget. The legal level of budgetary control should be disclosed in the notes to the financial statements. Per Subsection C of Section 10 of the General Appropriation Act of 2013, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other. Therefore, the legal level of budgetary control would be the appropriation program level (A-Code, P-Code, R-Code, and Z-Code). The A-Code pertains to capital

outlay appropriations (general obligation/severance tax or state general fund). The P-Code pertains to operating funds. The R-Code pertains to American Recovery & Reinvestment Act (ARRA) funds. The Z-Code pertains to special appropriations; total expenditures for the program need to be compared to the program's approved final budget for compliance.

(12) Accounting for special capital outlay appropriations financed by bond proceeds:

(a) STO administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO should not report in its basic financial statements bonds payable that are obligations of the state of New Mexico. The proper reporting of these payables and the related bond face amounts (proceeds) is in the state's comprehensive annual financial report (CAFR). The STO audit report, notes to the financial statements must explain the following: (1) by statute, STO is responsible for making the state's bond payments and keeping the related records; however, it is not responsible for the related debt, the state is; and (2) refer the reader to the detailed supplemental information in the STO audit report and the statewide CAFR; the STO's financial statements include audited supplemental information (SI) regarding the state of New Mexico bond obligations; the SI schedules must show: (1) the beginning and end-of-year bond payable balances, increases and decreases (separately presented), and the portions of each bond issuance that are due within one year, as required by GASBS 34 Paragraph 119; (2) the details of debt service requirements to maturity required by GASBS 38 Paragraph 10; and (3) any violations of bond covenants and related actions taken to address violations of bond covenants, required by GASBS 38 Paragraph 9 and Section 12-6-5 NMSA 1978;

(b) DFA has provided accounting and reporting guidance for state agencies that receive or administer any special capital outlay appropriations from the state legislature that are financed by bond proceeds; DFA's guidance is available in the "FY 2008 Audit Forum" section at <http://www.nmdfa.state.nm.us/Forums.aspx>; in the notes to the financial statements, agencies should disclose that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients, and the agency is not obligated in any manner for the related indebtedness; agencies should also disclose the specific revenue recognition policy for these appropriations; each agency's IPA should audit the agency's financial statement presentation of this capital outlay project information and the related budget comparisons, to ensure that they are

presented in accordance with accounting principles that are generally accepted in the United States.

(13) Amounts “due from other state agencies” and “due to other state agencies”: If a state agency has amounts “due from” or “due to” other state agencies in its balance sheet, the notes should disclose the amount “due to” or “due from” each agency, the name of each agency, the SHARE fund account numbers and the purpose of the account balance.

(14) Investments in the state treasurer’s general fund investment pool (SGFIP): These investments should be recorded as investments in the statement of net position and the balance sheet, not as cash or cash equivalents; the notes to the financial statements should contain the following disclosures for the SGFIP as required by GASBS 40:

(a) an explanation that credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations, and a statement that the SGFIP is not rated for credit risk (GASBS 40 Paragraph 7);

(b) interest rate risk: (i) an explanation that interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment; (ii) disclosure required by GASBS 40 Paragraph 15, of the agency’s SGFIP investment fair value as of the end of the fiscal year, and the maturities of the SGFIP for the fiscal year per DFA or STO; and (iii) a statement that the agency does not have an investment policy that limits investment interest rate risk;

(c) the disclosure should also refer the reader to the separate audit report for the STO for additional information regarding the SGFIP.

(15) Format for the statement of activities: State agencies that have more than one program or function must use the financial statement format like GASBS 34, Illustrations B-1 through B-4(b); the simplified statement of activities (GASBS 34, Illustration B-5) should not be used for agencies that have multiple programs or functions; GASBS 34 Paragraph 41 requires governments to report direct expenses for each function.

(16) Oversight duties of the department of finance and administration’s financial control division: On October 3, 2008, the state controller and the state auditor distributed a letter to agencies regarding the CAFR unit’s request for agencies’ draft financial statements for the preparation of the comprehensive annual financial report (CAFR) for the state; agencies were concerned about violating Paragraph (4) of Subsection C of 2.2.2.9 NMAC, delivery and release of the audit report; Subsection S of

Section 6-5-2.1 NMSA 1978 provides FCD to “have access to and authority to examine books, accounts, reports, vouchers, correspondence files and other records, bank accounts, money and other property of a state agency;” in addition, Section 6-5-4.1 NMSA 1978 mandates that FCD shall compile the CAFR; after some consideration and discussion of the conflicting regulations, the state controller and the state auditor concluded, “pursuant to these rules, Sections 6-5-4.1 and 12-6-5 NMSA 1978 should be construed to give effect to both statutes and the corresponding administrative rules; therefore, an agency shall provide a copy of its draft audited financial statements to financial control division in order that the division may compile the CAFR; the agency’s audit report is not public record unless released in accordance with Section 12-6-5 NMSA 1978;” to review the entire letter, the DFA-FCD oversight letter, go to the FCD website at www.dfafcd.state.nm.us, under the resource information tab, memos and notices link, and comprehensive annual financial report; the unaudited draft financial statements submitted to DFA shall exclude the opinion and findings; submission of the unaudited draft financial statements is the responsibility of the agency and not the auditor.

B. PERTAINING TO AUDITS OF HOUSING AUTHORITIES:

(1) Housing authorities within the state of New Mexico consist of regional housing authorities, component units or departments of local governments, component units of housing authorities, and a housing authority created by an intergovernmental agreement between a city and county that is authorized to exercise all powers under the Municipal Housing Law Section 3-45-1 *et seq.* NMSA 1978.

(2) The financial statements of a housing authority that is a department or component unit of a primary government, must be included in the financial audit report of the primary government by discrete presentation unless an exemption from this requirement has been obtained from the state auditor.

(a) Discrete presentation shows financial data of the component unit in a column to the right of and separate from the financial data of the primary government. See GASBS 14 Paragraphs 44 through 50, as amended.

(b) The primary government in cooperation with its auditor must make the determination whether the housing authority is a component unit of the primary government; see Paragraph (1) of Subsection A of 2.2.2.10 NMAC for guidance in this determination; in the event the primary government and auditor determine that the housing authority is a

department of, rather than a component unit of the primary government, a request for exemption from the discrete presentation requirement must be submitted to the state auditor, by the agency, explaining why the housing authority should not be a discretely presented component unit; the request for exemption must include evidence that the housing authority is not a separate legal agency from the primary government and that the corporate powers of the housing authority are held by the primary government; evidence included in the request must address these issues: (i) the housing authority is not a corporation registered with the secretary of state; (ii) there was never a resolution or ordinance making the housing authority a public body corporate; and (iii) the housing authority was authorized under the Municipal Housing Law, Section 3-45-1 *et seq.* NMSA 1978.

(c) Upon receipt of the exemption granted by the state auditor from the requirement for discrete presentation, the housing authority department or program would be included in the financial report of the primary government like any other department or program of the primary government.

(3) Audits of the public housing authorities that are departments of the local government shall be conducted by the same IPA that performs the audit of the local government; separate audit contracts will not be approved.

(a) Local governments are encouraged to include representatives from the public housing authorities that are departments in the IPA selection process.

(b) The IPA shall include the housing authority’s governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold a separate entrance and exit conference with housing authority’s management and a member of the governing board.

(4) Housing authorities that are component units of a local government:

(a) must account for financial activity in proprietary funds;

(b) are authorized by Subsection E of Section 12-6-3 NMSA 1978, and “at the public housing authority’s discretion, may be audited separately from the audit of its local primary government entity; if a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity;” the statute further stipulates in Subsection A of Section 12-6-4 NMSA 1978, that “a public housing authority (other than a regional housing

authority) shall not bear the cost of an audit conducted solely at the request of its local primary government entity;”

(c) any separate audits of component unit housing authorities must be conducted according to the following requirements: (i) the primary government auditor must agree to use the information from the work of the component unit auditor; (ii) the component unit auditor selected must appear on the office of the state auditor list of eligible independent public accountants; (iii) the bid and auditor selection processes must comply with the requirements of this rule; (iv) the office of the state auditor standard contract form must be used; (v) all component unit findings must be disclosed in the primary government’s audit report; (vi) any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC; (vii) the audit report will be released by the state auditor separately from the primary government’s report under a separate release letter to the housing authority.

(5) Auditors and public housing authorities must follow the requirements of *Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities Not-for-Profit Multifamily Program Participants and their Independent Accountants*, which is available on the HUD website under a search for UFRS; additional administrative issues related to the audit of public housing authorities follow:

(a) housing authority audit contracts must include the cost of the audit firm’s AU-C 725 opinion on the financial data schedule (FDS); the public housing authority must electronically submit a final approved FDS based on the audited financial statements no later than nine months after the public housing authority’s fiscal year end; the auditor must: (i) electronically report on his comparison of the electronic FDS submission in the REAC staging data base through the use of an ID and password; (ii) include a hard copy of the FDS in the audit report; (iii) render an AU-C 725 opinion on the FDS; and (iv) explain in the notes any material differences between the FDS and financial statements;

(b) the audit must include this separate attestation engagement; the preparation and submission cost for this HUD requirement must be included in the audit contract; the IPA shall consider whether any fee accountant used by the housing authority is a service organization; the IPA shall follow applicable guidance at AU-C 402 regarding service organizations;

(c) the IPA shall provide the housing authority with an itemized cost

breakdown by program area for audit services rendered in conjunction with the housing authority.

(6) Single audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority schedule of expenditures of federal awards, then the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation the housing authority federal expenditures do not need to be included in the primary government’s schedule of expenditures of federal awards; see Paragraphs 6.17 and 13.37 of *the AICPA Audit Guide, Government Auditing Standards* and *Circular A-133 Audits* for more information regarding this issue.

C. PERTAINING TO AUDITS OF SCHOOL DISTRICTS:

(1) the auditor selection process: In the event that a state-chartered charter school subject to oversight by the PED is not subject to the requirement to use the same auditor as PED, that charter school shall submit its IPA recommendation to PED for approval, prior to submitting the IPA recommendation to the state auditor for approval; the sample cover letter is provided at www.osanm.org; it may be used for the PED approval signature; this process must be completed in time to meet the deadline for submission of the IPA recommendation and the audit contract to the office; the IPA recommendation and completed contract are due to the state auditor on or before May 1; in the event the due date falls on a weekend or a holiday the due date will be the next business day;

(2) audit planning level of materiality:

(a) as explained in Paragraphs (1) and (2) of Subsection A of 2.2.2.10 NMAC, the level of planning materiality and required auditor opinion will be at the individual fund level for the primary government and at the individual fund level for the component units;

(b) if a 501(c)3 component unit organization had a gross annual income in excess of \$250,000, Section 6-5A-1 NMSA 1978 requires that entity to be audited regardless of its materiality in relation to the primary government;

(3) regional education cooperative (REC) audits:

(a) a separate financial and compliance audit is required on activities of RECs; the IPA shall provide a copy of this report to the participating school districts and the PED once the report has been released by the state auditor; the presentation of these funds should be in conformity with accounting principles generally accepted in the United States of America;

(b) audits of RECs should test for compliance with PED rule 6.23.3.7 through 6.23.3.12 NMAC;

(c) if applicable, any on-behalf payments for fringe benefits and salaries made by RECs for employees of school districts should be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with Sec. N50.131;

(d) the audit report of each REC shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year; this schedule shall account for cash in the same categories used by the REC in its monthly cash reports to the PED; if there are differences in cash per the REC financial statements and cash per the REC accounting records, the IPA should provide the adjusting entries to the REC to reconcile cash per the financial statements to cash per the REC accounting records; however, if cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report, then the IPA should write a finding stating that the PED reports do not reconcile to the REC accounting records.

(4) school district audits must address the following issues:

(a) audits of school districts shall test for compliance with PED Regulation, 6.20.2 NMAC, *Governing Budgeting and Accounting for New Mexico Public Schools and School Districts* and the *Manual of Procedures*, primarily Supplement 7, *Cash Controls*;

(b) the audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year; this schedule is also required for each charter school chartered by a school district and each charter school chartered by the PED; this schedule will account for cash in the same categories as used by the district in its monthly cash reports to the PED Subsection D and E of 6.20.2.13 NMAC, state that “the cash basis of accounting is used for budgeting and reporting” to PED; the financial statements are prepared on the accrual basis of accounting; if there are differences between the financial statements, school district records and department records, the IPA should provide the adjusting entries to the school district to reconcile the report to the school district records;” however, if there is some difference between the school district records and the PED report amounts, other than those explained by the adjusting entries, then the IPA should write a finding stating that the PED reports do not reconcile to the school district records;

(c) on-behalf payments of salaries and fringe benefits made for school district employees by RECs must be accounted for in accordance with GASB Cod. Sec. N50.129 through .133 and disclosed in accordance with Sec. N50.134; “employer governments should obtain information about the amount of on-behalf payments for fringe benefits and salaries from the paying entity or the third-party recipient; inter-entity cooperation is encouraged. If information cannot be obtained from those sources, employer governments should make their best estimates of the amounts” (GASBS 24 Paragraph 9);

(d) any joint ventures or other entities created by the school districts are agencies subject to the Audit Act;

(e) agency fund reporting: under GASBS 34 a statement of changes in fiduciary net position is required for pension trust funds, investment trust funds, and private-purpose trust funds; however, agency funds have no net position and will be excluded from this presentation (GASBS 34 Paragraph 110 as amended by GASBS 63); therefore, it is a requirement of the state auditor that a schedule of changes in assets and liabilities - agency funds for the fiscal year be included as supplemental information in the audit report for each school district and each charter school; the schedules should show the changes (both additions and deductions) in the agency funds summarized by school or for each activity; the schedule should appear toward the end of the table of contents and requires an AU-C 725 opinion in the independent auditor’s report;

(f) capital expenditures by the New Mexico public school facilities authority: school districts must: review capital expenditures made for repairs and building construction projects of the school district by the NM public school facilities authority; determine the amount of capital expenditures that should be added to the capital assets of the school district; and account for those additions properly; the auditor should test the school district capital asset additions for proper inclusion of these expenditures;

(g) functions of the general fund: the school district audit reports must include individual fund financial statements and budgetary comparisons for the following functions of the general fund: operational, transportation, instructional material and teacherage (if applicable);

(5) pertaining to charter schools:

(a) a charter school is a conversion school or start-up school within a school district authorized by the local school board or authorized by the PED to operate as a charter school; a charter school is considered a public school, accredited by the state board of public education and accountable to the school district’s local school board or to the PED, for ensuring compliance with applicable laws, rules and charter provisions; a charter school is administered and governed by a governing body in a manner set forth in the charter;

(b) certain GASBS 14 criteria must be applied to determine whether a charter school is a component unit of the chartering entity (the district or PED); GASBS 14, recently amended by GASBS 61, that is effective for financial statements for periods beginning after June 15, 2012 (FY13); the district, the PED, the charter school and the IPA must evaluate whether the amended GASBS 14 criteria requires a charter school to be presented as a component unit of its chartering entity; if a charter school is determined to be a component unit, then the charter school must be included in the financial statements of its sponsoring school district or PED by discrete presentation or blended presentation, if the GASB 34 (as amended) criterion for blended presentation is met;

(c) the financial statements for charter schools that are determined to be component units pursuant to the amended GASBS 14 criteria should be presented and opined on in the following manner: (i) any charter school that has been determined to be a component unit should not be omitted based on materiality; all the charter schools that are component units should be included in the basic financial statements (full accrual basis presentation) in one of the following manners: a separate column for each component unit presented in the government-wide statement; combining statements of component units presented as a basic financial statement after the fund financial statements; or as condensed financial statements in the notes to the basic financial statements (GASB 34 Paragraphs 124 to 126); (ii) when separate audited financial statements are not available for a charter school, the fund financial statements for that charter school must be presented in the primary government’s financial statements on the modified accrual basis of accounting; if applicable, combining and individual fund financial statements should also be presented for the nonmajor funds; the financial statements should be presented as supplemental information (SI) according to AAG-SLV 3.20 (latest edition); (iii) the state auditor requires that individual fund budgetary comparison statements for all of the charter school’s funds must be included in the supplemental information section of the financial statements following the fund financial statements and the combining statements for the nonmajor funds to demonstrate compliance with legally adopted budgets; the budgetary comparisons must be audited and included in the auditor’s opinion;

(6) New Mexico public schools insurance authority (NMPSIA): both legal compliance and substantive tests should be performed at the agency level on these transactions.

D. PERTAINING TO AUDITS OF COUNTIES:

(1) Tax roll reconciliation - county governments: Audit reports for counties must include two supplementary schedules. The first one is a “tax roll reconciliation of changes in the county treasurer’s property taxes receivable” showing the June 30 receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Subsection C of Section 7-38-81 NMSA 1978, property taxes that have been delinquent for more than 10 years, together with any penalties and interest, are presumed to have been paid. The second schedule titled “county treasurer’s property tax schedule” must show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. Property taxes levied in January 2013 are budgeted for the fiscal year July 1, 2013 through June 30, 2014. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, a finding is required to be reported.

(2) The following is an example of a tax roll reconciliation schedule:

<p><u>STATE OF NEW MEXICO</u> <u>(NAME) COUNTY</u> <u>TAX ROLL RECONCILIATION - CHANGES IN THE COUNTY TREASURER’S</u> <u>PROPERTY TAXES RECEIVABLE</u> <u>FOR THE YEAR ENDED JUNE 30, 2014</u></p>
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Property taxes receivable, beginning of year	\$ 641,290
Changes to Tax Roll:	
Net taxes charged to treasurer for fiscal year	4,466,602
Adjustments:	
Increases in taxes receivables	3,066
Charge off of taxes receivables	(6,144)
Total receivables prior to collections	5,104,814
Collections for fiscal year ended June 30, 2014	(4,330,993)
Property taxes receivable, end of year	<u>\$ 773,821</u>
Property taxes receivable by years:	
2005-2013	226,344
2014	547,477
Total taxes receivable	<u><u>\$ 773,821</u></u>

(3) An example of the schedule titled “county treasurer’s property tax schedule” may be found on the office website at www.osanm.org.

E. PERTAINING TO AUDITS OF COLLEGES AND UNIVERSITIES:

(1) update to the auditor selection process: After completing the evaluation for each IPA, the college or university shall submit the IPA recommendation to the HED for approval, prior to submitting the recommendation to the state auditor for approval; the sample cover letter provided at www.osanm.org may be used for the HED approval signature; the IPA recommendation is due to the state auditor on or before May 1; in the event the due date falls on a weekend or holiday the due date will be the next workday;

(2) budgetary comparisons: the legal level of budgetary control per 5.3.4.10 NMAC should be disclosed in the notes to the financial statements; the state auditor requires that every college and university’s audit report include budgetary comparisons as supplementary information (SI); the budgetary comparisons must be audited and an auditor’s opinion must be rendered; an AU-C 725 opinion does not meet this requirement; since the budgetary basis is a special purpose framework, rather than GAAP, the auditor should follow AU-C 805 in performing the audit of the budgetary comparison statement; the budgetary comparisons must show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column; the auditor must confirm the final adjusted and approved budget with the HED; the auditor must compare the financial statement budget comparison to the related September 15 budget submission to HED; the only differences that should exist between the HED budget submission and the financial statement budget comparisons are: (a) adjustments made by the institution after September 15; and (b) audit adjustments; if the HED budget submission does not tie to the financial statement budget comparison, taking into account only those differences, then the auditor should write a related finding; the auditor’s opinion on the budgetary comparisons should follow Illustration 2 in AU-C 805; a reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements should be disclosed at the bottom of the budgetary comparisons (preferred) or in the notes to the financial statements; the reconciliation is required only at the “rolled up” level of unrestricted and restricted - all operations and should include revenues and expenses; the HED approved the following format which must be used for the budgetary comparisons:

(a) Unrestricted and restricted - all operations (Schedule 1)
Beginning fund balance: Unrestricted and restricted revenues: State general fund appropriations, federal revenue sources, tuition and fees, land and permanent fund, endowments and private gifts, other
Total unrestricted and restricted revenues
Fund balance budgeted
Total unrestricted and restricted revenues and fund balance budgeted
Unrestricted and restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant, student social and cultural activities, research, public service, internal service, student aid grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness, other (student aid, grants and stipends; and independent operations)
Total unrestricted and restricted expenditures

Change in fund balance net assets (budgetary basis), ending fund balance
(b) Unrestricted - instruction and general (Schedule 2)
Beginning fund balance, unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Fund balance budgeted
Total unrestricted revenues and fund balance budgeted
Unrestricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total unrestricted expenditures
Net Transfers
Change in fund balance (budgetary basis)
Ending fund balance
(c) Restricted - instruction and general (Schedule 3)
Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Fund balance budgeted
Total restricted revenues and fund balance budgeted
Restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total restricted expenditures
Change in net assets (budgetary basis)

(3) the level of planning materiality required by the state auditor follows: institutions should present their financial statements using the business type activities (BTA) model; the level of planning materiality described in the *AICPA Audit and Accounting Guide, State and Local Governments*, Section 4.72, must be used for the audit of these institutions; planning materiality for component units is at the individual component unit level; if a 501(c)3 component unit organization had a gross annual income in excess of \$250,000, Section 6-5A-1 NMSA 1978, requires that entity to be audited regardless of materiality; see Paragraph (1) of Subsection A of 2.2.2.10 NMAC for more information about contracting for these required audits;

(4) compensated absence liability should be shown as follows: the statement of net position should reflect the current portion of compensated absences under current liabilities, and the long-term portion of compensated absences under noncurrent liabilities;

(5) component unit issues: legally separate entities that meet the criteria set forth in GASBS 14 as amended by GASBS 39 and GASBS 61 to qualify as a component unit of an educational institution, must be included in the educational institution's audit report as a discrete component unit; an exemption must be obtained from the state auditor in order to present any component unit as blended; the same auditor must audit the component unit and the educational institution unless an exemption is obtained from the state auditor;

(a) if the college or university has no component units there should be a statement to that effect in the notes to the financial statement in the description of the reporting entity.

(b) individual component unit budgetary comparisons are required if the component unit has a "legally adopted budget;" a component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law.

(c) there is also no level of materiality for reporting findings of component units that do not receive public funds; all component unit findings must be disclosed in the primary government's audit report;

(6) the MD&A analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results is required by this rule for colleges and universities; the analysis should include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity;

(7) required note disclosure for donor-restricted endowments are:

(a) "the amounts of net appreciation on investments of donor-restricted endowments that are available for authorization for expenditure by the governing board, and how those amounts are reported in the net position;

(b) the state law regarding the ability to spend net appreciation; and

(c) the policy for authorizing and spending investment income, such as a spending-rate or total-return policy." (GASBS 34 Paragraph 121)

(8) submit draft copy of financial statements to FCD: Section 11 of Article XII of the New Mexico state constitution established the following New Mexico educational institutions: (a) the university of New Mexico; (b) NM state university; (c) NM highlands university; (d) western NM university; (e) eastern NM university; (f) NM institute of mining and technology; (g) NM military institute; (h) NM school for the visually handicapped; (i) NM school for the deaf; and (j) northern NM college; these educational institutions should provide the FCD with a draft copy of their financial statements, excluding opinions and findings, pursuant to Paragraph (16) of Subsection

A of 2.2.2.12 NMAC, and the letter dated October 3, 2008, described therein, from the state controller and the state auditor. [2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 2-28-14]

2.2.2.13 REVIEW OF AUDIT REPORTS AND AUDIT DOCUMENTATION:

A. Section 12-6-14(B) NMSA 1978 requires that the state auditor or personnel of his office designated by him examine all audit reports of agencies made pursuant to contract; all audits under the contracts approved by the state auditor are subject to review. The office will review all reports submitted by the IPA to determine if the reports are presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards. The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. In addition, as discussed in Paragraph (5) of Subsection C of 2.2.2.9 NMAC, audit reports reissued by the agency and IPA pursuant to AU-C 560 are also subject to office review procedures.

B. Released audit reports are subject to a comprehensive report and audit documentation review by the state auditor. The IPA's audit documentation must be assembled in one complete file or one complete set of files in one location, whether the documentation is hardcopy or electronic, pursuant to AU-C 230.16. The documentation must be either all hardcopy or all electronic office reviews of audit and AUP working papers include the review of firm documentation of compliance with governmental auditing, accounting and financial reporting standards issued by GASB, AICPA, GAO, and OMB Circular A-133, and the requirements of this rule.

C. If during the course of its review of an audit report or the related audit documentation, the office finds significant deficiencies that warrant a determination that the audit was not made in a competent manner in accordance with the provisions of the contract and applicable standards, or requirements of this rule, any or all of the following action(s) may be taken:

- (1) as instructed by the office, the IPA may be required to correct the deficiencies and if necessary the working papers, and reissue the audit report to the agency, and any others receiving copies;
- (2) the IPA may be required to submit working papers along with the audit report to the state auditor for review by the office, prior to the release of future audit reports, for some or all audit contracts; or
- (3) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

D. Results of review: After the review is completed, the office will issue a letter to advise the IPA about the results of the review. The IPA is required to respond in writing to all review comments when directed. If the firm disagrees with any comments, the firm shall provide references to professional standards supporting the firm's disagreement. Failure to respond will be noted during the firm profile review process.

[2.2.2.13 NMAC - Rp, 2.2.2.13 NMAC, 2-28-14]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing professional education: U.S. GAO *Government Auditing Standards, 2011 Revision* (GAGAS), Section 3.76 states "Auditors performing work in accordance with GAGAS, including planning, directing, performing audit procedures, or reporting on an audit in accordance with GAGAS, should maintain their professional competence through CPE. Therefore, each auditor performing work in accordance with GAGAS should complete, every two years, at least 24 hours of CPE that directly relates to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. Auditors who are involved in any amount of planning, directly, or reporting on GAGAS audits and auditors who are not involved in those activities but charge 20% or more of their time annually to GAGAS audits should also obtain at least an additional 56 hours of CPE (for a total of 80 hours of CPE in every two-year period) that enhances the auditor's professional proficiency to perform audits. Auditors required to take the total 80 hours of CPE should complete at least 20 hours of CPE in each year of the two-year period. Auditors hired or initially assigned to GAGAS audits after the beginning of an audit organization's two-year CPE period should complete a prorated number of CPE hours." The GAO issued *Government Auditing Standards: Guidance on GAGAS Requirements for Continuing Professional Education, GAO-05-568G*, April 2005. It provides helpful guidance to auditors and audit organizations regarding the implementation of the GAGAS CPE requirements. The guide is available at www.gao.gov/govaud/ybcpe2005.pdf.

B. Peer review: GAGAS Section 3.82 states "each audit organization performing audits in accordance with GAGAS must: establish and maintain a system of quality control that is designed to provide the audit organization with reasonable assurance that the organization and its personnel comply with professional standards and applicable

legal and regulatory requirements; and have an external peer review performed by reviewers independent of the audit organization being reviewed at least once every three years." Required elements of each audit organization's system of quality control are described at GAGAS 3.83 to 3.96. Section 3.96 states "the audit organization should obtain an external peer review at least once every three years that is sufficient in scope to provide a reasonable basis for determining whether, for the period under review, the reviewed audit organization's system of quality control was suitably designed and whether the audit organization is complying with its quality control system in order to provide the audit organization with reasonable assurance of conforming with applicable professional standards."

(1) Per the *AICPA PR Section 100 Standards for Performing and Reporting on Peer Reviews*, a firm's due date for its initial peer review is 18 months from the date the firm enrolled in the peer review program or should have enrolled whichever is earlier. A firm's subsequent peer review is due three years and six months from the previous peer review year end.

(2) If the firm is unable to submit its latest current external quality control review documentation by the date the annual firm profile review process is completed, the firm will be put on "conditional approval" status by the office pursuant to Subsection C of 2.2.2.8 NMAC.

(3) The state auditor requires the location of the external quality control review to be the office of the firm under review, regardless of whether the firm reviewed is a sole practitioner and regardless of the number of firm employees. External quality control reviews performed at a location other than the office of the firm under review will not be accepted by the state auditor.

(4) The IPA firm profile submission to the state auditor requires copies of:

(a) proof that the firm your peer reviewer is associated with is a firm that received a peer review rating of "pass" under the updated peer review standards;

(b) the peer review report for the auditor's firm;

(c) if applicable, the detailed description of the findings, conclusions and recommendations related to deficiencies or significant deficiencies required by (GAGAS 3.103);

(d) auditor's response to deficiencies or significant deficiencies (if applicable);

(e) the letter of acceptance from the peer review program in which the firm is enrolled; and

(f) a list of the governmental

audits reviewed during the peer review; the office assumes that at least one of these will be a New Mexico governmental audit.

(5) A peer review rating of "failed" (under the January 1, 2009 standards) on the auditor's peer review, will disqualify the IPA from performing New Mexico governmental audits.

(6) During the procurement process audit firms shall provide a copy of their most recent external peer review report to the agency upon submitting a bid proposal or offer.

(7) The peer review should meet the requirements of GAGAS 3.96 to 3.107s.

(8) The New Mexico public accountancy board's substantial equivalency provision has been replaced with mobility pursuant to Section 61-28B-13 NMSA 1978. Under the mobility provision in the statute, a CPA may enter the state and perform work, provided he or she holds a current, valid license from some state. If the CPA is performing any type of attest work, his firm must apply for a firm permit.

(9) The reviewer should be familiar with this rule. This is a requirement of the state auditor that can be achieved by attendance at audit rule training provided by the office.

C. The state auditor performs its own quality control review of IPA audit reports and working papers. When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding peer review rating, the state auditor may no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor will take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 2-28-14]

2.2.2.15 SPECIAL AUDITS, PERFORMANCE AUDITS AND ATTESTATION ENGAGEMENT:

A. Special audit, performance audits or attestation engagement: pursuant to Section 12-6-3 NMSA 1978, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. Accordingly, the state auditor may initiate a special audit, performance audit or attestation engagement regarding the financial affairs and transactions of an agency or local public body based on information or a report received from an agency, IPA or member of the public. The state auditor may perform the special audit, performance audit or

attestation engagement. Additionally, in accordance with the procedures set forth in Subsection B of this section, the state auditor may designate an agency for special audit, performance audit or attestation engagement regarding that agency's financial affairs and transactions, to be conducted by an IPA approved by the state auditor. The state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor shall have available to them all documents necessary to perform a thorough special audit, performance audit or attestation engagement regarding the financial affairs and transactions of an agency. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for an audit, special audit, performance audit or attestation engagement regarding the financial affairs and transactions of an agency, the state auditor may apply to the district court of Santa Fe county for issuance of a subpoena to compel the attendance of witnesses and the production of books and records. All reasonable costs of special audits, performance audits and attestation engagements conducted pursuant to this section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978.

B. Designation of agency:

(1) The state auditor may designate an agency for special audit, performance audit or attestation engagement regarding that agency's financial affairs and transactions, to be conducted by an IPA approved by the state auditor. The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the scope and any procedures required for the special audit, performance audit or attestation engagement. If the state auditor designates an agency for special audit, performance audit or attestation engagement to be conducted by an IPA, the agency shall comply with the following procedures to obtain professional services from an IPA for the required special audit, performance audit or attestation engagement:

(a) upon receipt of notification to proceed from the office, the agency shall identify all elements or services to be solicited and request quotations or proposals for each applicable element of the special audit, performance audit or attestation engagement as specified by the office;

(b) follow all applicable procurement requirements in accordance with the Procurement Code, Chapter 13 Article 1, when selecting an IPA to perform the special audit, performance audit or attestation engagement;

(c) evaluate all competitive sealed proposals or quotations received by using

an evaluation process, preferably executed by a selection committee, as similarly described in Paragraph (5) of Subsection G of 2.2.2.8 NMAC; and

(d) after completing the evaluations for each IPA and making the IPA selection, each agency shall submit the following information to the state auditor by the due date specified by the state auditor in the notification letter: (i) a completed IPA recommendation form for special audits, performance audits, or attestations engagements provided at www.osanm.org that the agency shall print on agency letterhead; and (ii) a completed audit contract form including the contract fee, start and completion date, and the specific scope of services to be performed by the IPA, for special audit, performance audit, or attestation engagement, provided at www.osanm.org, with the IPA and agency signatures on the contract.

(2) IPA recommendation forms and contracts that are submitted to the office with errors or omissions will be rejected by the office; the office will return the rejected IPA recommendation form and contract to the agency with a checklist indicating the reason(s) for the rejection.

(3) In the event the agency's recommendation is not approved by the state auditor, the state auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a different recommendation. This process will continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor may set the meeting in a timely manner with consideration given to the agency's circumstances.

(4) Any contract amendments will be processed in accordance with Subsection R of 2.2.2.8 NMAC.

(5) Reports of any special audit, performance audit or attestation engagement made pursuant to this section will be reviewed by the office for compliance with the professional services contract and 2.2.2.15 NMAC. All reports for special audits, performance audits or attestation engagements related to financial fraud, waste or abuse in government undertaken pursuant to 2.2.2.15 NMAC, should report as findings any fraud, illegal

acts, noncompliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings should include the following elements:

(a) the condition or description of the situation that exists, including the extent of the condition, like the number of instances the condition was found out of the number of samples tested and the amount of dollars involved compared to the amount of dollars tested;

(b) the criteria of the policy or procedure, law, regulation, ordinance, contract, or grant agreement excerpt that illustrates what is expected;

(c) the cause of the condition, if it can be determined;

(d) the effect or impact of the condition; and

(e) the IPA's recommendation addressing each condition and cause.

(6) Upon completion of the report, the IPA shall deliver the organized and bound report to the state auditor. The IPA is required to respond to all review comments as directed by the office; after its review of the report for compliance with the professional services contract, the office will authorize the IPA to print and submit the final report, the required number of hardcopies specified in the professional services contract and an electronic version of the report, in the PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, all must be delivered to the office within two business days. The office will not release the report until the electronic version of the report is received by the office. The office will provide the agency with a letter authorizing final payment to the IPA and the release of the report pursuant to Section 12-6-5 NMSA 1978. Released reports may be selected by the office for comprehensive report and workpaper reviews. After a comprehensive review is completed, the office will issue a letter to advise the IPA about the results of the review. The IPA is required to respond to all review comments as directed in the letter.

(7) Agency and local public body personnel shall not release information to the public relating to the special audit, performance audit or attestation engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At all times during the engagement and after the engagement report becomes a public record. The IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the engagement. Applicable standards include but are not limited to the AICPA Code of Ethics Rule 301 and related interpretations and guidance and GAGAS 4.30 to 4.32 and GAGAS 4.40 to 4.44.

(8) All reasonable costs of special

audits, performance audits and attestation engagements conducted pursuant to this section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. Progress payments up to 90% of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final payments from 91% to 100% may be made by the agency only after the state auditor has stated in a letter to the agency that the report has been released by the state. When component unit audits are part of a primary government's audit contract, requests for progress payment approvals should be submitted by the primary government for both the primary government and the component unit. The primary government cannot exclude the component units in this process. All applicable component units and the primary government should be included in one request for progress payment approval. The office will not process separate progress payment approvals submitted by the component units.

C. Financial fraud, waste or abuse in government reported by agencies, IPAs or members of the public:

(1) The state auditor may conduct fact-finding procedures in connection with reports of financial fraud, waste and abuse in government made by agencies, IPAs or members of the public.

(2) Pursuant to Section 12-6-6 NMSA 1978 and Subsection K of 2.2.2.10 NMAC, every agency and IPA shall notify the state auditor immediately, in writing, upon discovery of any violation of a criminal statute in connection with financial affairs. In addition, upon discovery, the state auditor shall immediately report a violation of a criminal statute in connection with financial affairs to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

(3) An agency, IPA or member of the public may report financial fraud, waste or abuse in government to the state auditor. Reports may be submitted directly to the office orally or in writing. Reports may also be made telephonically or in writing through the fraud hotline or website established by the office for the confidential reporting of financial fraud, waste, and abuse in government. Reports may be made telephonically to the fraud hotline by calling 1-866-OSA-FRAUD (1-866-672-3728) or reported in writing through the office's website at www.osanm.org. Reports received or created by the office are audit information and audit documentation in connection with the state auditor's statutory duty to examine and audit the financial

affairs of every agency, or in connection with the state auditor's statutory discretion to audit the financial affairs and transactions of an agency in whole or in part.

D. Confidentiality:

(1) The identity of a person making a report directly to the office orally or in writing, or telephonically or in writing through the office's fraud hotline or website, alleging financial fraud, waste, or abuse in government is confidential audit information and may not be disclosed, unless the person making the report agrees to the disclosure of that person's name.

(2) A report alleging financial fraud, waste, or abuse in government that is made directly to the office orally or in writing, or telephonically or in writing through the office's fraud hotline or website, and any resulting special audit, performance audit, or attestation engagement, is confidential audit documentation and may not be disclosed except as provided in Paragraph (3) of this subsection to an independent auditor in connection with a special audit, performance audit, or attestation examination or other existing or potential engagement regarding the financial affairs or transactions of an agency.

(3) The office shall disclose audit information and audit documentation that is confidential under this section if required by Section 12-6-6 NMSA 1978.

(4) The IPA however, shall not disclose information provided to them by the office unless otherwise specified by the office. Disclosure of confidential information by the IPA may result in the IPA being restricted pursuant to Subsection E of 2.2.2.8 NMAC.

E. Reports of special audits, performance audits or attestation engagements related to financial fraud, waste or abuse in government:

(1) This section applies to instances in which an agency and an IPA enter into a professional services contract for a special audit, performance audit or attestation engagement relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the audit or engagement pursuant to Subsection B of 2.2.2.15 NMAC.

(2) An agency or an IPA shall not enter into a professional services contract for a special audit, performance audit or attestation engagement regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract must be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA; the contract must include the contract fee, start and

completion date, and the specific scope of services to be performed by the IPA.

(3) A report of a special audit, performance audit or attestation engagement made pursuant to a contract approved under this section is subject to review by the state auditor. All reports for special audits, performance audits or attestation engagements related to financial fraud, waste or abuse in government undertaken pursuant to 2.2.2.15 NMAC, should report as findings any fraud, illegal acts, noncompliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings should include the following elements:

(a) the condition or description of the situation that exists, including the extent of the condition, like the number of instances the condition was found out of the number of samples tested and the amount of dollars involved compared to the amount of dollars tested;

(b) the criteria of the policy or procedure, law, regulation, ordinance, contract, or grant agreement excerpt that illustrates what is expected;

(c) the cause of the condition, if it can be determined;

(d) the effect or impact of the condition; and

(e) the IPA's recommendation addressing each condition and cause; upon completion of the report, the IPA shall deliver the organized and bound report to the state auditor with a copy of the signed management representation letter.

(4) The IPA is required to respond to all review comments as directed by the office. After its review of the report, the office will authorize the IPA to print and submit the final report. The required number of hardcopies specified in the contract and an electronic version of the report, in PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, must be delivered to the state auditor within the time specified by the office pursuant to the authorization to print and submit the final report. The office will not release the report until the electronic version of the report is received by the office.

(5) The IPA shall deliver to the agency the number of copies of the report indicated in the contract only after the state auditor has officially released the audit report with a "release letter."

(6) Agency personnel and local public body personnel shall not release information to the public relating to the special audit, the performance audit or the attestation engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978.

(7) At all times during the engagement and after the report becomes a public record, the IPA shall follow

applicable standards and 2.2.2 NMAC regarding the release of any information relating to the engagement. Applicable standards include but are not limited to *the AICPA Code of Ethics Rule 301* and related interpretations and guidance, and GAGAS 4.30 to 4.32 and GAGAS 4.40 to 4.44. [2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 2-28-14]

2.2.2.16 ANNUAL FINANCIAL PROCEDURES REQUIRED FOR LOCAL PUBLIC BODIES WITH REVENUES LESS THAN \$500,000:

A. Pursuant to Subsection B of Section 12-6-3 NMSA 1978, the annual revenue of a local public body determines the type of financial reporting a local public body shall submit to the office; local public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts; the annual revenue of a local public body shall be calculated on a cash basis, excluding capital outlay funds, federal and private grants.

B. Annually, the state auditor shall provide local public bodies written authorization to proceed with obtaining services to conduct a financial audit or other procedures. Upon receipt of the authorization, a local public body shall determine its annual revenue in accordance with Subsection A of 2.2.2.16 NMAC. The following requirements for financial reporting apply to the following annual revenue amounts.

(1) If a local public body's annual revenue is less than \$10,000 and the local public body did not directly expend at least 50% of, or the remainder of, a single capital outlay award, then the local public body is exempt from submitting and filing quarterly reports and budgets for approval to the LGD-DFA and from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC.

(2) If a local public body's annual revenue is \$10,000 or more but less than \$50,000, then the local public body: shall comply with the requirements of Section 6-6-3 NMSA 1978; and is exempt from any financial reporting to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC.

(3) If a local public body's annual revenue is less than \$50,000, and the local public body expended at least 50% of, or the remainder of, a single capital outlay award, then the local public body shall procure the services of an IPA for the performance of a tier 3 agreed upon procedures engagement in accordance with the tier 3 agreed upon procedures checklist on the state auditor's website.

(4) If a local public body's annual revenue is \$50,000 or more, but less than \$250,000, then the local public body shall procure the services of an IPA for the performance of a tier 4 agreed upon procedures engagement in accordance with the tier 4 agreed upon procedures checklist on the state auditor's website.

(5) If a local public body's annual revenue is \$50,000 or greater, but less than \$250,000, and the local public body expended any capital outlay funds, then the local public body shall procure the services of an IPA for the performance of a tier 5 agreed upon procedures engagement in accordance with the tier 5 agreed upon procedures checklist on the state auditor's website.

(6) If a local public body's annual revenue is \$250,000 or greater, but less than \$500,000, the local public body shall procure services of an IPA for the performance of a tier 6 agreed upon procedures engagement in accordance with the tier 6 agreed upon procedures checklist on the state auditor's website.

(7) If a local public body's annual revenue is \$500,000 or more, the section shall not apply and the local public body shall procure services of an IPA for the performance of a financial and compliance audit in accordance with other provisions of 2.2.2 NMAC.

(8) Notwithstanding the annual revenue of a local public body, if the local public body expended \$500,000 or more of federal funds subject to a federal single audit during the fiscal year then the local public body must procure a single audit in accordance with 2.2.2.8 NMAC.

C. A local public body that is exempt from financial reporting to the state auditor pursuant to Paragraphs (1) and (2) of Subsection B of 2.2.2.16 NMAC shall submit written certification to the local government division and the state auditor. The certification shall be provided on the form made by the state auditor and available on the state auditor's website at www.osanm.org. The local public body shall certify, at a minimum:

(1) the local public body's annual revenue for the fiscal year; and

(2) that the local public body did not expend 50% of or the remainder of a single capital outlay award.

D. A local public body required to perform an agreed upon procedures engagement shall procure the services of an IPA in accordance with the procedures below.

(1) Upon receipt of notification to proceed from the office, the local public body shall identify all elements or services to be solicited and request quotations or proposals for the applicable agreed upon procedures engagement pursuant to

Subsection A of 2.2.2.16 NMAC. A local public body is strongly encouraged to select an IPA on the state auditor's list of audit firms approved to perform audits of New Mexico government agencies. However, a local public body may select an IPA who has submitted the following information and been approved by the office pursuant to applicable procedures described at Subsection B through F of 2.2.2.8 NMAC:

(a) a New Mexico firm permit to practice;

(b) current liability insurance; and
(c) a current peer review (if applicable) with a rating of at least "pass with deficiencies."

(2) IPA services that cost less than \$60,000 excluding gross receipts tax on each year's contract should be considered small purchases in accordance with the Procurement Code (Chapter 13, Article 1 NMSA 1978). The local public body may procure professional services for one year only. The local public body may procure the required services using a multiple year proposal (not to exceed three years) in which the cost of service is \$60,000 or less in each year (excluding gross receipts taxes). The local public body is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the local public body on the date the contractor signs the contract.

(3) For IPA services that cost \$60,000 or more excluding gross receipts tax on each year's contract, the local public body shall seek competitive sealed proposals and contract for services in accordance with the Procurement Code (Chapter 13, Article 1 NMSA 1978). Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the local public body as part of the competitive sealed proposal.

(4) The local public body may request a multiple year proposal to provide services not to exceed a term of three years including all extensions and renewals. The term of the contract shall be one-year with the option to extend for two successive one-year terms at the same price, terms and conditions as stated on the original proposal. Exercising the option to extend shall be by mutual agreement of the parties to the contract and with the approval of the state auditor. In the event that either of the parties to the contract elects not to extend, or the state auditor disapproves the recommendation for renewal, the local public body shall use the procedures described above in Paragraphs (2) and (3) of Subsection D of 2.2.2.16 NMAC to solicit

services.

(5) The local public body shall evaluate all competitive sealed proposals or quotations received using an evaluation process, preferably executed by a selection committee. Members of component units such as housing authorities, etc., should be included in the IPA selection process. As part of their evaluation process, local public bodies may and are strongly encouraged to consider the following criteria when selecting an IPA:

(a) the capability of the IPA, including: (i) whether the IPA has the resources to perform the type and size of the agreed upon procedures required; (ii) the results of the IPA's most recent external quality control review (peer review); and (iii) the organization and completeness of the IPA's proposal or bid for agreed upon procedures services;

(b) the work requirements and approach of the IPA, including: (i) the IPA's knowledge of the local public body's need and the product to be delivered; (ii) whether the IPA's proposal or bid contains a sound technical plan and realistic estimate of time to complete the agreed upon procedures engagement; (iii) plans for using local public body staff, including internal auditors; and (iv) if the proposal or bid is for a multiple year contract, the IPA's approach for planning and conducting the work efforts of subsequent years;

(c) the IPA's technical experience, including: (i) the governmental audit experience of the IPA and the specialization in the local public body's type of government; and (ii) the IPA's attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and agreed upon procedures services.

(6) A local public body that does not qualify for the tiered system should submit the completed IPA recommendation form and completed audit contract to the office by May 15 pursuant to Paragraph (6) of Subsection G of 2.2.2.8 NMAC. A local public body that does qualify for the tiered system should complete the evaluations for each IPA that responds, make the IPA selection and then submit the completed IPA recommendation form for tiered system local public bodies and the completed and signed agreed upon procedures contract to the state auditor on or before July 1. The blank form and contract that the local public body shall use are available at www.osanm.org. In the event the due date falls on a weekend or holiday, the due date will be the next business day. Local public bodies with a fiscal year end other than June 30 must use an IPA recommendation form and contract due date of one day after the end of the fiscal year. If a completed IPA

recommendation form and AUP contract are not delivered to the state auditor by the applicable deadline, the IPA must include a finding of noncompliance with Paragraph (7) of Subsection D of 2.2.2.16 NMAC in the AUP report:

(a) the local public body shall print the form on the local public body's letterhead;

(b) the local public body shall complete the agreed upon procedures contract form provided at www.osanm.org for the applicable tier; the local public body should obtain the IPA's signature on the contract, and submit the completed and signed agreed upon procedures contract to the state auditor with the completed IPA recommendation form for agreed upon procedures;

(c) if the IPA is not on the state auditor's list of audit firms approved to perform audits of New Mexico government agencies, the local public body or the IPA shall submit: (i) firm contact information; (ii) a copy of the firm's current New Mexico firm permit to practice; (iii) proof of current liability insurance; (iv) if applicable, a copy of the firm's current peer review with a rating of at least pass with deficiencies; a peer review rating of less than "pass with deficiencies" (under the January 1, 2009 standards) on the IPA's peer review will disqualify the IPA from performing New Mexico governmental agreed upon procedures engagements; and (v) an explanation regarding why the local public body selected an IPA that did not appear on the state auditor's list;

(d) the IPA recommendation form for agreed upon procedures and the related agreed upon procedures contract that are submitted to the office with errors or omissions will be rejected by the office; the office will return the rejected contract and IPA recommendation form to the local public body with a checklist indicating the reason(s) for the rejection; the office will process first the timely submitted correct IPA recommendation forms and related contracts; then the office will process any IPA recommendation forms and related contracts that are submitted late or were rejected by the office and not resubmitted correctly by the deadline;

(e) the local public body shall retain all procurement documentation including completed evaluation forms, for five years and in accordance with applicable records laws;

(f) if the local public body fails to submit an IPA recommendation by the deadline, the office may send a letter to the local public body reminding the local public body that pursuant to Section 12-6-14 NMSA 1978, the state auditor may select an IPA to perform the AUP engagement if the local public body has not submitted

a recommendation within 60 days of the date of the notification letter sent by the state auditor to the local public body with instructions to procure an AUP contract for the fiscal year specified;

(g) the office may select an IPA for the local public body pursuant to Section 12-6-14 NMSA 1978 and Paragraphs (9) through (13) of Subsection G of 2.2.2.8 NMAC.

E. In the event the local public body's recommendation and related contract have been submitted without errors or omissions, but were not approved by the state auditor pursuant to Subsection H of 2.2.2.8 NMAC, the state auditor will promptly communicate the decision, including the reasons(s) for disapproval, to the agency; at which time, the agency shall promptly submit a different recommendation. This process will continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the local public body may submit a written request to the state auditor for reconsideration of the disapproval. The local public body shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation. The state auditor may hold an informal meeting to discuss the request. The state auditor may set the meeting in a timely manner with consideration given to the agency's circumstances; any contract amendments will be processed in accordance with Subsection R of 2.2.2.8 NMAC.

F. Requirements of the IPA selected to perform the agreed upon procedures:

(1) The IPA will provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. The IPA will provide an electronic copy of the dated signed engagement letter to the office within 30 days of execution. Failure to submit the copy of the engagement letter could result in a contract restriction. See Paragraph (5) of Subsection R of 2.2.2.8 NMAC for applicable restrictions on the engagement letter.

(2) The IPA may not subcontract any portion of the services to be performed under the contract with the local public body.

(3) Once the report is officially released to the agency by the state auditor (by an authorizing letter) and the required waiting period of five calendar days has passed or has been waived by the local public body, the agreed upon procedures report shall be presented by the IPA, to

a quorum of the governing authority of the local public body at a meeting held in accordance with the Open Meetings Act, if applicable.

G. Progress payments:

(1) Progress payments up to 90% of the contract amount do not require state auditor approval and may be made by the local public body if the local public body ensures that progress payments made do not exceed the percentage of work completed by the IPA. If requested by the state auditor, the local public body shall provide the office a copy of the approved progress billing(s).

(2) Final payment from 91% to 100% may be made by the local public body only after the state auditor has stated in a letter to the entity that the agreed upon procedures report has been released by the state auditor and the engagement letter and management representation letter have been received by the state auditor.

H. Report due date, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end, the report due date is December 1. Local public bodies with a fiscal year end other than June 30 must submit the agreed upon procedures report no later than five months after the fiscal year-end. An organized bound hard copy of the report should be submitted. Reports submitted via fax or email will not be accepted. A copy of the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the office is closed due to inclement weather, the report is due the following business day by 5:00 p.m. If the report is mailed to the state auditor, it should be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report should be postmarked by the following workday. The state auditor will grant no extensions of time to the established regulatory due dates.

(2) As soon as the auditor becomes aware that circumstances exist that will make the local public body's agreed upon procedures report late, the auditor shall notify the state auditor and oversight agency of the situation in writing. This notification shall consist of a letter with official signatures, not an email. However, a scanned version of the official letter sent via email that contains the required signatures is acceptable. There must be a separate notification for each late agreed upon procedures report. The notification must include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the local public body. If the IPA will not meet the expected report submission date, then the IPA should

send a revised notification letter. In the event the contract was signed after the report due date, the notification letter must still be submitted to the office explaining the reason the agreed upon procedures report will be submitted after the report due date. A copy of the letter must be sent to the LGD, if LGD oversees the local public body.

(3) Local public body personnel shall not release information to the public relating to the agreed upon procedures engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At all times during the engagement and after the agreed upon procedures report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the agreed upon procedures engagement.

I. Findings: All agreed upon procedures engagements should report as findings any fraud, illegal acts, noncompliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings should include the content listed at Subparagraph (c) of Paragraph (3) in Subsection I of 2.2.2.10 NMAC.

J. Review of agreed upon procedures reports and related workpapers: Agreed upon procedures reports will be reviewed by the office for compliance with the professional services contract; unfinished or excessively deficient reports will not be considered received. Such reports will be returned to the firm and a copy of the rejection letter will be sent to the local public body. If the office rejects and returns a substandard agreed upon procedures report to the firm, the report will be considered late if the revised report is not submitted by the due date, and the firm must include a finding for noncompliance with the due date. The office encourages early submission of reports to avoid findings for late reports; after its review of the agreed upon procedures report for compliance with the professional services contract, the office will authorize the IPA to print and submit the final report. The required number of hardcopies specified in the professional services contract and an electronic version of the agreed upon procedures report, in PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, all must be delivered to the office within two business days. The office will not release the agreed upon procedures report until the electronic version of the report is received by the office. The office will provide the local public body with a letter authorizing the release of the report after the required five day waiting period, and final payment to the IPA; released reports may be selected by the office for comprehensive report and

workpaper reviews. After a comprehensive review is completed, the office will issue a letter to advise the IPA about the results of the review. The IPA is required to respond to all review comments as directed. If during the course of its review, the office finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with the provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

(1) as instructed by the office, the IPA may be required to correct the working papers and reissue the agreed upon procedures report to the agency, and any others receiving copies;

(2) the IPA's future engagements may be limited in number pursuant to Subsections E and F of 2.2.2.8 NMAC; or

(3) the IPA may be required to submit working papers along with the agreed upon procedures report to the state auditor for review by the office, prior to the release of future agreed upon procedures reports, for some or all contracts; or

(4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

K. IPA independence:
IPA's that perform agreed upon procedure engagements under the tiered system must maintain independence in mind and appearance, in all matters relating to the engagement.

(1) An IPA who performs the local public body's annual agreed upon procedures engagement shall not enter into any special audit or nonaudit service contract with that local public body without the prior written approval of the state auditor. To obtain this approval, the IPA should follow the requirements set forth at Paragraph (1) of Subsection M of 2.2.2.8 NMAC.

(2) Except as provided in Subsection E of 2.2.2.15 NMAC, a local public body and an IPA who does not perform that local public body's annual financial audit shall submit a copy to the state auditor of each professional services contract entered into between the local public body and the IPA for a special audit, agreed upon procedure or any other nonaudit services. The contract shall not require approval by the state auditor but shall be submitted to the state auditor within 30 days of execution.
[2.2.2.16 NMAC - Rp, 2.2.2.16 NMAC, 2-28-14]

HISTORY of 2.2.2 NMAC:

Pre-NMAC Regulatory Filing History:

The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-

1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5-14-71; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5-27-71; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the State of New Mexico, filed 6-1-72; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6-1-72; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2-28-74; SA Rule No. 74-2, Rotation of Assignments, filed 2-28-74; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11-3-78; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5-28-80; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12-17-82; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4-10-84; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1-28-85; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgments and Compensated Absences, filed 4-16-80; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6-12-85; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6-17-85; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6-17-85; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1-20-86; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3-20-86; SA Rule No. 86-3, Professional Services Contracts, filed 7-9-86; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-13-87; SA Rule 87-2, Approval of Audit Contracts, filed 4-2-87; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8-14-87; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-10-88; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-10-89; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-1-90; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled

Substances, filed 5-7-90; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-13-91; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-6-92; SA Rule 93-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-93; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-94; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5-16-94; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-16-95; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4-2-96.

History of Repealed Material:

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-30-01.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-29-02.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-30-03.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-31-04.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 5-13-05.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-16-06.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-16-07.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-15-08.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 2-27-09.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 2-12-10.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 2-28-11.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 2-15-12.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 2-28-13.
2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 2-28-14.

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT**

**TITLE 8 SOCIAL SERVICES
CHAPTER 26 FOSTER CARE AND
ADOPTION
PART 6 COMMUNITY
HOME LICENSING STANDARDS**

8.26.6.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD) Protective Services Division (PSD).
[8.26.6.1 NMAC - N, 02/28/2014]

8.26.6.2 SCOPE: Any individual, partnership, association or corporation, doing business in New Mexico, undertaking to place a child in a community home for the purpose of providing a 24 hour group living setting in order to meet the child's developmental, psychological, educational, social and emotional needs.
[8.26.6.2 NMAC - N, 02/28/2014]

8.26.6.3 STATUTORY AUTHORITY: Children, Youth and Families Department Act, NMSA 1978, 9-2A-7 D.
[8.26.6.3 NMAC - N, 02/28/2014]

8.26.6.4 DURATION: Permanent
[8.26.6.4 NMAC - N, 02/28/2014]

8.26.6.5 EFFECTIVE DATE: February 28, 2014, unless a later date is cited at the end of a section.
[8.26.6.5 NMAC - N, 02/28/2014]

8.26.6.6 OBJECTIVE: These standards authorize the protective services division, of the children, youth and families department, to license community homes for the purpose of ensuring the health and safety of children under the administration of the Human Services Department Act, NMSA 1978, 9-8-13. These standards within 8.26.6 NMAC supersede Sections 82 through 127 of 7.8.3 NMAC. The children, youth and families department recognizes these community home standards within 8.26.6 NMAC as the exclusive standards for licensing community homes.
[8.26.6.6 NMAC - N, 02/28/2014]

8.26.6.7 DEFINITIONS:

A. "Adult" means, for the purpose of 8.26.6 NMAC, a person who is age 18 years or older and is a client of and resides in a community home licensed by PSD.

B. "Child" means, for the purpose of 8.26.6 NMAC, a person who is under the age of 18 and is a client of and

resides in a community home licensed by PSD.

C. "Child abuse and neglect check" is a review of the PSD information management system, also known as FACTS, or another state's central abuse or neglect registry to determine if there have been any previous referrals on an individual to this state's or another state's protective services division.

D. "Community home" means a facility which operates 24 hours a day and provides full time care, **supervision and support to no more than 16 children in a single residential building, including a facility which meets** the definition of "group home" as outlined in the Human Services Department Act, NMSA 1978, 9-8-13.

E. "Contact" for the purpose of 8.26.6 NMAC may include, but is not limited to:

- (1) the ability to make physical contact with children;
- (2) working in close proximity to children; and
- (3) having unsupervised access to children.

F. "Corrective action" means action taken by PSD in order to correct deficiencies or non-compliance with 8.26.6 NMAC.

G. "Corrective action plan" means a written plan developed by PSD that identifies the actions that will be taken to correct deficiencies or non-compliance with 8.26.6 NMAC.

H. "Criminal records check (CRC)" means, for the purpose of 8.26.6 NMAC, federal, state or local checks for criminal offenses conducted on all staff, interns or volunteers whose duties include contact with children, as defined in Subsection E of 8.26.6.7 NMAC.

I. "CYFD" means the children, youth and families department of the state of New Mexico.

J. "Deficiency" means non-compliance with 8.26.6 NMAC, and other laws or regulations referenced herein.

(1) **"Minor deficiencies"** means those deficiencies that do not impair the safety, permanency or well-being of a child while in the community home's care.

(2) **"Substantial deficiencies"** means those deficiencies that impair the safety, permanency or well-being of a child while in the community home's care.

K. "Emergency suspension" means the prohibition of a community home's operation for a stated period of time through the temporary withdrawal of the license, prior to a hearing on the matter, when immediate action is required to protect human health and safety.

L. "Governing board" means the organizational entity of an

agency that has the ultimate responsibility for all planning, direction, control, and management of the activities and functions of a community home licensed pursuant to 8.26.6 NMAC.

M. "Incident" means any incident reportable to PSD that may include, but is not limited to:

(1) policy and procedure violations related to the health and safety of a child;

(2) abuse or neglect, as defined in Subsections N, Q and U of 8.26.6.7 NMAC, which may include but is not limited to:

(a) physical or sexual abuse, as defined in Subsections Q and U of 8.26.6.7 NMAC, by a staff member or volunteer to a child; or

(b) physical or sexual abuse, as defined in Subsections Q and U of 8.26.6.7 NMAC, by a child to another child;

(3) death or serious injury to a child;

(4) safety issues concerning a child;

(5) children who have run away;

or

(6) serious or contagious illnesses.

N. "Neglect" means, for the purpose of 8.26.6 NMAC, a child:

(1) who is without proper care, subsistence, education, medical or dental care necessary for the child's well-being due to the refusal or failure to act on behalf of the child by the community home; or

(2) who has been physically or sexually abused and the community home knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm.

O. "On-site review" means the on-site review of a community home for the purpose of determining whether 8.26.6 NMAC is being met.

P. "Permanency plan" means, for the purpose of 8.26.6 NMAC, a plan of intervention for the permanent placement of a child in PSD custody, as defined under the Adoptions and Safe Families Act.

Q. "Physical abuse" for the purpose of 8.26.6 NMAC includes, but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product

of an accidental occurrence.

R. “Placement” means the point in time when the child is placed in the community home by a legal custodian or guardian.

S. “Protective services division (PSD)” refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

T. “Service provider” means anyone, agency or individual, providing a service to a child.

U. “Sexual abuse” for the purpose of 8.26.6 NMAC, includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law.

V. “Substantial compliance” means a community home has complied with 8.26.6 NMAC, and that only minor deficiencies exist which do not impair the safety, permanency or well-being of a child.

W. “Variance” means, upon written application from a community home, PSD may in the exercise of its sole discretion issue a variance that allows non-compliance with 8.26.6 NMAC. Variances are issued in writing at PSD’s sole discretion.

X. “Wide scale emergency” means a natural disaster, such as floods, wild fires and pandemic diseases or human-caused disaster, whether intentional or accidental, such as acts of terrorism, transportation accidents and explosions. A wide scale emergency affects the entire community, with consequences that surpass the community’s resources to respond, and typically, although not necessarily, results in a local, state, or national declaration of emergency. [8.26.6.7 NMAC - N, 02/28/2014]

8.26.6.8 ELIGIBLE COMMUNITY HOME:

A. The principle function of a community home is to provide full time care to children on a 24 hour a day residential basis for no more than 16 resident children in a designated residential building.

B. The community home shall be licensed to do business in the state of New Mexico and be a member of any state or national association that requires the community home to observe standards recognized by state or national group home standards for the care of children, such as the New Mexico Christian child care association, the national association of home for children or the council on accreditation.

[8.26.6.8 NMAC - N, 02/28/2014]

8.26.6.9 APPLICATION: Any

individual, group or organization requesting consideration for a license as a community home shall submit information to PSD, as described in Subsections A-F of this Section. The application shall include:

A. Description and organization: Each applicant community home shall provide PSD a description of the community home to include, but not limited to:

- (1) the name or proposed name and location of the community home;
- (2) statement of non-profit status;
- (3) names and addresses of the members of the governing board;
- (4) name and address of the community home’s administrator; and
- (5) a signed statement from the community home administrator acknowledging responsibility for:
 - (a) providing for the safety and well-being of children placed in the community home;
 - (b) monitoring risks that may expose the organization to liability; and
 - (c) monitoring risks that may reveal unsatisfactory service.

B. Statement of purpose, including:

- (1) philosophy of the applicant community home;
- (2) the type of services to be provided to children placed in the community home;
- (3) the type of services that may be offered to children outside of the community home; and
- (4) any applicable and current accreditations or affiliations.

C. Personnel:

(1) Applicant community homes will list the name of the supervisor and the home’s administrator, such as the chief executive officer, the executive director, or the individual responsible for the administration of the community home.

(2) The applicant community home shall in its application provide the following information regarding staff and contract providers:

- (a) name, telephone and address of parent company and any contract providers, if applicable.
- (b) practicing clinical staff resumes, copy of current professional licensure, if applicable;
- (c) staff criminal records checks and abuse and neglect checks results; and
- (d) organizational charts.

D. Policies and

procedures: Community homes shall develop policies and procedures that address the health and safety of children as outlined in Section 16 of 8.26.6 NMAC.

E. Community home operations: The applicant community home shall include documentation of financial

operations, including:

(1) a statement of financial responsibility from a certified public accountant which demonstrates that the applicant has access to sufficient funds to provide services for a minimum of six months; and

(2) proof of professional liability insurance, acceptable to PSD.

F. Changes, additions

or revisions: Applicant community home changes, additions or revisions to the information contained in the original application shall be submitted to PSD for approval before implementation. PSD may request, in writing and by certified mail, additional information to support the application. The requested information shall be submitted within 30 calendar days of PSD’s request. An applicant community home’s failure to respond to PSD’s request for information within 30 calendar days shall be construed as voluntary withdrawal of an application.

[8.26.6.9 NMAC - N, 02/28/2014]

8.26.6.10 TYPES OF LICENSES:

A. Initial license: An initial license is granted to a community home when PSD verifies that the applicant is in substantial compliance with the licensing requirements outlined in 8.26.6 NMAC. If the applicant community home is in substantial compliance but there are minor deficiencies, the applicant community home shall be directed by PSD to correct the minor deficiencies. An initial license shall be issued for a maximum of one year.

B. Standard license: If a community home continues to meet all licensing requirements, PSD shall license the community home for a standard license. A standard license is issued for one year; however, PSD has the option to issue a two year license if the community home consistently exceeds the basic standards outlined in 8.26.6 NMAC.

C. Six month license: A six month license may be issued when PSD determines the community home has documented substantial deficiencies or chronic minor deficiencies, and:

(1) the community home submits a written corrective action plan as approved by PSD to correct the deficiencies; and

(2) the community home can meet the licensing requirements within six months from the date of issuance of the six month license; PSD makes at least one on-site review at least two months prior to the expiration of the six month license, or more frequent reviews, to determine that the community home has taken sufficient steps to correct the deficiencies.

D. License extension: If a community home requests to be re-licensed,

and holds a current standard license, and an on-site review is not conducted prior to the or on the date of expiration of the present license, the most recent license may remain in effect for a period of up to 90 calendar days beyond the current expiration date. The extension allows for completion of the on-site review and determination if a new license is issued, or, in the case of a voluntary community home closure, to allow for the timely transfer of families or children. Upon written request of the community home, PSD issues a letter extending the license for the determined amount of time, not to exceed 90 days. [8.26.6.10 NMAC - N, 02/28/2014]

8.26.6.11 APPROVAL OR DENIAL OF A LICENSE:

A license is granted or denied based upon the application, assessment and determination that the applicant community home is, or is not, in compliance with the licensing standards outlined in 8.26.6 NMAC and any other standards governing the health and safety of children residing within a community home.

A. Approval: PSD notifies the applicant community home, in writing, of approval of a license. Notice is sent by registered mail to the address shown on the application within 90 calendar days after receipt of the completed application.

B. Denial: PSD notifies the applicant community home, in writing, of denial of the license. The applicant community home may be denied a license when the standards for licensing are not met or the applicant community home has a history of license revocation, suspension, denial, penalties or allegations of abuse or neglect substantiated by PSD or any other state agency responsible for the protection and welfare of children. Notice of denial is sent by registered mail to the address shown on the application within 90 calendar days after the receipt of the completed application packet. A notice denying the license states the reason for the denial and informs the applicant community home of the appeal process. See Section 13 of 8.26.6 NMAC. [8.26.6.11 NMAC - N, 02/28/2014]

8.26.6.12 LICENSE RENEWAL:

A. The community home shall request a renewal of its license, on a renewal form provided by PSD, by certified mail, no later than 90 calendar days before the expiration of the current license.

B. A license is renewed or terminated based on the community home's written request for renewal and PSD's on-site review and assessment of community home's operations. Failure to submit a renewal form at least 90 days prior

to expiration of a license with the required documents attached, shall be interpreted as voluntary closure.

C. If a community home fails to file a renew request within 90 calendar days of expiration of the license, the license may be, at PSD's sole discretion, automatically terminated 30 days from the expiration date shown on the face of the existing license. The community home shall assist in the smooth transfer of the children to other licensed child placement agencies or community homes, so that there is no disruption in the care of the children.

D. Before renewing a community home license, PSD shall determine that the community home is in compliance with all applicable requirements by conducting an onsite review which shall include interviews, case record reviews and visits to the facilities maintained by the community home. PSD is not responsible for locating documents when files are not kept organized and up to date.

E. PSD shall notify the community home in writing of its licensing decision before the expiration date of the current license. If PSD does not renew the license prior to its expiration date, a license extension, at PSD's sole discretion, may be issued to the community home for a maximum of 90 calendar days. If PSD decides to not renew a community home's license, notice of denial is sent by registered mail to the address shown on the application prior to the expiration date of the current license. The notice states the reasons for the denial and informs the applicant of the appeal process. See Section 13 of 8.26.6 NMAC.

[8.26.6.12 NMAC - N, 02/28/2014]

8.26.6.13 SANCTIONS, NOTIFICATION AND ADMINISTRATIVE HEARINGS:

A. Sanctions and Notification: PSD may impose sanctions if it determines that a community home has failed to comply with 8.26.6 NMAC, or where an investigation substantiates an allegation of abuse or neglect against a community home. At PSD's discretion, depending upon the severity of a community home non-compliance, PSD may issue a letter of correction, put a community home on probation with restricted admissions, suspend a community home license, revoke a community home license, or deny a community home license. PSD shall notify the community home in writing by return receipt mail of its intent to put the community home on probation or suspension, or to revoke or not renew the license. Notice shall be sent to the address on file, or by personal delivery to the person authorized to accept service on behalf of the community home. Notice shall be sent at

least 30 days prior commencement of such actions.

(1) Letter of correction: PSD may send the community home a letter of correction. The letter of correction is sent by registered mail and:

(a) notifies the community home of identified deficiencies and works with the community home to correct the deficiencies by a specific date;

(b) requires the community home to submit a written corrective action plan, subject to approval of PSD, identifying the specific actions which will be taken to correct the deficiencies, following the time frame provided by PSD; at its discretion, PSD staff may work with the community home in the development or revision of the corrective action plan; and

(c) advises the community home of potential PSD actions should the deficiencies not be corrected, including, but not limited to probation, suspension or revocation of license, or denial of license renewal.

(2) Probation with restricted admissions: PSD may place the community home on probation and restrict the community home from accepting any new clients or expanding into additional services until the identified deficiencies are corrected. Notice shall:

(a) state the deficiencies and reasons for the probation and instruct the community home to correct the deficiencies by a specific date;

(b) require the community home to submit a written corrective action plan, subject to approval of PSD, identifying the specific actions which will be taken to correct the deficiencies, following the time frame provided by PSD. At its discretion, PSD staff may work with the community home in the development or revision of the corrective action plan;

(c) advise the community home of potential PSD actions should the deficiencies not be corrected, including, but not limited to suspension or revocation of license or denial of license renewal; and

(d) inform the community home of the right to request an administrative hearing and instructions on how to request an administrative hearing through CYFD.

(3) Suspension of license: PSD may suspend the community home license and move the children placed by the community home to new placements, giving preference to another licensed community home provider. When PSD suspends a community home license, the community home shall assist PSD in arranging for transfer of care, custody and control of any children currently being served, and for the preservation and transfer of records. Notice shall:

(a) state the deficiencies and

reasons for the suspension and works with the community home to correct the deficiencies by a specific date;

(b) require the community home to submit a written corrective action plan, subject to approval of PSD, identifying the specific actions which will be taken to correct the deficiencies, following the time frame provided by PSD; at its discretion, PSD staff may work with the community home in the development or revision of the corrective action plan;

(c) advise the community home of potential PSD actions should the deficiencies not be corrected, including, but not limited to revocation of license or denial of license renewal; and

(d) inform the community home of the right to request an administrative hearing and instructions on how to request an administrative hearing through CYFD.

(4) Revocation of community home license or denial of license renewal: PSD may revoke a community home license or deny renewal of the license if PSD determines such action is necessary based upon the community home failure to comply with 8.26.6 NMAC, or the community home's failure to correct deficiencies identified in a prior letter of correction, probation, or suspension of license. When PSD revokes or denies renewal of a community home license, the community home shall assist PSD in arranging for the transfer of care, custody and control of any children currently being served, and for the preservation and transfer of records. The notice shall:

(a) state the deficiencies and reasons for the revocation or denial of license renewal; and

(b) inform the community home of the right to request an administrative hearing and instructions on how to request an administrative hearing through CYFD.

B. Administrative hearings and emergency suspension:

(1) PSD shall comply with the administrative appeals process governed by 8.8.4 NMAC, Children, Youth and Families General Provisions, Administrative Appeals.

(2) PSD may immediately suspend a community home license, prior to a hearing on the matter, when such action is required to protect human health and safety. [8.26.6.13 NMAC - N, 02/28/2014]

8.26.6.14 COMMUNITY HOME OPERATIONS:

A. Financial accountability:

(1) Community homes shall provide a brief statement verifying financial stability from a certified public accountant to PSD during the annual onsite visit for license renewal.

(2) Community homes shall have

an annual financial audit conducted by an independent certified public accountant. A brief statement or proof that such audit has been conducted from an independent certified public account will be provided to PSD during the annual onsite review for license renewal.

B. Liability insurance:

Community homes shall provide proof of professional liability insurance acceptable to PSD.

[8.26.6.14 NMAC - N, 02/28/2014]

8.26.6.15 HEALTH AND SAFETY CHECKLIST:

A. Heating, cooling, and ventilation:

(1) Heating, air-conditioning, piping, boilers, and ventilation equipment shall be installed and maintained in safe working condition to meet all requirements of current state mechanical, electrical, and construction codes.

(2) Heating and cooling equipment shall be adequate to maintain a comfortable interior temperature in all living and sleeping quarters, and provides a means for adjusting the temperature by staff for clients as needed.

(3) All living and sleeping quarters shall be adequately ventilated. There shall be an effective means of providing fresh air to client's sleeping quarters, including at least one window.

B. Electrical wiring and lighting:

(1) Electrical wiring shall be installed and maintained in safe working condition to meet all requirements of current state mechanical, electrical, and construction codes.

(2) Extension cords shall be U/L approved and shall not be used for general wiring purposes.

(3) Living, working and sleeping quarters shall have adequate lighting; areas that pose potential tripping or falling hazards shall be adequately lit, this may include but is not limited to stairwells, parking lots, storerooms, entrances and exits.

(4) A community home shall provide emergency lighting, such as but not limited to flashlights, backup generators or battery operated lamps upon disruption of electrical service.

C. Water:

(1) A community home shall have an adequate supply of safe and sanitary water for drinking, cooking and bathing purposes.

(2) Water supply piping and associated equipment shall be installed and maintained in safe working condition to meet all requirements of current state safety regulations and construction codes.

D. Sewage, waste and

sanitation:

(1) Living and sleeping quarters shall be kept clean and free of accumulation of dirt, waste, and infestations of insects and rodents.

(2) Toilet and bathing facilities shall be provided and maintained in a sanitary manner.

(3) Household waste shall be disposed by way of designated garbage or waste receptacles.

E. Space, furnishing and sleeping arrangement:

(1) A community home shall have separate bedrooms for any adult age 19 years or older; any exceptions shall be requested by the community to PSD.

(2) There shall be a separate bed provided for each child.

(a) Each bed has a clean, comfortable mattress which is waterproof or has a waterproof covering.

(b) Each bed is provided with a clean, comfortable pillow and pillow case.

(c) Each bed is provided with two clean sheets and bedding that is appropriate for weather and climate.

(3) Cribs must be of sturdy construction with bars closely spaced so that a child's head cannot be caught between the bars. Drop side cribs are prohibited.

(a) Cribs must have clean, individual crib size bedding.

(b) Crib mattress must be completely and securely covered with waterproof material.

(4) A child over the age of five years shall not share a bedroom with another non-related child of the opposite gender.

(5) There shall be sufficient closet space or furniture storage space to permit the storage of children's clothes, linens and bedding.

(6) All furnishings shall be clean and maintained in a safe and sanitary condition.

F. Kitchen and food storage:

(1) A community home shall have a kitchen with sufficient storage space. Food shall be stored separately from cleaning supplies and other household chemicals.

(2) The kitchen shall be equipped with a refrigerator sufficient to maintain cold food storage safely.

(3) The kitchen and food preparation equipment and storage shall be maintained in a sanitary condition.

G. Doors, locks and fire safety:

(1) Community homes shall have at least two designated exits that meet fire code standards.

(2) Designated exits shall be clear of obstructions at all times.

(3) There shall be no interior door hardware which makes it possible for a child to be locked inside. All privacy locks shall be provided with emergency unlocking mechanisms.

(4) Community homes shall have smoke detectors appropriate for the square footage.

(5) Community homes shall have carbon monoxide detectors in living or sleeping areas where carbon monoxide poisoning is a possibility.

(6) Community homes shall develop a fire evacuation plan with staff to safely remove children in case of fire. All staff and children should be oriented to the community home's fire evacuation plan.

H. Yard and play space:

(1) Community homes shall have access to safe indoor and outdoor designated play areas.

(2) In areas which have a high density of traffic or other hazards to children, the yard or play space shall be adequately fenced for the children's protection.

(3) All outdoor play space and toys, swings and other outdoor equipment shall be maintained in good working condition and be free of projecting sharp edges, splinters or other hazards to children.

I. Personal items:

(1) Each child shall be provided an individual comb, toothbrush, night clothes, and under garments which shall not be interchanged between children.

(2) Linens and bedding shall be stored and maintained in a manner assuring that they will be clean when ready for use. All linens and bedding shall be laundered before use by another child.

J. First aid, medical and behavioral health care and dental care:

(1) Each community home shall make available a first aid kit and first aid manuals readily accessible to staff.

(2) The community home ensures that children receive timely, competent medical care when they are ill and that they continue to receive necessary follow-up medical care as needed.

(3) The community home shall ensure that children have access to and receive behavioral health assessments, services and treatment that address their habilitation and treatment needs.

(4) The community home arranges to secure any necessary dental care and that each child three years of age or older has an annual dental examination.

K. Medication:

(1) Prescription medicines shall be administered only as prescribed by a medical doctor, nurse practitioner, or physician's assistant. Medications prescribed for one child are not to be given to any other child.

(2) All medications shall be stored separately from food, cleaning agents or other household chemicals, and shall be stored in a manner in which they are not easily accessed by children.

(3) All leftover or expired medication shall be disposed of according to state pharmaceutical regulations.

L. Animals:

(1) All animals, including farm animals or pets, shall be in good health with documentation of current vaccinations as appropriate and relevant to the type of animal.

(2) Farm animals shall be properly housed and secured as a health and safety precaution.

M. Motor vehicles:

(1) If the community home operates a motor vehicle then the community home shall have motor vehicle insurance as required by law.

(2) Any person who operates such motor vehicles used to transport children shall have a valid driver's license.

(3) All motor vehicles used for the purpose of transporting children shall have safety restraints as required by law and shall have properly installed car seats for age appropriate children.

N. Other safety issues:

(1) For age appropriate children, a community home shall have safety gates and locking mechanisms for cabinets that contain medications, cleaning agents or chemicals.

(2) All weapons owned or acquired by a community home shall be stored and locked with ammunition stored separately as per the PSD approved weapons safety agreement. The community home shall sign a PSD weapons safety agreement; a signed copy will be provided to the community home and the original will be kept on file with PSD.

(3) All pool areas, including hot tubs, shall be adequately secured in order to prevent the access of young children when not accompanied by an adult. Spas or hot tubs shall be securely covered to prevent the access of young children when not in use. Outdoor ponds shall not be within the immediate play area of children.

(4) Smoking shall be prohibited in the house and in any vehicle used for transporting children.

[8.26.6.15 NMAC - N, 02/28/2014]

8.26.6.16 COMMUNITY HOME POLICIES AND PROCEDURES:

Community homes shall develop, maintain and follow internal written policies and procedures concerning:

A. Protection of children:

Policies and procedures shall acknowledge the community home's responsibility to protect the safety of children. Specifically,

policies and procedures shall:

(1) require that community home staff report all suspected incidents of abuse and neglect, as defined in Subsections N, Q and U of 8.26.6.7 NMAC, involving children in the community home's care and advise the child's legal guardian when such a report is made;

(2) address the safety of children who may be harmed while in the care and control of the community home or its providers and include a plan stating the course of action followed in the event a child is harmed, without regard to how the incident occurred, and identifying the line of authority and the decision-making process to assist in the reporting and investigation of these matters; and

(3) create a safe and supportive home environment for youth in PSD custody regardless of their sexual orientation or gender identity.

B. Confidentiality: Under the confidentiality provisions of the New Mexico Children's Code, NMSA 1978, Sections 32A-3B-22, 32A-4-33, 32A-5-6 and 32A-5-8, all child or client case records and child or client identifying information is confidential and may not be publicly disclosed.

C. Grievances: Policies and procedures shall include that process by which the community home reviews and makes decisions regarding grievances on behalf of all children residing within the community home.

D. Incident reports: Policies and procedures shall include a process for internally reviewing and acting upon incident reports. Incidents and subsequent incident reports shall include, but are not limited to:

(1) policy and procedure violations related to the health and safety of a child;

(2) abuse or neglect of a child, as defined in Subsections N, Q and U of 8.26.6.7 NMAC, including but not limited to:

(a) physical or sexual abuse, as defined in Subsections Q and U of 8.26.6.7 NMAC, by any adult, staff member, or volunteer to a child; and

(b) physical or sexual abuse, as defined in Subsections Q and U of 8.26.6.7 NMAC, by a child to another child;

(3) death or serious injury to a child;

(4) safety issues concerning a child;

(5) children who have run away; and

(6) serious or contagious illnesses.

E. Personnel: The community home shall develop, maintain, and adhere to internal written personnel policy and procedures governing

employees, student interns and volunteers. Each employee, student intern and volunteer shall receive a copy of:

- (1) policy regarding conflicts of interest;
- (2) policy requiring staff, student interns and volunteers to report all suspected incidents of abuse and neglect;
- (3) policy regarding the confidentiality of child and client case records and identifying information, including the requirement for a signed acknowledgement of confidentiality by each employee, contractor, or volunteer; and
- (4) requirements for abuse and neglect checks and state and federal criminal records checks for all applicable staff, student interns and volunteers, see Subsection A of 8.26.6.17 NMAC. [8.26.6.16 NMAC - N, 02/28/2014]

8.26.6.17 STAFF BACKGROUND CHECKS:

A. Community homes shall conduct state and federal criminal records checks and child abuse and neglect checks for staff, interns and volunteers whose duties include any contact with children. Contact may include but is not limited to:

- (1) physical contact with children;
- (2) working in close physical proximity to children; and
- (3) having unsupervised access to children.

B. Staff, interns and volunteers shall successfully pass state and federal criminal records checks and child and abuse neglect checks prior to any contact with children.

C. If a criminal records check is not required for an employee, student intern or volunteer, then the reason for not requiring the criminal records check must be documented in the file of the employee, student intern or volunteer.

D. Staff, student interns and volunteers shall report all arrests or abuse and neglect referrals to the community home within 24 hours of the alleged offense. The community home shall investigate any reported or discovered arrests and referrals and take appropriate action to protect the safety of the children residing in their homes.

E. Any corrective actions in response to a referral or arrest will depend on the outcome of such referral or arrest and may include a written reprimand, a corrective action plan, and restriction of unsupervised contact with children, suspension or termination, depending on the nature of the offense and whether or not children were involved. The community home shall document any corrective actions taken.

F. Volunteers and staff whose duties are clerical, relate to cooking

and maintenance, or other support staff activities and whose duties do not include being in close proximity to children or left alone with children unsupervised are not subject to requirements outlined in Subsections A and C of 8.26.6.17 NMAC. [8.26.6.17 NMAC - N, 02/28/2014]

8.26.6.18 STAFFING REQUIREMENTS:

A. Minimum staff: Community home staff shall include, at a minimum, an administrator and a supervisor. The administrator may also fulfill the role of supervisor, provided the person meets the minimum qualifications for the higher position.

(1) Administrator: The administrator shall work in the community home's New Mexico office.

(2) Clinical supervisor: Each community home shall have access to a licensed clinical supervisor for the purpose of evaluating the behavioral health needs of its clients. The clinical supervisor shall make face to face contact with clients when delivering services to clients. The clinical supervisor shall be licensed by the state of New Mexico as a:

- (a) licensed psychologist or psychiatrist;
- (b) social worker licensed at the master's level (MSW);
- (c) licensed professional clinical mental health counselor (LPCC); or
- (d) licensed marriage and family therapist (LMFT).

B. Staff to client ratio: Community home staff and volunteers who work directly with clients, as outlined in Subsection A of 8.26.6.17 NMAC, and who are counted in the staff-to-child ratio shall be 18 years of age or older. The community home shall maintain the following ratios:

- (1) for children under the age of six years old, one staff to six children; and
- (2) for children over the age of six, one staff to sixteen children.

C. References: At least three professional and character references shall be obtained by a community home for each potential employee prior to his or her employment. One of these references shall be from the previous employer or a professional colleague who has direct knowledge of the qualifications of the potential employee. Each letter of reference shall be followed up by a phone call by the agency. Documentation of references, with date and type of contact, including all telephone or in person contacts, shall be included in the employee's personnel file.

D. Employment history: A community home shall obtain a relevant employment history on each potential employee prior to employment and verify requisite experience or document attempts

to accomplish such in the personnel file.

E. Staff training: All staff members of a licensed community home shall be instructed in:

- (1) the definitions of abuse and neglect as defined in Subsections M, P and T of 8.26.6.7 NMAC; and
- (2) the responsibility of staff to report all suspected incidents of child abuse or neglect including access to the statewide central intake hot line number.

F. First aid certification: At least one staff member who has direct contact with children shall have a current first aid certificate and a current cardio pulmonary resuscitation certification. [8.26.6.18 NMAC - N, 02/28/2014]

8.26.6.19 EMPLOYEE, STUDENT INTERN, AND VOLUNTEER PERSONNEL FILES:

A. Employee personnel file: The community home shall maintain a personnel file for all employees, including temporary professional employees, of the community home which shall be available to PSD for inspection. Each file shall include, at a minimum:

- (1) application: the employee's employment application showing qualifications and experience;
- (2) references: at least three professional and character references for each potential employee prior to his or her employment;
- (3) academic transcripts: the official academic transcripts, if applicable;
- (4) disciplinary or corrective actions: documentation of any disciplinary or corrective action taken;
- (5) evaluations: any evaluations of work performance;
- (6) background check results: the results of the abuse and neglect and criminal records check, if required; if a background check is not required, the file shall include written documentation as to why it is not required;
- (7) training: any training received including content and hours, and documentation that staff have been instructed on:
 - (a) the definitions of abuse and neglect as defined in Subsections M, P and T of 8.26.6.7 NMAC; and
 - (b) the responsibility of staff to report all suspected incidents of child abuse or neglect, to include access to the statewide central intake hotline number.
- (8) licenses or certifications: a copy of an employee's professional license or certifications when applicable;
- (9) abuse and neglect reporting: a signed statement of understanding by the employee of the requirements to report suspected abuse and neglect to PSD;
- (10) community home

licensing standards: a signed statement by professional staff acknowledging the receipt of these regulations; and

(11) confidentiality statement: signed statement by the employee acknowledging the confidentiality rights of the children and families that are or may become clients of the community home, specifically that the child or client's case records and identifying information shall not be publically released

B. Student intern personnel file: The community home shall maintain a personnel file for all student interns of the community home which shall be available to PSD for inspection. Each file shall include, at a minimum:

(1) reference: the community home shall obtain at least three professional and character references for each potential student intern prior to the commencement of the internship;

(2) academic transcripts: the official academic transcripts, if applicable;

(3) disciplinary or corrective actions: documentation of any disciplinary or corrective action taken;

(4) evaluations: any evaluation of work performance;

(5) background check results: the results of the abuse and neglect and criminal records check, if required; if a background check is not required, the file shall include written documentation as to why it is not required;

(6) training: any training received including content and hours, and documentation the student intern has been instructed on:

(a) the definitions of abuse and neglect as defined in Subsections M, P and T of 8.26.6.7 NMAC; and

(b) the responsibility of the student intern to report all suspected incidents of child abuse or neglect, to include access to the state wide central intake hotline number.

(7) licenses or certifications: a copy of the current professional license or certifications, if applicable;

(8) abuse and neglect reporting: a signed statement of understanding by the student intern of the requirements to report suspected abuse and neglect to PSD;

(9) community home licensing standards: a signed statement by the student intern acknowledging the receipt of these regulations; and

(10) confidentiality statement: signed statement by the student intern acknowledging the confidentiality rights of the children and families that are or may become clients of the community home, specifically that the child or client's case records and identifying information shall not be publically released.

C. Volunteer files:

(1) background check results: the results of the abuse and neglect and criminal records check, if required; if a background check is not required, the file shall include written documentation as to why it is not required;

(2) training: any training received including content and hours, and documentation the volunteer has been instructed on:

(a) the definitions of abuse and neglect as defined in Subsections M, P and T of 8.26.6.7 NMAC; and

(b) the responsibility of the volunteer to report all suspected incidents of child abuse or neglect, to include access to the state wide central intake hotline number.

(3) abuse and neglect reporting: a signed statement of understanding by the volunteer of the requirements to report suspected abuse and neglect to PSD; and

(4) confidentiality statement: signed statement by the volunteer acknowledging the confidentiality rights of the children and families that are or may become clients of the community home, specifically that the child or client's case records and identifying information shall not be publically released.

[8.26.6.19 NMAC - N, 02/28/2014]

8.26.6.20 RECORDS:

A. Child's record: The child's record shall contain at a minimum:

(1) intake information; any assessments relevant to the child's needs and well-being, and the discharge report with recommendations;

(2) education records: the community home shall maintain documentation of the child's educations status, needs, and history; the documentation shall include information provided by the school to the community home and is updated, at a minimum, each academic year;

(3) medical and behavioral health records: the community home shall maintain documentation of the child's medical and behavioral health needs, medications, and history including but not limited to:

(a) medical information;
(b) behavioral health history;
(c) developmental history;
(d) immunization record;
(e) history of serious illness or injury;
(f) physiological or psychological evaluations;

(g) past and current use of prescribed medications (including psychotropic medications);

(h) any complaints by the child indicating a current need for diagnosis and treatment;

(i) dates of any dental, visual,

auditory, and physical examination and any treatment secured for any conditions discovered; and

(j) diagnosed behavioral health conditions and dates of any behavioral health treatment secured for those conditions.

(4) individualized case plan report: the child's record shall contain an individualized case plan report of services provided by the community home; for children in PSD custody, the report shall be provided to the PSD worker and shall include dates and locations of all professional staff visits with the child; and

(5) any incident reports.

B. Administrative records: Administrative records include but are not limited to:

(1) employee, student intern or volunteer records or files;

(2) policy and procedure; and

(3) a copy of the community home's license.

[8.26.6.20 NMAC - N, 02/28/2014]

8.26.6.21 COMMUNITY HOME REPORTS:

A. Annual reports: The community home shall submit to PSD an annual statistical report of the services provided by the community home.

B. Report format: Annual reports shall be prepared on forms provided by PSD and include all the information required therein, including, but not limited to:

(1) total number of children placed during the reporting period;

(2) total number of children discharged from the community home during the reporting home;

(3) all complaints, incidents, and abuse and neglect reports with complaint's identifying information made regarding specific homes and information regarding resolution of such; and

(4) children in PSD custody statistics:

(a) number of children in PSD custody placed in the community home during the reporting period;

(b) number of children in PSD custody discharged from community home placement during the reporting period;

(c) number of children in PSD custody remaining in community home placement at the end of the reporting period; and

(d) identity (first name and last initial) and date of placement of children in PSD custody who have been in community home for more than six months.

C. Confidentiality of reports: Annual reports are not confidential, except that child or client identifying information and criminal records checks

and abuse and neglect checks information, shall not be released to the public except as required by a court order.

[8.26.6.21 NMAC - N, 02/28/2014]

8.26.6.22 EMERGENCY RESPONSE PLAN:

A. As required by the federal Child and Family Services Improvement Act of 2006 and included in CYFD's federal child and family services plan, each community home shall develop and maintain a written emergency response plan.

B. The plan shall be developed within three months of the promulgation of these regulations, or within three months of initial licensure. PSD will review the plan during on-site visits.

C. Contact information shall be provided to PSD for alternative locations in which the community home would evacuate staff and children to in case of a wide scale emergency.

[8.26.6.22 NMAC - N, 02/28/2014]

8.26.6.23 PSD ROLE:

A. Annual on-site review: PSD shall conduct annual on-site reviews as part of the community home's annual re-licensure.

B. Investigations of abuse and neglect referrals in community homes: PSD shall investigate all screened-in reports of allegations of abuse or neglect regarding children in accordance with CYFD protective services investigation policy and procedure. If a screened-out report involves a child in PSD custody, the child's PSD case worker shall conduct a safety assessment of the placement.

C. On-site reviews and investigation authority: PSD may conduct on-site reviews and interviews related to referrals of abuse and neglect, licensing violations, or complaints received by PSD related to the operation of the community home. Such reviews and interviews may be conducted at any time, with or without prior notice. In order to evaluate the safety and continuity of care for children placed in the community home, PSD may enter and inspect the community home's offices and physical facilities.

[8.26.6.23 NMAC - N, 02/28/2014]

8.26.6.24 VOLUNTARY COMMUNITY HOME CLOSURE:

When a community home voluntarily closes, the community home shall notify PSD in writing at least 90 calendar days prior to the agency beginning to move children to another agency or community home. The licensee shall provide PSD a written plan summarizing the preparation and arrangements for the care, custody and control of any children being served.

[8.26.6.24 NMAC - N, 02/28/2014]

**HISTORY OF 8.26.6 NMAC:
[RESERVED]**

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

The Human Services Department, Medical Assistance Division, is repealing the following rule in Title 8, effective February 28, 2014.

8.315.4 NMAC, Personal Care Option Services, filed 12-15-2010.

NEW MEXICO MINING COMMISSION

This is an amendment to 19.10.3 NMAC, Sections 303 and 304, effective February 28, 2014.

19.10.3.303 MINIMAL IMPACT EXISTING MINING OPERATIONS:

A. An existing mining operation that continues mining operations will not be considered a minimal impact existing mining operation if it exceeds 10 acres of disturbed land, except that an existing mining operation extracting humate may exceed 10 acres but not 20 acres if its approved closeout plan or reclamation plan provides for concurrent reclamation of mined-out areas. Permanent roads and areas within the permit area that are reclaimed will not be counted as part of the acreage limitation for a minimal impact existing mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status.

B. A minimal impact existing mining operation that has discontinued or does not continue active mining operations may consist of unlimited acres of disturbed land; however, sites with the following characteristics will not be determined to be minimal impact operations:

- (1) sites that exceed state or federal standards for soil or water contamination from mining activities that are subject to the act;
- (2) sites likely to create acid mine drainage; or
- (3) sites where the applicant proposes to seek a waiver from the usual reclamation requirements for a pit or waste

unit.

C. Timing of applications and deadlines for approval for minimal impact existing mining operations must be in accordance with 19.10.5.501 NMAC or 19.10.5.511 NMAC.

D. An applicant for a minimal impact existing mining operation permit shall submit six copies of a completed application form provided by the director. If the proposed operation is on federal land, then information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information on the form provided by the director. Any confidential information shall be submitted separately in accordance with Subsection B of 19.10.5.502 NMAC. Any information that was submitted with the site assessment must be updated to reflect current conditions.

E. The application shall include the following information:

- (1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;
- (2) the location of the operation as shown on a topographic map which indicates the proposed permit area with the existing and proposed area of disturbance and gives the location of the following: the areas to be disturbed; perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on and within one-half mile of the permit area;
- (3) a general description of the minerals sought, the methods of extraction, and any processing to be conducted on site; any chemicals to be used on site must be identified;
- (4) an estimate of depth to ground water and total dissolved solids concentration;
- (5) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with 19.10 NMAC;
- (6) a closeout plan, whether submitted with the permit application or as a modification, shall include a general description of how the permit area will be reclaimed to a condition that allows for re-establishment of a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure

unless conflicting with the approved post-mining land use; each closeout plan must be developed to meet the site-specific characteristics of the mining operations and the site; the closeout plan must specify incremental work to be done within specific time frames to accomplish the reclamation; and

(7) a list of other permits required for the operation, and the anticipated schedule for receipt of these; and

(8) information necessary to meet other requirements specified by the director which are necessary to meet the definition of "minimal impact mining operation" in [Subsection M;] Paragraph (2) of Subsection M of 19.10.1.7 NMAC or achieve reclamation.

F. The director shall determine the amount of financial assurance appropriate for each operation based on the cost of reclaiming the site by a third party. Operations less than 2 acres total disturbance are not required to provide financial assurance.

G. The application must be accompanied by the permit fee as required by 19.10.2 NMAC and a proposal for the required financial assurance.

H. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

I. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of 19.10.5.502 NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request) to the agencies listed in Subsection E of 19.10.5.506 NMAC which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making his determination of eligibility for minimal impact status.

J. The director shall determine if an operation is eligible for a minimal impact operation permit and may conduct an evaluation or site visit which may include other agencies in making this determination.

K. No permit for a minimal impact operation will be issued until the director finds the following:

(1) the application is complete and demonstrates the closeout plan will meet the performance and reclamation standards and requirements of [Subsection E;] Paragraphs (5) and (6) of Subsection E of 19.10.3.303 NMAC or provides a

schedule for submitting such a plan in the shortest time practicable;

(2) the applicant has paid the permit fee;

(3) the applicant has provided satisfactory financial assurance; and

(4) the applicant has signed a notarized statement that he agrees to comply with the requirements of the permit, 19.10 NMAC and the act and allows the director to enter the permit area for the purpose of conducting inspections.

(5) the secretary of environment has provided a written determination stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described in the closeout plan; this determination will address applicable standards for air, surface water and ground water protection enforced by the environment department or for which the environment department is otherwise responsible; the determination shall be made within the 20-day period provided in Subsection I of 19.10.3.303 NMAC, or the requirement is waived.

L. Modifications to a permit are allowed pursuant to 19.10.5.505 NMAC including modifications to incorporate a closeout plan. The term of a permit is governed by 19.10.5.504 NMAC. Annual reports are required for each permit pursuant to 19.10.5.510 NMAC. [7-12-94, 2-15-96, 12-14-96; 19.10.3.303 NMAC - Rn, 19 NMAC 10.2.3.303, 05-15-01; A, 02-28-14]

19.10.3.304 MINIMAL IMPACT NEW MINING OPERATIONS:

A. A minimal impact new mining operation will not exceed 10 acres of disturbed land, except that a new mining operation extracting humate may exceed 10 acres but not 20 acres if its approved closeout plan or reclamation plan provides for concurrent reclamation of mined-out areas. Pre-existing roads and reclaimed acres within the permit area will not be counted as part of the acreage limitation for a minimal impact new mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status.

B. Timing of applications and deadline for approval for minimal impact new mining operations must be in

accordance with 19.10.6.601 NMAC.

C. An applicant for a minimal impact new mining operation permit shall submit six copies of a completed application on a form to be provided by the director. If the proposed operation is on federal land, then the information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information on the form provided by the director. Any confidential information shall be submitted separately in accordance with Subsection B of 19.10.6.602 NMAC.

D. The application shall include the following information:

(1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;

(2) the location of the proposed operation as shown on a topographic map which indicates the proposed permit area and gives the location of the following: the areas to be disturbed; perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on and within 1/2 mile of the permit area;

(3) a listing of other environmental permits held by the applicant for other mining operations within the United States and any violations issued for non-compliance with those permits;

(4) a general description of the minerals sought, the methods of extraction, and any processing to be conducted on site; any chemicals to be used on site must be identified;

(5) an estimate of depth to ground water and total dissolved solids concentration;

(6) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with 19.10 NMAC;

(7) a general description of how the operation will meet the following performance standards:

(a) the mining and reclamation operation shall be designed and operated using the most appropriate technology and best management practices;

(b) the mining and reclamation operation shall assure protection of human health and safety, the environment, wildlife and domestic animals;

(c) measures will be taken to safeguard the public from unauthorized entry into shafts, adits and tunnels and to prevent falls from highwalls or pit edges; depending on site-specific characteristics, the following measures shall be required:

(i) closing shafts, adits or tunnels to prevent entry;

(ii) posting warning signs, and restricting access to hazardous areas; and

(iii) posting a sign at the main entrances giving a telephone number of a person to call in the event of emergencies;

(d) the disturbed area shall not contribute suspended solids above background levels, or where applicable the water quality control commission's standards, to intermittent and perennial streams; and

(e) mining and reclamation operations shall be conducted to control erosion;

(8) a general description of how the operation will be operated and reclaimed to a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use;

(9) a list of other permits required for the operation, and the anticipated schedule for receipt of these; and

(10) information necessary to meet other requirements specified by the director which are necessary to meet the definition of "minimal impact mining operation" [Subsection M,] Paragraph (2) of Subsection M of 19.10.1.7 NMAC or achieve reclamation.

E. The director shall determine the amount of financial assurance appropriate for each operation based on the cost of reclaiming the site by a third party. Operations less than two acres total disturbance are not required to provide financial assurance.

F. The application must be accompanied by the permit fee as required by 19.10.2 NMAC and a proposal for the required financial assurance.

G. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

H. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of 19.10.6.602 NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request)

to the agencies listed in Subsection C of 19.10.6.605 which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making his determination of eligibility for minimal impact status.

I. The director shall determine if an operation is eligible for a minimal impact operation permit and may conduct an evaluation or site visit which may include other agencies in making this determination.

J. No permit for a minimal impact operation will be issued until the director finds the following:

(1) the application is complete and demonstrates the proposed operation will comply with the performance and reclamation standards and requirements of [Subsection D,] Paragraphs (6) through (8) of Subsection D of 19.10.3.304 NMAC;

(2) the applicant has paid the permit fee;

(3) the applicant has provided satisfactory financial assurance;

(4) the applicant, the operator or owner or any persons or entities directly controlled by the applicant, operator, owner or any persons or entities that directly control the applicant, operator or owner:

(a) are not currently in violation of the terms of another permit issued by the division or in violation of any substantial environmental law or substantive regulation at a mining operation in the United States, which violation is unabated and is not the subject of appeal, and have not forfeited or had forfeited financial assurance required for any mining, reclamation or exploration permit in the United States; for purposes of this subparagraph, a substantial environmental law or substantive regulation is one which is intended to protect natural resources from degradation and does not include violations of record-keeping or reporting requirements; if a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose; and

(b) have not demonstrated a pattern of willful violations of the act or other New Mexico environmental statutes; if a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose; and

(5) the applicant has signed a notarized statement that he agrees to comply with the requirements of the permit, 19.10 NMAC, and the act and allows the director to enter the permit area for the purpose of conducting inspections until release of the financial assurance;

(6) the secretary of environment has provided a written determination stating that the permit applicant has demonstrated

that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described in the closeout plan; this determination shall address applicable standards for air, surface water and ground water protection enforced by the environment department or for which the environment department is otherwise responsible; the determination shall be made within the 20-day period provided in Subsection H of 19.10.3.304 NMAC, or the requirement is waived.

K. The term of a permit is governed by 19.10.6.607 NMAC.

Modifications to a permit are allowed pursuant to 19.10.6.608 NMAC. Annual reports are required for each permit pursuant to 19.10.6.610 NMAC.

[7-12-94, 2-15-96; 19.10.3.304 NMAC - Rn, 19 NMAC 10.2.3.304, 05-15-01; A, 02-28-14]

NEW MEXICO BOARD OF OSTEOPATHIC MEDICAL EXAMINERS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 17 OSTEOPATHIC MEDICINE AND SURGERY PRACTITIONERS

PART 5 PRESCRIBING AND DISTRIBUTION OF CONTROLLED SUBSTANCES

16.17.5.1 ISSUING AGENCY: Regulation and Licensing Department - NM Board of Osteopathic Medical Examiners. [16.17.5.1 NMAC - N, 03-16-2014]

16.17.5.2 SCOPE: This part applies to all licensed osteopathic physicians. [16.17.5.2 NMAC - N, 03-16-2014]

16.17.5.3 STATUTORY AUTHORITY: These rules of practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine and Surgery Act, Sections 61-10-1 through 61-10-23 NMSA 1978 and the Pain Relief Act, sections 24-2D-1, NMSA thru 24-2D-6. [16.17.5.3 NMAC - N, 03-16-2014]

16.17.5.4 DURATION: Permanent. [16.17.5.4 NMAC - N, 03-16-2014]

16.17.5.5 EFFECTIVE DATE: March 16, 2014, unless a later date is cited at the end of a section.

[16.17.5.5 NMAC - N, 03-16-2014]

16.17.5.6 OBJECTIVE: It is the position of the board that osteopathic physicians have an obligation to treat pain and that a wide variety of medicines including controlled substances and other drugs may be prescribed for that purpose. When such medicines and drugs are used they should be prescribed in adequate doses and for appropriate lengths of time after a thorough medical evaluation has been completed.

[16.17.5.6 NMAC - N, 03-16-2014]

16.17.5.7 DEFINITIONS:

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

B. "Chronic pain" means a pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically for longer than three consecutive months. "Chronic pain" does not, for the purpose of the Pain Relief Act requirements, include pain associated with a terminal condition.

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

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

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

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

G. "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

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

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

J. "Prescribe" means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber bearing the name and address of the prescriber, license classification, the name and address of the patient, the name of the drug prescribed, direction for use and the date of issue.

K. "Administer" means to apply a prepackaged drug directly to the body of a patient by any means.

L. "Dispense" means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container.

M. "Distribute" means to administer or supply to a patient under the direct care of the distributing physician or physician assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container.

N. "Formulary" means any dangerous drugs; including Schedule II-V controlled substances, physicians may use in the care of patients where there is an established physician-patient relationship.

O. "Established physician-patient relationship" means a relationship between a physician and a patient that is for the purpose of maintaining the patient's well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician or physician assistant or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

P. "Licensed osteopathic physician" means an osteopathic physician licensed by the New Mexico osteopathic board of examiners to practice medicine in New Mexico.

[16.17.5.7 NMAC - N, 03-16-2014]

16.17.5.8 GUIDELINES: The following regulations shall be used by the board to determine whether an osteopathic

physician's prescriptive practices are consistent with the appropriate treatment of pain.

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

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

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

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

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

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

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

agreement, chronic non-cancer pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

(6) The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic non-cancer pain, the patient's state of health, and any new information about the etiology of the chronic non-cancer pain at least every six months. In addition, a practitioner shall consult, when indicated by the patient's condition, with a clinical pain expert. Consultation should occur early in the course of long-term treatment and at reasonable intervals during continued long-term treatment for assessment of benefit and need a minimum of once every six months.

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

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

- (1) a contractual agreement;
- (2) appropriate consultation;
- (3) urine or hair or salivary or

blood drug screening shall be considered when other factors suggest an elevated risk of misuse or diversion; and

(4) a schedule for re-evaluation at appropriate time intervals at least every six months.

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

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

F. Any physician that prescribes opiate based pain medication, shall obtain at least six CME credits in pain management over a three year period.

G. Any physician that

prescribes opiate based pain medication shall utilize the state based prescription monitoring program at the initial office visit which results in a prescription for an opiate based pain medication, and at least at yearly intervals and at critical turning points in patient care.

H. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Osteopathic Medicine and Surgery Practice Act or board rules. [16.17.5.8 NMAC - N, 03-16-2014]

16.17.5.9 PHYSICIANS

TREATED WITH OPIATES: Physicians who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on opiates while continuing to practice. [16.17.5.9 NMAC - N, 03-16-2014]

16.17.5.10 PRESCRIPTION MONITORING PROGRAM (PMP)

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

A. A health care practitioner who holds a federal drug enforcement administration registration and licensure to prescribe opioids shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A health care practitioner shall, before prescribing, ordering, administering or dispensing a controlled substance listed in schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when the patient is a new patient of the practitioner.

C. Prescription monitoring reports shall be requested and reviewed a minimum of once every six months during the continuous use of opioids for each established patient. The practitioner shall document the review of these reports. [16.17.5.10 NMAC - N, 03-16-2014]

16.17.5.11 NON-CANCER PAIN MANAGEMENT CONTINUING EDUCATION: This section applies to all

New Mexico osteopathic board licensed physicians who hold a federal drug enforcement administration registration and licensure to prescribe opioids. Pursuant to the Pain Relief Act, in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

A. On or before July 1, 2014 all New Mexico osteopathic medical board licensees who hold a federal drug enforcement administration registration and licensure to prescribe opioids, shall complete no less than two continuing medical education hours in appropriate courses that include a review of 16.17.5 NMAC, management of the treatment of pain, an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction and diversion, and awareness of state and federal regulations for the prescription of controlled substances. All such courses are subject to board approval. Practitioners who have taken continuing education hours in these educational elements in the two years prior to July 1, 2014 may apply those hours toward the required two continuing education hours described in this subsection.

B. Beginning with the July 1, 2014 triennial renewal date, as part of the 75 continuing medical education hours required during each triennial renewal cycle, all New Mexico osteopathic board physician licensees, who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit six continuing education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. All such courses are subject to board approval. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The two continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of the required continuing medical education hours in pain management.

C. All New Mexico osteopathic board licensees, whether or not the New Mexico license is their first license, who hold a federal drug enforcement administration registration and license shall complete two continuing medical education hours in pain management during the first year of licensure. These two continuing medical education hours completed prior to the first renewal may be included as part of the hours required in Subsection B above. [16.17.5.11 NMAC - N, 03-16-2014]

16.17.5.12 NOTIFICATION: In addition to the notice of procedures set forth

in the State Rules Act Chapter 14, Article 14, NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 17 of the New Mexico Osteopathic board rule;

A. health care practitioners under its jurisdiction; and

B. health care practitioners being investigated by the board in relation to the practitioner's pain management services.

[16.17.5.12 NMAC - N, 03-16-2014]

HISTORY OF 16.17.5 NMAC:

[RESERVED]

**NEW MEXICO BOARD OF
OSTEOPATHIC MEDICAL
EXAMINERS**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 17 OSTEOPATHIC
MEDICINE AND SURGERY
PRACTITIONERS**

**PART 8 LICENSURE FOR
MILITARY SERVICE MEMBERS,
SPOUSES AND VETERANS**

16.17.8.1 ISSUING AGENCY:

Regulation and Licensing Department - NM Board of Osteopathic Medical Examiners.
[16.17.8.1 NMAC - N, 03-16-2014]

16.17.8.2 SCOPE: Part 8 of Chapter 17 sets forth application procedures to expedite licensure for military service members, their spouses and veterans.
[16.17.8.2 NMAC - N, 03-16-2014]

16.17.8.3 STATUTORY AUTHORITY: Part 8 of Chapter 17 is promulgated pursuant to and in accordance with the Osteopathic Medicine and Surgery Act, NMSA 1978, Sections 61-10-1 through 61-10-22 (specific authority to promulgate rules is 61-2-6(D)(2) and NMSA 1978, Section 61-1-(HB 180).
[16.17.8.3 NMAC - N, 03-16-2014]

16.17.8.4 DURATION: Permanent.
[16.17.8.4 NMAC - N, 03-16-2014]

16.17.8.5 EFFECTIVE DATE: March 16, 2014, unless a later date is cited at the end of a section.
[16.17.8.5 NMAC - N, 03-16-2014]

16.17.8.6 OBJECTIVE: The objective of Part 8 of Chapter 17 is to expedite licensure for military service members, their spouses and veterans pursuant to NMSA 1978, Section 61-1-(2013).
[16.17.8.6 NMAC - N, 03-16-2014]

16.17.8.7 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.
[16.17.8.7 NMAC - N, 03-16-2014]

16.17.8.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the board.

B. The information shall include:
(1) completed application and fee pursuant to 16.17.1.10 NMAC and 16.17.2 NMAC;

(2) satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for New Mexico osteopathic physicians;

(3) proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.
[16.17.8.8 NMAC - N, 03-16-2014]

16.17.8.9 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this part shall not be renewed unless the license satisfies the requirements for issuance of a license pursuant to 16.17.2.8 NMAC and 16.17.3.9 NMAC and for the renewal of a license pursuant to 16.17.4 NMAC.

B. A license issued pursuant to this part shall be valid for one year or until July 1, whichever comes first.

C. Prior to the expiration of the license, all licensed osteopaths shall apply for registration renewal and shall pay the renewal fee as set forth in 16.17.1.10 NMAC.

D. The board office mails license renewal notifications at least 45 days before the license expiration date. Failure to receive the renewal notification shall not relieve the licensee of the responsibility to timely renew the license by the expiration date.
[16.17.8.9 NMAC - N, 03-16-2014]

HISTORY OF 16.17.8 NMAC:
[RESERVED]

**NEW MEXICO BOARD OF
PHARMACY**

This is an amendment to 16.19.26 NMAC, addition of new Section 13, effective 03-14-14.

16.19.26.13 NALOXONE FOR OPIOID OVERDOSE:

A. PROTOCOL:

(1) Prescriptive authority for naloxone drug therapy shall be exercised solely in accordance with the written protocol for naloxone drug therapy approved by the board.

(2) Any pharmacist exercising prescriptive authority for naloxone drug therapy must maintain a current copy of the written protocol for naloxone drug therapy approved by the board.

B. EDUCATION AND TRAINING:

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject area of naloxone for opioid overdose drug therapy provided by:

(a) the New Mexico pharmacists association; or

(b) a similar health authority or professional body approved by the board.

(2) Training must include study materials and instruction in the following content areas:

(a) mechanisms of action;

(b) contraindications;

(c) identifying indications for the use of naloxone drug therapy;

(d) patient screening criteria;

(e) counseling and training

patient and care-giver regarding the safety, efficacy and potential adverse effects of naloxone;

(f) evaluating patient's medical profile for drug interactions;

(g) referring patient for follow-up care with primary healthcare provider;

(h) informed consent;

(i) record management;

(j) management of adverse events.

(3) Continuing education: Any pharmacist exercising prescriptive authority for naloxone drug therapy shall complete a minimum of 0.2 CEU of live ACPE approved naloxone drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

C. AUTHORIZED

DRUG(S):

(1) Prescriptive authority shall be limited to naloxone and shall include any device(s) approved for the administration of naloxone.

(2) Prescriptive authority for naloxone drug therapy shall be limited to naloxone as delineated in the written protocol for naloxone drug therapy approved by the board.

D. RECORDS:

(1) The prescribing pharmacist must generate a written or electronic prescription for any naloxone dispensed.

(2) Informed consent must be documented in accordance with the approved protocol for naloxone drug therapy and a record of such consent maintained in the pharmacy for a period of at least three years.

E. NOTIFICATION:

Upon signed consent of the patient, the pharmacist shall notify the patient's designated physician or primary care provider within 15 days of naloxone dispensing.

[16.19.26.13 NMAC - N, 03-14-14]

**NEW MEXICO BOARD OF
PODIATRY**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 21 PODIATRISTS
PART 6 LICENSURE FOR
MILITARY SERVICE MEMBERS,
SPOUSES AND VETERANS**

16.21.6.1 ISSUING AGENCY:
Regulation and Licensing Department, NM
Board of Podiatry.
[16.21.6.1 NMAC - N, 03-13-14]

16.21.6.2 SCOPE: This part sets
forth application procedures to expedite
licensure for military service members,
spouses and veterans.
[16.21.6.2 NMAC - N, 03-13-14]

**16.21.6.3 STATUTORY
AUTHORITY:** These rules are
promulgated pursuant to and in accordance
with the Podiatry Act, NMSA 1978,
Sections 61-8-1 to -17 (specific authority
to promulgate rules is 61-8-6 E. (2) and
Section 61-1-34 of the Uniform Licensing
Act, NMSA 1978, Sections 61-1-1 to -34.
[16.21.6.3 NMAC - N, 03-13-14]

16.21.6.4 DURATION:
Permanent.
[16.21.6.4 NMAC - N, 03-13-14]

16.21.6.5 EFFECTIVE DATE:
March 13, 2014, unless a later date is cited
at the end of a section.

[16.21.6.5 NMAC - N, 03-13-14]

16.21.6.6 OBJECTIVE: The
purpose of this part is to expedite licensure
for military service members, spouses and
veterans pursuant to NMSA 1978, Section
61-1-34.

[16.21.6.6 NMAC - N, 03-13-14]

16.21.6.7 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.

[16.21.6.7 NMAC - N, 03-13-14]

**16.21.6.8 APPLICATION
REQUIREMENTS:**

A. Applications for
registration shall be completed on a form
provided by the department.

B. The applicant shall
provide:
(1) a completed application and
corresponding fee pursuant to 16.21.2.8
NMAC;

(2) satisfactory evidence that
the applicant holds a license that is current
and in good standing, issued by another
jurisdiction, including a branch of the
United States armed forces, that has met
the minimal licensing requirement that are
substantially equivalent to the licensing
requirements for the occupational or
professional license the applicant applies
for pursuant to Chapter 61, Article 8 NMSA
1978; 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.
[16.21.6.8 NMAC - N, 03-13-14]

**16.21.6.9 RENEWAL
REQUIREMENTS:**

A. A license issued
pursuant to this section shall not be renewed
unless the license holder satisfies the
requirements for the issuance and for the
renewal of a license pursuant to Chapter 61,
Articles 8 NMSA 1978.

B. A license issued
pursuant to this section shall be valid until
the next renewal, which is the next January
1.

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 post-marked
or hand delivered on or before January 1 of
each year.

E. To renew a license,
the licensee must submit the following
documentation on or before January 1 a
completed license renewal application,
verification of continuing education, and
the applicable renewal fee at the time of
renewal.

F. A license issued
pursuant to this section shall not be renewed
unless the license holder satisfies the
requirements for the issuance specified
in 16.21.3 or 16.21.4 NMAC and for the
renewal of a license specified in 16.21.7
and 16.21.8 NMAC pursuant to Chapter 61,
Articles 8 through 16 NMSA 1978.
[16.21.6.9 NMAC - N, 03-13-14]

**HISTORY OF 16.21.6 NMAC:
[RESERVED]**

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2014

Volume XXV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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