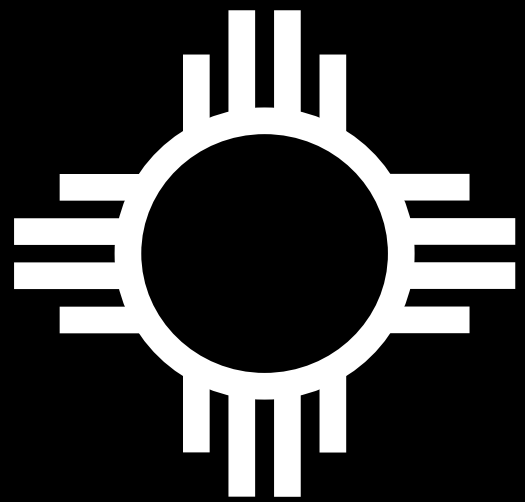


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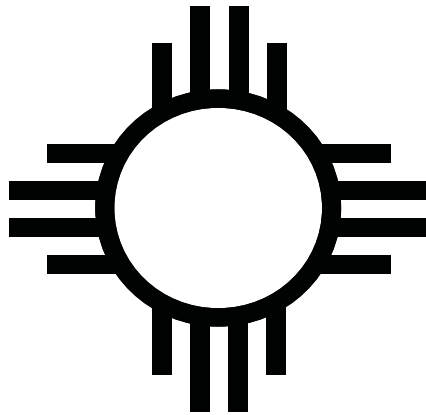


Volume XXV  
Issue Number 5  
March 14, 2014



# **New Mexico Register**

**Volume XXV, Issue Number 5**  
**March 14, 2014**



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

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Santa Fe, New Mexico  
2014

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# New Mexico Register

Volume XXV, Number 5

March 14, 2014

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#### Effective Date and Validity of Rule Filings

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO COUNSELING AND THERAPY PRACTICE BOARD

#### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

The New Mexico Counseling & Therapy Practice Board will hold a Rule Hearing on Friday, April 25, 2014, and following the Rule Hearing the Board will convene a regular board meeting to adopt the rules and take care of regular business. The New Mexico Counseling & Therapy Practice Board Rule Hearing will begin at 9:00 a.m. and the Regular Board Meeting will convene immediately following the Rule Hearing. The meeting will be held at the Gaming Control Board, located at 4900 Alameda Blvd. NE, Albuquerque, New Mexico.

The purpose of the Rule Hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in New Part 16.27.23 NMAC – Licensure for Military Service Members, Spouses and Veterans.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico, 87505, or call (505) 476-4622 after March 26, 2014. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing by close of business day on April 11, 2013. Persons wishing to present their comments at the Rule Hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

A copy of the agenda will be available at least 72 hours prior to the meeting and may be obtained at the Board office located on the 2<sup>nd</sup> Floor of the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, or by calling the Board office at (505) 476-4622 and will also be posted on our website at [www.rld.state.nm.us](http://www.rld.state.nm.us) Counseling & Therapy Practice Board, under Members and Meetings.

If you have questions, or if you are an

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

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend the following rule that is part of the New Mexico Administrative Code (NMAC): 8.308.15 NMAC, *Managed Care Program, Grievances and Appeals*. The register for the proposed amendment to 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 Wednesday, April 16, 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](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Wednesday, April 16, 2014.

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

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor

or by making them available on the MAD website or at a location within the county of the requestor.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal and replace the following rule that is part of the New Mexico Administrative Code (NMAC): 8.352.2 NMAC, *Administrative Hearings, Claimant Hearings*. The register for the repeal of this rule and the proposed rule 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 15, 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](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Tuesday, April 15, 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) has re-scheduled the public hearing to for the proposed amendment to 8.314.5 NMAC, *Long Term Care Services - Waivers, Developmental Disabilities Home and Community-Based Services Waiver*. The public hearing to receive testimony on these proposed rules will be held in Rio Grande Conference Room, Toney Anaya Building, 2055 Cerrillos Road, Santa Fe on Wednesday, April 30, 2014 at 9 a.m.

The Department through 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.

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](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Wednesday, April 30, 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) has rescheduled the public hearing for the proposed repeal of the following rules that are part of the New Mexico Administrative Code (NMAC): 8.310.15 NMAC, *Health Care Professional Services, Intensive Outpatient Program (IOP) Services*; 8.353.2 NMAC, *Provider Hearings, Provider Hearings*; 8 NMAC 4.MAD.746.6, *Licensed Alcohol and Drug Abuse Counselors*. The 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 15, 2014 at 9 a.m.

The register for the repeal of these rules is available on the HSD/MAD web site at <http://www.hsd.state.nm.us/>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD at 505-827-3152.

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](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Tuesday, April 15, 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 PUBLIC  
SCHOOL INSURANCE  
AUTHORITY**

**NOTICE OF PUBLIC HEARING  
REGARDING PROPOSED REPEAL  
AND REPLACEMENT OF RULES  
6.50.1 NMAC THROUGH 6.50.18  
NMAC IN ORDER TO UPDATE  
REGULATIONS IN ACCORDANCE  
WITH CHANGES IN STATUTORY  
LAW AND NEW MEXICO PUBLIC  
SCHOOL AUTHORITY POLICY  
CHANGES.**

Notice is hereby given pursuant to amendments to Sections 22-29-7(E) and 22-29-7(F), NMSA 1978 (being Laws 1986, Chapter 94, Section 7 as amended) that the New Mexico Public School Insurance Authority plans to repeal and replace rules 6.50.1 NMAC through 6.50.18 NMAC in order to update the regulations in accordance with changes in statutory law and Authority policy changes.

The proposed new rules will be discussed and comments taken at a public hearing to be held May 1, 2014 at 9:00 a.m. at the New Mexico Public School Insurance Authority Board Meeting on Thursday, May 1, 2014 at 9:00 a.m. at the Cooperative Educational Services, 4216 Balloon Park Road, NE, Albuquerque, NM 87109. The Board Meeting will be called pursuant to Subsection H of 6.50.1.9 NMAC of the Board's Rules and Regulations and as provided by the current Open Meeting Act Resolution of the Authority. Copies of the proposed rules will be provided to all of the member school districts, charter schools and other educational entities and may be obtained before the meeting at the New Mexico Public School Insurance Authority's offices at 410 Old Taos Highway, Santa Fe, New Mexico or by contacting Frank R. Coppler (505) 988-5656 or by email to [fcoppler@coppler.com](mailto:fcoppler@coppler.com).

Interested person may submit written comments to the New Mexico Public Schools Insurance Authority at 410 Old Taos Highway, Santa Fe, New Mexico 87501 or email comments to [fcoppler@coppler.com](mailto:fcoppler@coppler.com) to be received by 5:00 p.m. April 30, 2014. Written comments should suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.



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 meeting, please contact the office of the Executive Director of the New Mexico Public Schools Insurance Authority at 1-800-548-3724 prior to the hearing, or as soon as possible. The proposed rules can be provided in various accessible formats. Please contact the office of the Executive Director of the New Mexico Public Schools Insurance Authority at 1-800-548-3724 if a summary or other type of accessible format is needed before April 25, 2014. If accommodation is not requested in advance, we cannot guarantee the availability of accommodation on-site.

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**End of Notices and Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO DEPARTMENT OF GAME AND FISH

The State Game Commission repeals its rule entitled Class A Park and Lakes, 19.35.9 NMAC (filed 1/31/2014) and replaces it with 19.35.9 NMAC Class A Park and Lakes, effective 3/14/2014.

### NEW MEXICO DEPARTMENT OF GAME AND FISH

**TITLE 19           NATURAL  
RESOURCES AND WILDLIFE  
CHAPTER 35       CAPTIVE  
WILDLIFE USES  
PART 9            CLASS A PARK AND  
LAKES**

**19.35.9.1           ISSUING AGENCY:**  
New Mexico Department of Game and Fish.

[19.35.9.1 NMAC - Rp, 19.35.9.1 NMAC, 3-14-14]

**19.35.9.2           SCOPE:** Persons who desire to hold wildlife species in the state of New Mexico. This will include holders of class "A" park and lake licenses.  
[19.35.9.2 NMAC - Rp, 19.35.9.2 NMAC, 3-14-14]

**19.35.9.3           STATUTORY  
AUTHORITY:** 17-1-14, 17-1-26, 17-2-3, 17-2-7, 17-2-10, 17-4-8, 17-4-9, 17-4-10, 17-4-11, 17-4-12, 17-4-13, 17-4-14, 17-4-15, 17-4-16, 17-4-17, 17-4-18, 17-4-19, 17-4-20, 17-4-21, 17-4-22, 17-4-23, 17-4-24, 17-4-25, 17-4-26, 17-4-27, and 17-4-28 NMSA 1978.  
[19.35.9.3 NMAC - Rp, 19.35.9.3 NMAC, 3-14-14]

**19.35.9.4           DURATION:**  
Permanent.  
[19.35.9.4 NMAC - Rp, 19.35.9.4 NMAC, 3-14-14]

**19.35.9.5           EFFECTIVE DATE:**  
March 14, 2014, unless a later date is cited at the end of a section.  
[19.35.9.5 NMAC - Rp, 19.35.9.5 NMAC, 3-14-14]

**19.35.9.6           OBJECTIVE:** To provide consistent criteria for the possession and sale of privately owned wildlife held in New Mexico. To provide disease testing and general requirements to protect native wildlife and address human health and safety issues.

[19.35.9.6 NMAC - Rp, 19.35.9.6 NMAC, 3-14-14]

**19.35.9.7           DEFINITIONS:**

**A.** "Animal health emergency" A situation in which people or animals are at risk of exposure to infectious or contagious diseases.

**B.** "Chronic wasting disease" or "CWD" is a transmissible spongiform encephalopathy of cervids.

**C.** "CWD-exposed animal" is an animal that is part of a CWD-positive herd, or that has been exposed to a CWD positive animal or contaminated premise within the previous 60 months.

**D.** "CWD-exposed herd" is a herd in which a CWD-positive animal resided within 60 months prior to that animal's diagnosis as CWD-positive.

**E.** "CWD-positive herd" is a herd in which a CWD-positive animal resided at the time it was diagnosed and which has not been released from quarantine.

**F.** "CWD profile" is a deer or elk at least 12 months of age that is emaciated and exhibits some combination of clinical signs associated with CWD including increased salivation, tremors, stumbling, incoordination, difficulty swallowing, excessive thirst, and excessive urination.

**G.** "CWD-response committee" is the group of persons who will develop a herd plan for any facility in which CWD is confirmed or in which is identified a trace-back or a trace-forward herd. This group will be comprised of at least the owner or designee of the facility, a representative from the department, from USDA veterinary services, and from the New Mexico livestock board. The committee must contain a qualified epidemiologist designated for the event.

**H.** "CWD-suspect animal" is an animal for which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

**I.** "CWD-suspect herd" is a herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

**J.** "CWD-trace-back herd" is an exposed herd in which a CWD-positive animal has resided during the 60 months prior to the diagnosis.

**K.** "CWD-trace-forward herd" is a CWD-exposed herd that has received CWD-exposed animals from a CWD-positive herd during the 60 months

prior to the diagnosis of CWD in the CWD-positive herd.

**L.** "Department" shall mean the New Mexico department of game and fish.

**M.** "Director" is the director of the New Mexico department of game and fish.

**N.** "Double fenced" means a park surrounded by two (2) fences, each continuous, with one fence surrounding the other and a separation of at least 30 feet between the fences.

**O.** "Facility" is the area of a class A park surrounded by a fence meeting specifications defined herein, and all buildings, isolation pens, loading chutes, gates, waters, and other structures and equipment used in the class A park operation.

**P.** "Feed" is all forage grown outside the facility and transported in, all forages compounded and packaged for commercial distribution, and all dietary supplements.

**Q.** "Herd plan" is a written facility management agreement that sets forth the steps to be taken to eradicate CWD from a CWD-positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

**R.** "Official animal identification" is a device or means of animal identification approved by USDA to uniquely identify individual animals nationally. The animal identification must include a nationally unique identification number that adheres to one of the following:  
(1) national uniform ear tagging system,

(2) animal identification number (AIN),

(3) premises-based number system using a premises identification number (PIN) in conjunction with a livestock production numbering system, or,  
(4) any other numbering system approved by USDA for the identification of animals in commerce.

**S.** "Permit owner" is that person or persons to whom the class A park or lake permit is issued. This person(s) may be a lessee on the land designated for the class A park or lake.

**T.** "Quarantine" is an order issued to any class A park or lake prohibiting all animal ingress or egress. The director shall declare the end of the quarantine.

**U.** "Quarantine fence" is a fence, inside a facility, constructed to ensure isolation within the facility.

**V.** "Record" shall mean

all vital documents and electronic data kept for each animal. These documents include, but are not limited to, breed registries, importation permits, bills of sale, health certificates, veterinary diagnoses, etc.

**W.** "Single fenced" is a park surrounded by one (1) continuous fence.

**X.** "Shooter animals" are animals designated by a permit owner or his designee for hunting or harvesting in the facility.

**Y.** "Water" is the system for delivering water to animals in a facility including but not limited to wells, streams, ponds, troughs, and water catchments.

**Z.** "USDA" is the United States department of agriculture. [19.35.9.7 NMAC - Rp, 19.35.9.7 NMAC, 3-14-14]

### 19.35.9.8 POSSESSION AND RETENTION OF PROTECTED SPECIES LIVE ANIMALS, BIRDS AND FISH:

It shall be unlawful to possess protected species of live animals, birds or fish, as defined in 17-2-3 NMSA 1978, in New Mexico without first obtaining appropriate permits issued by the director. Such permits will be issued only for those purposes named in Subsection A of 19.31.10.10 NMAC as described herein. New permits will not be issued until all conditions and appeal processes, if any, listed herein have been satisfied. A violation of the provisions herein shall subject the permittee or licensee to denial or revocation as described under authority of 17-1-14, 17-3-34 NMSA 1978 and 19.31.2 NMAC.

**A.** Only members of the following families of fish (except as noted in Subsections D and E of 19.35.7.8 NMAC) will be considered for retention in New Mexico class A lakes:

- (1) salmonidae
- (2) esocidae
- (3) percichthyidae
- (4) ictaluridae
- (5) centrarchidae
- (6) percidae

**B.** Only members of the following families of mammals and birds will be considered for retention in New Mexico class A parks: Protected mammals and birds under 17-2-3 NMSA 1978.

**C.** Permission may be granted by the state game commission to retain prohibited species into New Mexico upon demonstration by the applicant that no possible conflict with native animals, human health or livestock will occur, upon showing of good cause, or upon requiring that certain additional conditions are met by the applicant, and does not conflict with any other law, rule or ordinance.

[19.35.9.8 NMAC - Rp, 19.35.9.8 NMAC, 3-14-14]

### 19.35.9.9 POSSESSION CONDITIONS AND HEALTH CERTIFICATION:

All live protected species of the families' bovidae, antilocapridae, and cervidae retained in the state of New Mexico shall meet the following criteria:

**A.** All class A parks with cervids must develop and follow a herd plan if any animal is identified to come from a CWD-positive herd, CWD-suspect herd, CWD-exposed herd, CWD-trace-back or CWD-trace-forward herd. The herd plan will be developed by the CWD response committee:

(1) tissues from all CWD-exposed or CWD-suspect animals that die or are depopulated or otherwise killed must be collected and tested for CWD as specified in the herd plan. Carcasses and tissues of such animals should be disposed of as specified in the herd plan,

(2) CWD testing specified by the herd plan must be done at the expense of the class A park,

(3) CWD testing shall be done only at a laboratory approved by USDA and the department,

(4) laboratory results must be retained by the class A park and presented to the department with the annual inventory inspection, and,

(5) the director may require CWD testing of cervids from class A parks not enrolled in the CWD herd certification program.

**B.** Any live cervid leaving a park must be accompanied by a health certificate by an accredited veterinarian.

**C.** Any protected wildlife leaving a park or lake must also be accompanied by a bill of sale or invoice.

**D.** All class A game parks must maintain herd records that include at least:

(1) bills of sale or donation receipts, that is, the source of all animals moved into the herd from an outside source,

(2) importation permit if the animal was imported into New Mexico from a source outside of the state,

(3) all health certificates associated with importation or other activities,

(4) age or date of birth, species, gender; and location of birth, that is, born at the facility or introduced from a location outside of the facility,

(5) registration documents if applicable,

(6) all health and medical records including details of veterinary care and consultation,

(7) all laboratory results and reports from disease testing and any necropsies performed,

(8) all documents associated with movement of live animals from the facility including movement to slaughter, and final destination of all movements, and,

(9) all individual animal identification data.

**E.** Feed containing animal products or by-products shall not be administered to cervids.

**F.** Any positive test for CWD shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis by the class A park owner or owner's designee. This notification requirement will only be considered met if the owner or designee talks directly or by telephone to the department or sends a verifiable email to appropriate representatives of the department:

(1) the park shall be under immediate indefinite quarantine. All gates shall remain closed, and all existing fences shall remain standing and maintained at the owner's expense,

(2) the director shall assemble the CWD response committee to determine immediate actions to:

(a) contain, control, and prevent further transmission,

(b) develop and write a herd plan. If the CWD-positive herd is enrolled or certified in the CWD herd certification program, the herd plan will follow the guidelines contained in the publication, *USDA Chronic Wasting Disease Program Standards*, and,

(c) determine all trace-back and all trace-forward facilities,

(3) class A park owners or designees shall notify all owners of trace-forward and trace-back herds of the positive CWD diagnosis within 96 hours of the diagnosis.

**G.** Domestic sheep shall not be kept within the boundaries of the park unless the domestic sheep herd is enrolled and participating in the USDA scrapie program.

**H.** All live protected species of the family salmonidae retained for propagation and sale outside of the class A lake shall meet the following criteria:

(1) test annually meeting the same requirements as specified as 19.35.7 NMAC,

(2) any positive test for any of the pathogens listed in 19.35.7 NMAC shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to a department person either by phone or in-person:

(a) the lake shall be under immediate indefinite quarantine, and,

(b) owners shall submit factual copies of all records to the department within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back lots of fish of the positive diagnosis within 72 hours of the diagnosis.

[19.35.9.9 NMAC - Rp, 19.35.9.9 NMAC, 3-14-14]

#### 19.35.9.10 ANIMAL HEALTH

**EMERGENCIES:** Upon identification of an animal health emergency, the department shall determine immediate actions to contain, control, and prevent spread of the animal health emergency giving due consideration for public safety. The department will plan for quarantine, isolation, treatment, disinfection, including destruction and disposal. The director will notify and update appropriate public and private entities as needed.

**A.** Escaped animals: if, in the opinion of the director, any escaped animal poses an animal health emergency or a risk to animal or public health, the director may employ any and all available means to capture and return or to destroy the escaped animals.

**B.** Reportable diseases and conditions: the following diseases are considered to be of significant economic and biological risk to humans, wildlife, and domestic animals that, if detected and confirmed in wildlife species, are to be immediately reported to the department:

- (1) anthrax
- (2) arboviruses
- (3) brucellosis
- (4) chronic wasting disease
- (5) epizootic hemorrhagic disease/bluetongue virus
- (6) foot and mouth disease
- (7) malignant catarrhal fever
- (8) mange
- (9) plague
- (10) rabies
- (11) tuberculosis
- (12) tularemia
- (13) vesicular stomatitis
- (14) any other disease outbreak

of significant threat to wildlife populations, livestock health, or human public health. [19.35.9.10 NMAC - Rp, 19.35.9.10 NMAC, 3-14-14]

#### 19.35.9.11 INTRASTATE TRANSPORTATION:

**A.** All live captive ungulates transported within the state of New Mexico shall:

- (1) be legally possessed,
- (2) can be transferred only to other class A park facilities or to processor for slaughter, or sold for immediate consumption,
- (3) be shipped following all applicable laws,

(4) all live ungulates including cervids must be permanently identified with any two of the following devices, one of which must be an official animal identification. All identification data shall be registered with the department:

- (a) implanted electronic identification device,
- (b) ear tag with park identification number,
- (c) tamper-proof ear tag with imprinted national identification number, or,
- (d) USDA metal ear tags.

**B.** Any individual(s) transporting live fish from a class A lake shall:

(1) be required to seek importation and release permits through the process outlined in 19.35.7 NMAC,

- (2) legally possess the fish, and,
- (3) ship following all applicable

laws.

[19.35.9.11 NMAC - Rp, 19.35.9.11 NMAC, 3-14-14]

#### 19.35.9.12 CLASS A PARK AND LAKE APPLICATION AND PERMITTING OF NEW PARKS:

New class A park and lake applications will be accepted anytime during the license year. All park and lake licenses will expire March 31 and must be renewed. Applicants or designee shall provide completely factual information on all application and supplemental material requested, included but not limited to:

**A.** Name of owner, address, telephone number, name of contact person;

**B.** Complete legal description of park or lake, including location (township, range, section); county; size of park or lake (surface acres-lake or water; major use of water; a map of sufficient size and detail to allow the park or water to be located by someone unfamiliar with the area shall be included;

**C.** Species, size, pounds, and number of wildlife to be retained will be specified;

**D.** Purpose of park or lake will be specified;

**E.** Each park or lake facility shall meet all the specifications listed on the application prior to final approval and no permit will be approved until all conditions and inspections have been completed by a department designee;

**F.** Inclusion of annual fee for processing of application as per 19.30.9 NMAC.

[19.35.9.12 NMAC - Rp, 19.35.9.12 NMAC, 3-14-14]

**19.35.9.13 RENEWAL OF CLASS A PARKS AND LAKES:** All applicants renewing their class A license

shall apply to the department by May 1 of each year and must be received by the close of the business day. Any renewal application received after May 1 will be assessed an administrative fee of \$250.00 in addition to the normal application fee. Any class A park or lake failing to send in or renew their application by June 1 will be deemed delinquent and revocation action may commence following 19.31.2 NMAC. [19.35.9.13 NMAC - Rp, 19.35.9.13 NMAC, 3-14-14]

#### 19.35.9.14 CLASS A PARK AND LAKE FACILITY DESIGN, INSPECTION AND RECORDS:

**A.** Park enclosure: each class A park facility shall, at a minimum, conform to all rules listed below and on the application:

(1) no park shall exceed 3200 acres. Any additional acres will result in another class A park and will be considered as a separate park. All conditions of application and renewal shall be adhered to,

(2) fence height shall be at least eight feet (8') from ground level to the top wire or fence top for all new class A parks and for all parks participating in the state herd certification program. Fence shall be continuous from bottom to top, even if multiple layers must be used. Current class A parks with seven and one half foot (7.5') fences will not have to meet this requirement unless they apply for certification,

(3) fence wire must be a woven wire mesh, consisting of a top and bottom wire at least 12 gauge or its equivalent. Mesh measures shall not exceed six inch by seven inch (6"X7") openings,

(4) fence wire shall be taught enough to not allow bottom or top wire mesh to be pushed or maneuvered up or out of the way by force. If this occurs wire must either be re-stretched or bolstered in some other permanent fashion,

(5) fence wire must be maintained securely four inches (4") or less to the ground. Any fencing that is found to be greater than four inches (4") above the ground shall not constitute a proper fence and shall be aproned with permanent material,

(6) all fences must be securely fastened to the posts,

(7) barbed wire may be used on the bottom or top horizontal wires at the owner's discretion,

(8) posts shall be metal "T" posts, pipe or wooden (at least three and one half inches (3.5") in diameter; and must be pressure treated with a preservative),

(9) posts shall be set firmly in the ground and not subject to dislodging,

(10) posts shall be spaced at intervals not to exceed 18 feet (18') with



T-posts or wood; or not to exceed 20 feet (20') on metal pipe,

(11) perimeter gates shall be constructed to at least the same specification as fence; mesh and height with no more than four inches (4") from ground to gate bottom,

(12) all water gaps and arroyos shall be constructed to withstand normal flooding and maintain enclosure,

(13) all fence right-of-ways shall be cleared for a distance of eight feet (8') on each side of the fence and all dead timber with a height greater than the distance to the fence shall be felled,

(14) class A park fences shall be constantly maintained as described above, if found out of compliance, the owner or his designee shall immediately repair any substandard material or specifications. It is the intent of this section that all fences shall be maintained in a game-proof condition at all times and prevent the passing of the game held therein,

(15) all working pens, corrals and holding pens used for processing or temporarily holding animals shall be located inside the park, and,

(16) if the park fence is to border any other property (private or public) then a signed affidavit must be executed by the park owner to ensure correct placement of fence and verify ownership of property.

**B. Park design:**

(1) all feeding or baiting sources shall be at least 100 feet from any exterior fence, except holding pens or working facilities,

(2) no placement of feed or bait shall be allowed until the park license has been completely issued and the gates to park closed, and,

(3) gates shall remain open until the final inspection and approval by a department designee.

**C. Lake enclosure:** each class A lake facility shall conform to all rules listed below and on the application:

(1) all bodies of water and channels connecting a series or group of lakes under one license shall be identified upon each application,

(2) list and describe all screens or other appliances that prevent ingress and egress of fish into and out the bodies of water, and,

(3) a map of the lake facility and surrounding watershed shall be provided by the applicant upon application.

**D. Facility inspections of parks and lakes:** once application is made to the department, the proposed site shall be subject to inspections by a department representative at any reasonable time. Inspections shall also occur at least once per year, upon receipt of renewal of application to inspect the facility and fence integrity.

All inspections will be limited to the facility and the animals held therein.

**E. Natural disasters:** every owner or his designee shall immediately notify the department of any natural disasters that threaten or compromise the integrity of the facility. The owner or designee must make every effort to maintain animal(s) inside the facility. It shall be unlawful for any owner or designee to intentionally release animals endangered by a natural disaster.

**F. Animal escapes:** every owner or his designee shall immediately notify the department of any escapes from a park or lake. Species and all identification data shall be reported with time, location, number or quantity, and sex of escaped animals. Owner or designee shall immediately attempt to recapture escaped animals and make every reasonable effort to return the animals to their facility.

**G. Park and lake closure or termination:** any park or lake failing to renew by May 1 of each license year will be considered as failing to properly renew and subject its license to revocation according to 19.31.2 NMAC if this should be necessary. Any park, enclosure or lake maintained after May 1 without a license shall be considered in violation of 17-4-9 NMSA 1978. No animal shall be released into the wild, but held until certified with disease free status by that testing required by the director. Nothing in this section shall prevent the owner from legally disposing of his property provided that the number of game animals or fish shall not be lessened by disposition from his or her initial application survey or information filed with the department. However disposition must occur immediately as required by all applicable laws.

**H. Records:**

(1) any animal disposed or sold from a park or lake must be accompanied by an invoice signed by the owner or his designee and state the following:

(a) park or lake name and license number,

(b) date of disposition or sale, and,

(c) species, quantity, sex and identification data of game animals included in disposition or sale; or, if fish, the approximate weight and number,

(2) each owner shall submit a year-end report to the director by May 1 and state the following: species, quantity, sex, and identification data of game animals disposed, sold, or removed in any way; or, if fish, the approximate weight and number for the previous license year,

(3) owner or designee shall maintain all inventory and health records obtained or created for each animal as designated in 19.35.9.9 NMAC herein,

(4) final disposition, if known, shall be documented of every class a park or lake animal, and,

(5) all such records listed in this section shall be made available for immediate inspection upon request by the director. Any owner or designee that knowingly provides inaccurate or false records will be deemed in violation of this section and subject to revocation proceedings pursuant to 19.31.2 NMAC.

**I. Existing parks:** parks and lakes permitted prior to January 1, 2014 of this regulation will have five (5) years to bring their facility into compliance with this regulation. However, all possession conditions and health certification requirements are mandatory and must begin immediately, even for existing class A parks and lakes.

[19.35.9.14 NMAC - Rp, 19.35.9.14 NMAC, 3-14-14]

**19.35.9.15 DENIAL AND**

**REVOCATION:** Each class A park and lake shall be subject to permit denial or revocation if found to be in violation of this rule or Chapter 17 NMSA 1978. No park or lake application will be approved if fencing or other barrier materials were purchased or installed by the department until all costs associated the fencing have been reimbursed back to the department through the appropriate fund.

[19.35.9.15 NMAC - Rp, 19.35.9.15 NMAC, 3-14-14]

**HISTORY OF 19.35.9 NMAC:**

**NMAC History:**

19.35.9 NMAC, Class A Park and Lakes, filed 9-28-01.

**History of Repealed Material:**

19.35.9 NMAC, Class A Park and Lakes, filed 9-28-01 - Repealed effective 1-31-14.

19.35.9 NMAC, Class A Park and Lakes, filed 1-31-14 - Repealed effective 3-14-14

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

**The Human Services Department - Income Support Division, repeals its rule 8.102.640 NMAC entitled Description of Program/Benefits - Benefit Corrections, filed 6-18-2001, effective 4-1-2014.**

**The Human Services Department - Income Support Division, repeals its rule 8.106.640 NMAC entitled Description of Program/Benefits - Benefit Corrections, filed 6-17-2004, effective 4-1-2014.**

**The Human Services Department - Income Support Division, repeals its rule 8.139.640 NMAC entitled Errors In Benefits - Restorations and Claims, filed**

4-26-2001, effective 4-1-2014.

**The Human Services Department - Income Support Division, repeals its rule 8.150.640 NMAC entitled Benefits Corrections, filed 9-17-2001, effective 4-1-2014.**

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**NEW MEXICO HUMAN SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.308.6 NMAC, Part Name, effective March 15, 2014.

**TITLE 8 SOCIAL SERVICES  
CHAPTER 308 MANAGED CARE PROGRAM  
PART 6 ELIGIBILITY [AND ENROLLMENT]**

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**NEW MEXICO SUPERINTENDENT OF INSURANCE**

This is an amendment to 13.17.2 NMAC, Sections 1, 2 and 6 through 17, effective 3-14-14. This also amends the part name.

**TITLE 13 INSURANCE  
CHAPTER 17 WORKERS' COMPENSATION INSURANCE  
PART 2 WORKERS' COMPENSATION [APPEALS] DISPUTE BOARD**

**13.17.2.1 ISSUING AGENCY:** [New Mexico Public Regulation Commission, Insurance Division] Office of Superintendent of Insurance.  
[7-1-97; 13.17.2.1 NMAC - Rn & A, 13 NMAC 17.2.1, 5-15-01; A, 3-14-14]

**13.17.2.2 SCOPE:** This rule applies to grievances relating to experience modification factors, classification assignments and manual rules and other related matters deemed pertinent by the superintendent, as applied to specific workers' compensation insurance policies, which are to be heard by the New Mexico [Workers' Compensation Appeals Board] workers' compensation dispute board.  
[1-1-93, 7-1-97; 13.17.2.2 NMAC - Rn, 13 NMAC 17.2.2, 5-15-01; A, 3-14-14]

**13.17.2.6 OBJECTIVE:** The purpose of this rule is to establish a [Workers' Compensation Appeals Board] workers' compensation dispute board to provide a mechanism by which aggrieved parties may obtain review of the application of the rules of the workers' compensation system to their individual workers'

compensation policies, and to engage in other activities as more clearly set forth in 13.17.2.2 NMAC.

[1-1-93; 13.17.2.6 NMAC - Rn, 13 NMAC 17.2.6, 5-15-01; A, 3-14-14]

**13.17.2.7 DEFINITIONS:**  
[Workers' Compensation Service Organization (WCSO) means either a rate service organization licensed in accordance with NMSA 1978 Section 59A-17-19 or an advisory organization licensed in accordance with NMSA 1978 Section 59A-17-24 that is designated by the Superintendent of Insurance as competent in workers' compensation matters.] "Advisory organization" means an entity as defined by Section 59A-17-4(A) NMSA 1978, licensed in accordance with Section 59A-17-19 NMSA 1978 and designated by the superintendent pursuant to Section 59A-17-8(A) NMSA 1978.  
[13.17.2.7 NMAC - N, 5-15-01; A, 3-14-14]

**13.17.2.8 [MEMBERS AND NON-VOTING ADVISOR:** The Appeals Board shall consist of five [(5)] voting members, and one non-voting advisor as follows:

**A.** One member shall be from the staff of the New Mexico Insurance Division;

**B.** One member shall be an employee of the WCSO;

**C.** Three (3) members shall be from the private sector [and shall be referred to as public members:

**(1)** At least one public member shall be a private sector employer or a representative of a private sector employer located in New Mexico;

**(2)** At least one public member shall be affiliated with a local chamber of commerce, small business federation, or similar business association in New Mexico;

**(3)** Each public member shall be knowledgeable concerning workers' compensation insurance, rules, and classifications, and shall be familiar with the business environment and business community of New Mexico;

**(4)** No public member shall be, or be an employee of, an insurance company, insurance broker, insurance agent, law firm, actuary, or any association of any such entities; neither shall any such member be under contract to any such entity;

**(5)** No two public memberships shall be affiliated with the same business organization, affiliated group, business league, or labor organization;

**(6)** All voting memberships shall be held in the name of the individual

**D.** The non-voting advisor shall be an insurance company that writes workers' compensation insurance policies in

New Mexico:

**(1)** The insurance company shall designate one salaried employee to represent it on the Appeals Board, and another salaried employee as an alternate;

**(2)** The company representative or alternate representative shall attend each meeting of the Appeals Board and shall serve as a technical and business resource. The representative will provide advice to the Appeals Board on issues relating to experience modification factors, classification assignments, and manual rules. The company representative may participate in the discussion but shall have no vote in determining the Appeals Board's decisions.] **COMPOSITION OF DISPUTE BOARD:** The superintendent shall appoint the members of the dispute board, which shall consist of five voting members, one non-voting regulatory participant and two non-voting advisors as follows:

**A.** The one non-voting regulatory participant shall be from the staff of the office of superintendent of insurance.

**B.** The five voting members shall be from the private sector as follows:

**(1)** one voting member shall be a private sector employer or a representative of a private sector employer located in New Mexico;

**(2)** one voting member shall be affiliated with a local chamber of commerce, small business federation, or similar business association in New Mexico;

**(3)** two voting members shall be independent insurance agents licensed in New Mexico;

**(4)** one voting member shall be a representative from a New Mexico self-insurance group;

**(5)** each voting member shall be knowledgeable concerning workers' compensation insurance, rules, and classifications and shall be familiar with the business environment and business community of New Mexico;

**(6)** no voting member shall be, or be an employee of, an insurance company, insurance broker, law firm, actuary, or any association of any such entities; neither shall any such member be under contract to any such entity;

**(7)** no two voting memberships shall be affiliated with the same business organization, affiliated group, business league, or labor organization and

**(8)** all voting memberships shall be held in the name of the individual.

**C.** One non-voting advisor shall be an insurance company that writes workers' compensation insurance policies in New Mexico.

**(1)** The insurance company

shall designate one salaried employee to represent it on the dispute board, and another salaried employee as an alternate.

(2) The company representative or alternate representative shall attend each meeting of the dispute board and shall serve as a technical and business resource. The representative will provide advice to the dispute board on issues relating to experience modification factors, classification assignments, manual rules and other related matters deemed pertinent by the superintendent. The company representative may participate in the discussion but shall have no vote in determining the dispute board's decisions.

D. One non-voting advisor shall be an employee of the advisory organization and shall serve as a technical resource for the dispute board. The representative from the advisory organization will provide advice to the dispute board on issues relating to experience modification factors, classification assignments, manual rules and other related matters deemed pertinent by the superintendent. The advisory organization representative may participate in the discussion, but shall have no vote in determining the dispute board's decisions. [1-1-93; 13.17.2.8 NMAC - Rn & A, 13 NMAC 17.2.8, 5-15-01; A, 3-14-14]

### 13.17.2.9 ~~[SELECTION OF APPEALS BOARD MEMBERS:]~~

Members of the Appeals Board shall be selected as follows:

A. The member from the New Mexico Insurance Division shall be appointed by the New Mexico Superintendent of Insurance.

B. The members selected from the private sector (employers) shall be appointed by the New Mexico Superintendent of Insurance.

(1) The WCSO shall compile a list of nominees which the Superintendent is to consider when making such appointments. Nothing herein shall be construed as a requirement that the Superintendent appoint any of the nominees presented by the WCSO.

(2) The list of nominees compiled by the WCSO shall contain no fewer than nine (9) candidates. At least three (3) candidates must be qualified for each vacancy to be filled.

(3) The WCSO shall provide the list of nominees to the New Mexico Superintendent of Insurance thirty (30) days prior to the date the Superintendent is required to make the appointments.

(4) When an appointment is made, the Superintendent of Insurance shall immediately notify the WCSO regarding the identity of the public members so appointed.

C. The member selected from the WCSO shall be appointed by the president of the WCSO, or by some other senior officer designated by the president of the WCSO.

D. The non-voting advisor shall be appointed by the Superintendent of Insurance from a slate of five (5) nominees submitted by the WCSO. The five (5) nominees shall be selected from the WCSO member companies operating in New Mexico.

E. In the event that the Superintendent of Insurance declines to make any such appointment as is described in subsection B of 13.17.2.9 NMAC, the president of the WCSO shall appoint individual(s) from the private sector to fill the vacancy(ies). If the Superintendent of Insurance declines to make any such appointment as is described in subsection A of 13.17.2.9 NMAC, the president of the WCSO shall appoint a WCSO employee to fill such vacancy. If the Superintendent declines to make the appointment described in subsection D of 13.17.2.9 NMAC, the president of the WCSO shall appoint a company from the slate of nominees submitted by the WCSO to fill the vacancy. **[RESERVED]** [1-1-93; 13.17.2.9 NMAC - Rn & A, 13 NMAC 17.2.9, 5-15-01; Repealed, 3-14-14]

### 13.17.2.10 ~~TERMS OF [APPEALS] DISPUTE BOARD MEMBERS:~~

A. [Each member's term on the Appeals Board shall be for three years. The three public members shall serve staggered terms. For the first term, one public member shall be selected for a one-year term, one shall be selected for a two-year term, and one shall be selected for a three-year term. Their successors shall each be selected for three-year terms. No public member shall be permitted to serve a second consecutive three-year term although public members initially selected for a one- or two-year term may succeed themselves. There shall be no limitation on a non-public member's reappointment to serve successive terms.] Each member's term on the dispute board shall be for three years, staggered per the discretion of the superintendent so that the terms of no more than two voting members shall expire concurrently. No voting member shall be permitted to serve more than two consecutive three-year terms. There shall be no limitation on a non-voting regulatory participant's or a non-voting advisor's reappointment to serve successive terms.

B. [The term of each Appeals Board shall commence on May 1 and expire on April 30 of the following year]. The term of each dispute board member shall commence on April 1 and

expire on March 31 three years later.

C. If a vacancy occurs on the dispute board, the superintendent shall appoint a replacement for the remainder of the unexpired term. Such replacement shall be from the same class as the retiring member.

[1-1-93; 13.17.2.10 NMAC - Rn, 13 NMAC 17.2.10, 5-15-01; A, 3-14-14]

### 13.17.2.11 ~~[VACANCIES:]~~

Vacancies on the Appeals Board shall be filled for the remainder of the unexpired term pursuant to 13.17.2.9 NMAC. A newly appointed member shall be from the same class as the retiring member. **[RESERVED]**

[1-1-93; 13.17.2.11 NMAC - Rn & A, 13 NMAC 17.2.11, 5-15-01; Repealed, 3-14-14]

### 13.17.2.12 REIMBURSEMENT:

The [WCSO] advisory organization shall reimburse members for reasonable expenses connected with [Appeals Board] dispute board functions including, but not limited to, travel expenses, food and lodging. Such reimbursement may be provided as a per diem allowance. Members shall receive no other compensation for their participation. [1-1-93; 13.17.2.12 NMAC - Rn & A, 13 NMAC 17.2.12, 5-15-01; A, 3-14-14]

### 13.17.2.13 ~~[FORM OF MEETINGS] CHAIR:~~

The [Appeals Board] dispute board shall meet either in person or by teleconference at the beginning of each term for purpose of electing a chair. The chair shall be responsible for organizing the agenda of each meeting and each hearing, arranging facilities, providing notice as required, and for the conduct of each hearing. The chair may appoint from among [other] the members a secretary to which it may delegate any of its administrative functions.

[1-1-93; 13.17.2.13 NMAC - Rn, 13 NMAC 17.2.13, 5-15-01; A, 3-14-14]

### 13.17.2.14 HEARING PROCEDURES:

The [Appeals Board] dispute board shall meet as needed and in accordance with the provisions of state law.

A. Upon receipt of a grievance, the [Appeals Board must] dispute board shall schedule a hearing within sixty (60) days, unless state law mandates a shorter period.

B. The [Appeals Board] dispute board shall provide written notice of hearing to the appellant, the insurer, the policyholder, the producing agent and the [WCSO] advisory organization within thirty (30) days after receipt of the grievance, but not less than ten (10) days prior to the hearing.

C. Hearings may not be



held unless a [quorum] majority of the [Appeals Board] dispute board is present either in person or by teleconference. [A quorum shall consist of a simple majority: The decision of the Appeals Board will be by majority vote of those members present at the hearing. A member's vote may be cast only by the member or, in the member's absence, by the member's alternate who has been designated in writing. Otherwise, proxy voting shall not be permitted.]

**D.** Any party to a hearing may request permission to have a court reporter or other recording method present at the hearing at the cost of the requesting party. The requested permission to record the hearing must be made in writing to the chairman of the dispute board at least fifteen (15) days before the date of the hearing. The request must explain the intended purpose and use of the recorded record of the hearing. The chairman shall call a meeting of the dispute board, in person or by telephone to consider such request and the dispute board may consent or deny permission to record the hearing procedure. The requesting shall be notified in writing of the decision of the dispute board, at least two working days before the hearing date. [1-1-93; 13.17.2.14 NMAC - Rn & A, 13 NMAC 17.2.14, 5-15-01; A, 3-14-14]

### 13.17.2.15 CONFLICTS OF INTEREST:

**A.** If [an Appeals Board] a dispute board member has a conflict of interest with respect to a hearing scheduled before the [Appeals Board] dispute board, a substitute shall be appointed by the chair for purposes of that particular hearing. A substitute member shall be from the same class as the member being replaced.

**B.** A member will be deemed to have a conflict of interest if:

- (1) the member is associated with either party to the appeal;
- (2) the member is a direct competitor of either party;
- (3) the member is part of an affiliated group, any member of which is a direct competitor of either party; or
- (4) the member has any other material conflicting interest which would call into question that member's ability to render an unbiased decision.

**C.** A member is associated or affiliated with a party if they are involved in a common business enterprise or if they are members of a controlled group as that term is defined by Section 851(c)(3) of the Internal Revenue Code. A member is associated with the party if there is any familial relationship between them.

**D.** The insurance company advisor will be deemed to have a conflict of interest only if it is one of the parties to

the dispute. In the event such conflict of interest is deemed to exist for the insurance company advisor, a substitute insurance company shall be appointed by the chair to serve as the non-voting insurance company advisor for purposes of the particular hearing scheduled before the dispute board in which the conflict of interest exists.

**E.** A conflict of interest may be waived if, after full disclosure of the facts raising such a conflict, all parties to the appeal agree to such waiver.

**F.** [Notwithstanding the provisions of subsection B of this section, neither the representatives from the New Mexico Insurance Division nor the WCSO representative(s) on the Appeals Board shall be deemed to have a conflict of interest with respect to any appeal brought before the Appeals Board based solely upon the representative's affiliation with either the WCSO or the New Mexico Insurance Division.] Notwithstanding the provisions of Subsection B of this section, neither of the representatives from the office of superintendent of insurance and the advisory organization shall be deemed to have a conflict of interest with respect to any appeal brought before the dispute board based solely upon the representatives' affiliation with the advisory organization or the office of superintendent of insurance. [1-1-93; 13.17.2.15 NMAC - Rn & A, 13 NMAC 17.2.15, 5-15-01; A, 3-14-14]

### 13.17.2.16 DECISIONS OF [APPEALS] DISPUTE BOARD:

**A.** The decision of the dispute board will be by majority vote of those voting members of the dispute board who are present at the hearing. A member's vote may be cast only by the member or, in the member's absence, by the member's alternate who has been designated in writing. Otherwise, proxy voting shall not be permitted.

~~[A:]~~ **B.** Each decision shall be supported by a written memorandum stating the reason(s) for the decision, which memorandum shall be sent to both parties and to the [Superintendent of Insurance] superintendent.

~~[B:]~~ **C.** The votes of each member shall not be recorded on this memorandum.

~~[C:]~~ **D.** This memorandum shall be prepared by the [Chair] chair of the [Appeals Board] dispute board or by a member or non-voting advisor designated by the [Chair] chair. [1-1-93; 13.17.2.16 NMAC - Rn, 13 NMAC 17.2.16, 5-15-01; A, 3-14-14]

### 13.17.2.17 REVIEW:

~~[A:]~~ Review of decisions of the [Appeals Board] dispute board shall be accorded pursuant to Section 59A-17-30B

NMSA 1978. The chair of the [Appeals Board] dispute board, or the secretary appointed by the chair, shall advise each appellant in writing of his or her rights of appeal and the procedure to be followed.

~~[B:]~~ The appeals board shall not be required to report to the Board of Directors or any committee of the WCSO. However, for information purposes, the chair of the Appeals Board shall monthly provide to the WCSO Underwriting Advisory Committee a copy of each memorandum of decision with the names of the parties deleted.]

[1-1-93; 13.17.2.17 NMAC - Rn & A, 13 NMAC 17.2.17, 5-15-01; A, 3-14-14]

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## End of Adopted Rules Section

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## 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
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Issue Number 21	October 31	November 13
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