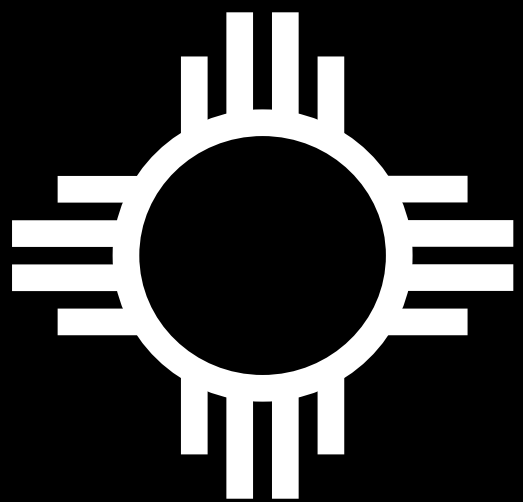


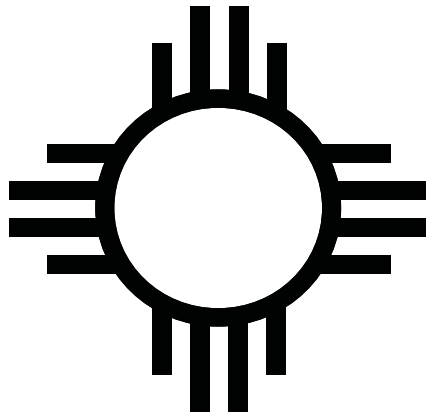
**NEW
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The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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Administrative Law Division
Santa Fe, New Mexico
2014

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New Mexico Register

Volume XXV, Number 10

May 30, 2014

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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
DEPARTMENT OF
AGRICULTURE
DIVISION OF AGRICULTURAL
PROGRAMS AND RESOURCES**

Public Meeting Notice

A meeting of the Acequia and Community Ditch Fund Committee will be held to determine distribution of the 2014 Acequia and Community Ditch Fund. The meeting will be held on Monday, June 16, 2014, at 1:00 p.m. in Santa Fe, New Mexico, Room 326, State Capitol Building.

Copies of the agenda may be obtained by contacting the New Mexico Department of Agriculture, at (575) 646-1091, or by writing New Mexico Department of Agriculture, Agricultural Programs and Resources, MSC-APR, P O Box 30005, Las Cruces, New Mexico 88003-8005.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the New Mexico Department of Agriculture at least three (3) days prior to the meeting, at (575) 646-1091. Disabled persons who need documents such as agendas or minutes in accessible form should contact the New Mexico Department of Agriculture.

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT
PROTECTIVE SERVICES DIVISION**

NEW MEXICO
CHILDREN, YOUTH AND FAMILIES
DEPARTMENT

PROTECTIVE SERVICES DIVISION

NOTICE OF PUBLIC HEARING

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing in Santa Fe on Monday, June 23, 2014 from 10:00 a.m. to 11:30 a.m. at the PERA Building located at 1120 Paseo de Peralta, on the second floor in the large conference room 227, to take comments regarding revisions to the following policy: [Community Home Licensing Standards](#).

The PERA building is accessible to people with disabilities. Documents can be available in different formats

to accommodate a particular disability upon request by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation. Written comments are provided the same weight as comments received during the public hearings.

The policy may also be reviewed between 8:00 a.m.-5:00 p.m. at the Director's office, Room 254, in the PERA building in Santa Fe. Copies of the report may be purchased (for the cost of copying); contact Milissa Soto, PSD Policy and Procedure Coordinator at 505-827-8078.

**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 rules that are part of the New Mexico Administrative Code (NMAC): 8.308.12 *Community Benefit*; 8.312.2 *Nursing Facilities*; 8.350.2 *Reconsideration of Utilization Review Decisions*; 8.354.2 *PASRR and Patient Status Hearings*. The register for the proposed amendment to this rule and the proposed replacement rules will be available May 30, 2014 on the HSD 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) 827-7743.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road Santa Fe on Monday, July 7, 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) 827-7743. Electronic comments may be submitted to Cedric.Chavez@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 Daylight Time July 7, 2014.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe

call 827-7743. 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 LIVESTOCK
BOARD**

NEW MEXICO LIVESTOCK BOARD

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

NOTICE IS HEREBY GIVEN that a rule making and adoption of rule hearing and a regular board meeting will be held on Monday, June 9, 2014 at the Las Cruces Convention Center, Las Cruces, New Mexico at 9:00 a.m. The Board will initiate rule changes regarding Bovine Trichomoniasis, Exhibition Livestock, Horse Rescue or Retirement Facilities and the Horse Shelter Rescue Fund and discuss other matters of general business.

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

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

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, June 17, 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 June 3, 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

1.18.665 NMAC ERRDS, Department of Health

Repeal and Replace

1.18.394 NMAC ERRDS, Office of the State Treasurer

1.18.420 NMAC ERRDS, Regulation and Licensing Department

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

BOARD OF PHARMACY

NEW MEXICO BOARD OF
PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **June 18th & 19th, 2014** at **9:00 a.m.** and continue until finished in the **Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM** for the purpose of conducting a regular board meeting. Anyone who needs special accommodations for the meeting should contact the board office at (505) 222-9830 or contact Debra Wilhite, Administrative Secretary, at (505)

222-9835 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us as soon as possible.

The agenda (tentative) will be available starting June 9, 2014 through the board's website: www.rld.state.nm.us/boards/pharmacy.aspx. To receive copies of the agenda and any proposed rule, you may access the links on the agenda for printing via the website listed.

Interested persons wishing to comment and/or present proposed language regarding rule hearings must submit documentation via fax (505)222-9845, mail or email to Larry Loring, Larry.Loring@state.nm.us no later than Monday, June 9, 2014, if in attendance must provide 12 copies of the documentation for distribution to board members.

Rule Hearings:

**16.19.4 NMAC Pharmacist
16.19.20 NMAC Controlled**

Substances

Hearings, Board Orders and Surrenders:

**Douglas Krell – 2006-145 –
Order to Show Cause
(statutory responsibility to pay
the \$1,663.27 costs related to hearing)
Kenneth Sanchez – 2010-069 –
Order to Show Cause
(repeated failures to comply to
pay \$400.00 in investigative costs)**

Approval of Applications:

Other Board Matters:

Committee Reports:

Public Requests:

Interested persons wishing to comment and/or Petitioners must be present or available telephonically to present their request. Petitioners must provide 12 copies of the documentation regarding the request and/or any proposed language for distribution to board members for review no later than 10 days in advance to the meeting. (Board staff is not required to make copies.)

The board may go into executive session at any time to discuss licensee and/or personnel matters.

*Executive Director's Report:
Case presentations*

**Published in the Albuquerque Journal
May 16, 2014**

**End of Notices and Proposed
Rules Section**

Adopted Rules

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.291.430 NMAC, Sections 14 and 15, effective June 1, 2014.

8.291.430.14 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUPS:

At the time of application, an applicant or recipient and the department shall identify everyone who is to be considered for inclusion in an assistance unit and budget group. The composition of the assistance unit and budget group is based on the following factors:

A. Assistance group: the assistance unit includes an individual who applies and who is determined eligible under one of the categories of eligibility outlined in 8.291.400.10 NMAC.

B. Budget group: the budget group consists of the following types and will be established on an individual basis:

(1) Tax filer(s): households that submit an application where an individual intends to file for federal taxes or will be claimed as a dependent on federal income taxes for the current year.

(a) The budget group will consist of individuals who are listed on the application as the taxpayer and tax dependents.

(b) If there are multiple taxpayers listed on a single application, the budget group(s) will be established based on who the taxpayer intends to claim as a dependent (including the taxpayer). Only the taxpayer and dependents listed on the application will be considered as part of the budget group.

(c) In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return, a separate tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse.

(d) Exceptions to tax filer rules: the following individuals will be treated as non-filers:

(i) individuals other than a spouse or a biological, adopted, or step child who expect to be claimed as a tax dependent by another taxpayer outside of the household;

(ii) individuals under 19 who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to

file a joint tax return; and

(iii) individuals under 19 who expect to be claimed as a tax dependent by a non-custodial parent.

(2) Non-filer(s) are individuals applying for medicaid who have not filed for taxes, do not intend to file for federal taxes, have not been claimed as a dependent on taxes in the current year or who meet an exception to tax filer rules in Paragraph (1) above. The following individuals may be included in a budget group when evaluating eligibility for an ACA related medicaid eligibility category, provided that they live together:

- (a) the individual;
- (b) the individual's spouse;
- (c) parents/step-parents, if the applicant is under the age of 19; or

(d) the individual's biological, adopted and step children under the age of 19.

(3) Households may submit an application that includes both filer and non-filers as defined in Subsections A and B above. The budget group(s) will be organized using the filer and non-filer concepts, and eligibility will be established on an individual basis.

[8.291.430.14 NMAC - Rp, 8.291.430.14 NMAC, 1-1-14; A, 6-1-14]

8.291.430.15 INCOME

STANDARDS: Verification of income, both earned and unearned, is mandatory for all ACA-related medicaid programs. Verification methods can be found at 8.291.410 NMAC.

A. All income will be calculated as defined by Section 36B of the code to produce a modified adjusted gross income (MAGI). This amount is compared to the FPL for the appropriate medicaid category of eligibility and household size.

B. MAGI is calculated using the methodologies defined in Section 36B(d)(2)(B) of the federal tax code, with the following exceptions:

(1) an amount received as a lump sum is counted as income only in the month received.

(2) scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.

(3) American Indian/Alaska native exceptions; the following are excluded from income:

- (a) distributions from Alaska native corporations and settlement trusts;
- (b) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation,

or otherwise under the supervision of the secretary of the interior;

(c) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from;

(i) rights of ownership or possession in any lands described in Subparagraph (b) above; or

(ii) federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;

(d) distributions resulting from real property ownership interests related to natural resources and improvements;

(i) located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

(ii) resulting from the exercise of federally-protected rights relating to such real property ownership interests.

(e) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; and

(f) student financial assistance provided under the bureau of Indian affairs education programs.

[~~(g)~~] (4) all social security benefits under Title II will be counted in determining MAGI.

[8.291.430.15 NMAC - Rp, 8.291.430.15 NMAC, 1-1-14; A, 6-1-14]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.7.3 NMAC, Section 11, effective July 1, 2014.

14.7.3.11 CHAPTER 3 BUILDING PLANNING:

A. Section R301 - Design criteria. See this section of the IRC except as provided below:

(1) Section R301.2.1 Climatic and geographic design criteria. Amend footnote "f" as follows: The jurisdiction shall fill in this part of the table with the seismic design category determined from Section R301.2.2.1 or information from the U.S.G.S. software "Design Values for Buildings" found online at <http://earthquake.usgs.gov/hazards/design/buildings.php>.

(2) **Section 301.2.2 Seismic provisions.** Add the following sentence to end the **exception**: Buildings in which earthen building materials form the bearing wall system, that are located in seismic design categories A, B, C and D₁ are exempt from the seismic requirements of this code.

(3) **Section R301.2.2.1. Determination of seismic design category.** Add the following text at the end of the section: or information from the U.S.G.S. software “Design Values for Buildings” found online at <http://earthquake.usgs.gov/hazards/design/buildings.php>.

B. Section R302. See this section of the IRC except as provided below.

(1) **Section R302.1.** See this section of the IRC except as follows: ~~[provided below and add a new sub-section as follows:]~~
Add the following exception to 302.1 exception #6 exterior walls will read as follows: Where zoning or perpetual, platted, and recorded easements create a non-buildable minimum fire separation distance of at least ten (10) feet between structures on adjacent properties. The “one hour” “fire resistive” rating shall not apply on the underside of the projections that project a maximum of 24” twenty-four inches. Add a new sub-section as follows: Section R302.1.1 Zero lot line separation. Where perpetual, platted, and recorded easements create a non-buildable minimum fire separation distance of at least six (6) feet between structures on adjacent properties, the one-hour fire-resistive rating shall not apply.

(2) **R302.2 Townhouses.** Add the following sentence to the beginning of the exception: The following exception applies if the *townhouse* has an automatic residential fire sprinkler system. Delete the text “Chapters 34 through 43” from the second to the last sentence and replace with currently-adopted electrical code.

(3) **Section R302.5.1 Opening protection.** Delete the text in this section and replace with the following: Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with self-closing, tight fitting solid wood doors not less than 1 3/8 inches (35 mm) in thickness, solid or honeycomb core steel doors not less than 1 3/8 inches (35 mm) thick or self-closing, tight fitting 20-minute fire-rated doors.

(4) **R302.6 Dwelling/garage fire separation required.** Delete the text of this section and replace with the following: The garage shall be separated from the residence and its attic area by not less than 5/8 inch (15.9 mm) type x gypsum board or equivalent applied to the garage side. Garages beneath habitable space shall be separated from all habitable rooms above by not less than 5/8 inch (15.9 mm) type x gypsum board or equivalent. Where separation is a floor-ceiling assembly, the structure supporting the separation shall also be protected by not less than 5/8 inch (15.9 mm) type x gypsum board or equivalent. Garages located less than three (3) feet (914 mm) from a dwelling unit on the same lot shall be protected with not less than 5/8 inch (15.9 mm) type x gypsum board or equivalent applied to the interior side of exterior walls that are within this area. Openings in these walls shall be regulated by section R309.1. This provision does not apply to garage walls that are perpendicular to the adjacent dwelling unit wall. **Table R302.6.** Delete the text of table R302.6 and replace with the following:

Table R302.6 DWELLING/GARAGE SEPARATION	
SEPARATION	MATERIAL
From the residence and attics	Not less than 5/8-inch Type X gypsum board or equivalent applied to the garage side
From all habitable rooms above the garage	Not less than 5/8-inch Type X gypsum board or equivalent applied to the interior side of exterior walls that are within this area
Structure(s) supporting floor/ceiling assemblies used for separation required by this section	Not less than 5/8-inch gypsum board or equivalent
Garages located less than 3 feet from a dwelling unit on the same lot	Not less than 5/8-inch gypsum board or equivalent

C. Section R303 through Section R308. See these sections of the IRC.

D. Section R309. See this section of the IRC except as provided below: **R309.1 Floor surface.** Delete the text of this section of the IRC and replace with the following language. Garage floor surfaces shall be of approved noncombustible material. The area of floor used for parking of automobiles or other vehicles shall be sloped a minimum of 1 percent to facilitate the movement of liquids to a drain or toward the main vehicle entry doorway. The approach apron shall be recessed a minimum 3/4 inch at the vehicle doorways to prevent entry of storm water into the garage.

~~[F.]~~ **E. Section R311 Means of egress.** See these section of the IRC except as provided below. **R311.7.7.3 Grip-size.** Delete the text of the first sentence of this section of the IRC and replace with the following: All required handrails shall be of one of the following types or the shape shall provide equivalent graspability. In item #1 Type I delete the word “of” after the “words maximum cross section” and before “dimension”.

~~[G.]~~ **E. Section R313 Automatic fire sprinkler systems.** Delete the text of sections R313.1 and R313.2 and replace with the following: **R313.1 A determination on the requirement for an automatic residential fire sprinkler system in townhouses and one- and two-family dwellings is deferred until July 1, 2013.**

~~[H.]~~ **G. Section R312 through Section R323.** See these sections of the IRC.
 [14.7.3.11 NMAC - Rp, 14.7.3.11 NMAC, 1-28-11; A, 7-1-14]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

This is an amendment to 14.7.6 NMAC, Section 12, effective July 1, 2014.

**14.7.6.12 CHAPTER
4 - RESIDENTIAL ENERGY**

EFFICIENCY: See this Chapter of the IECC except for the following:

A. 401.2 Compliance.

Delete the text of this section and replace with the following: projects shall comply with sections 401, 402.4, 403.1, 403.2.2, 403.2 through 403.9, and 404.1 (referred to as the mandatory provisions), and one of the following:

(1) sections 402.1 through 402.3, 402.5, and 403.2.1 (prescriptive); or

(2) specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code, such as ResCheck, RemRate, and worksheet trade-off sheets from the New Mexico energy conservation code residential applications manual; or

(3) performance path to compliance;

(a) section 405, simulated performance alternative or;

(b) a home energy rating system (HERS) index of 83 or less in climate zone 3, or a HERS index of 89 or less in climate zones 4-7, confirmed in writing by a ResNet-certified energy rater. Compliance may be demonstrated by use of the ResNet sampling protocols (see chapter 6 of the national standard for home energy ratings).

(4) above code programs see IECC section 102.1.1.

B. 402.4.3 Fireplaces.

[See this section of the IECC and add the following ~~exception~~: one wood burning masonry fireplace without a gas log igniter per residence is allowed without gasketed doors providing:

~~(1) the residence being constructed exceeds compliance of this code by 20 percent or better with compliance demonstrated by either section 401.2(2) or (3) with a HERS index of 70; and~~

~~(2) the fireplaces have outdoor combustion air supplied directly to the fireboxes.] **Amend to read as follows:** New wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air.~~

[14.7.6.12 NMAC - Rp, 14.7.6.12 NMAC, 6-28-13; A, 7-1-14]

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

The *New Mexico Register* is the official publication for all notices of rule making, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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For further information, call (505) 476-7907.