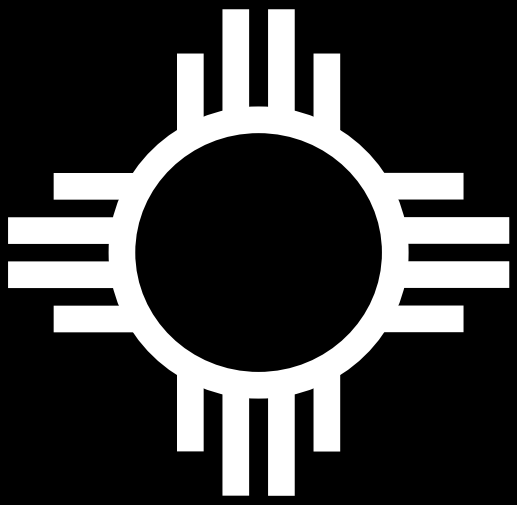
NEW MEXICO REGISTER



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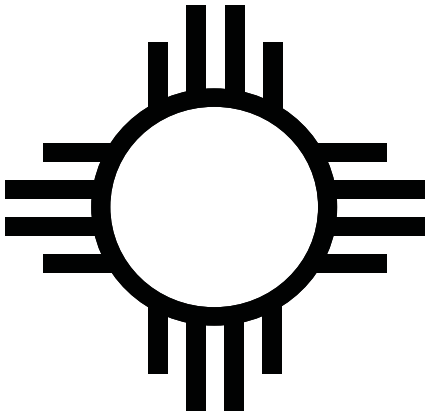

The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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

New Mexico Register

Volume XXV, Number 11
June 13, 2014

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Effective Date and Validity of Rule Filings

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

A=***Amended***, E=***Emergency***, N=***New***, R=***Repealed***, Rn=***Renumbered***

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Notices of Rulemaking and Proposed Rules

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, June 26, 2014**, beginning at 9:00 a.m., at the **Inn of the Mountain Gods,** located at **287 Carrizo Canyon Road, Mescalero, NM 88340,** the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Revocations, Prospective Modifications to Tagging Requirements for Big Game and Turkey, Department Review of Attorney General's Opinion (14-04) on Anglers Accessing Public Waters, Oklahoma et al. v. Department of the Interior et al., US District Court Case No. 4:14-CV-00123, Bear Education Efforts, Director's Draft of the Biennial Review, Habitat Restoration in New Mexico, Lease of State Game Commission Property located at 1085 Richards Avenue, Santa Fe, NM, Ibex License Applicant Numbers for Special Drawings (Hunting and Fish License Application (19.31.3 NMAC)), Special Drawing Protocol to Determine License Allocation, Prospective Initiatives for the 2015 Legislative Session, Final Recommendation on Fees for Special Drawings (19.30.9 NMAC), and Fiscal Year 2016 Budget Development. Additionally, they will hear and consider action as appropriate on proposed and final amendments to the following rules: Final Proposal Prohibiting the Use of Drones for Hunting (19.31.10 NMAC), and Draft Amendment to the Upland Game Rule (19.31.5 NMAC) and the Migratory Game Bird Rule (19.31.6 NMAC) to Allow the Use of Pellet Guns for the Take of Grouse, Squirrels, and Eurasian Collared Doves. 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 PUBLIC REGULATION COMMISSION

NEW MEXICO PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING CASE NO. 14-00061-TRP

The New Mexico Public Regulation Commission (NMPRC or Commission) gives notice of its proposed adoption of a new Rule 18.3.1 to 18.3.15 NMAC governing all motor carriers regulated by the Commission pursuant to the Motor Carrier Act, NMSA 1978, Sections 65-2A-1 to -41 (amended 2013).

Copies of the Order Initiating Proposed Rulemaking containing additional information and filing instructions may be downloaded from the Proposed Rulemaking section of the Commission's website at http://www.nmprc.state.nm.us under Case No. 14-00061-TRP or by calling the Commission's Records Management Bureau at (505) 827-6968.

Written Initial Comments and written Response Comments shall be filed by the deadlines below with the Commission's Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written Initial Comments not later than June 30, 2014 and written Response Comments not later than July 15, 2014. Comments shall refer to Case No. 14-00061-TRP.

A public hearing will be held on July 23, 2014, beginning at 1:00 p.m. at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe. The purpose of the hearing is to give interested individuals who have not filed written comments or written responses an opportunity to give oral comments. The Commission may limit the time for each comment to three minutes. The record of this case will close on August 4, 2014.

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ms. Cecilia Rios at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

Statutory Authority: New Mexico Constitution, Article XI, Sec. 2; NMSA 1978, Section 8-8-4(B)(10); the Motor Carrier Act, NMSA 1978, Sections 65-2A-1 to -41 (amended 2013).

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on June 26, 2014. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Boardroom at 4900 Alameda Blvd. NE, Albuquerque, NM.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.1 NMAC and 15.2.6.NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from Vince Mares, Executive Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

Vince Mares
Executive Director

Dated: June 2, 2014

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
PRIVATE INVESTIGATIONS ADVISORY BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Private Investigations Advisory Board will hold a Rule Hearing on Wednesday, July 23, 2014. Following the rule hearing the Board will convene a regular meeting to adopt the rules and take care of regular business. The rule hearing will begin at 10:00 a.m. and the regular board meeting will convene immediately following the hearing. The meeting will be held at the Regulation & Licensing Department, 2rd Floor, Rio Grande Room, located at 2550 Cerrillos Road, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.48.1 NMAC – General Provisions; 16.48.2 NMAC – Requirements for Licensure; New Part 16.48.8 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) 476-4615 after June 19, 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 July 3, 2014. 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 2nd Floor of the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, or by calling the Board office at (505) 476-4630 and will also be posted on our website at www.rld.state.nm.us Private Investigations Advisory 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) 476-4650 at least two weeks prior to the meeting or as soon as possible.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

8.308.15 NMAC, Grievances and Appeals, (filed 1/31/2014) repealed and replaced by 8.308.15 NMAC, Grievances and Appeals, effective 06/15/2014.

8.352.2 NMAC, Claimant Hearings (filed 12/17/2013) repealed and replaced by 8.352.2 NMAC, Claimant Hearings, effective 06/15/2014.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

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

8.308.15.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.308.15.1 NMAC - Rp, 8.308.15.1 NMAC, 6-15-14]

8.308.15.2 SCOPE: This rule applies to the general public.
[8.308.15.2 NMAC - Rp, 8.308.15.2 NMAC, 6-15-14]

8.308.15.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq NMSA 1978.
[8.308.15.3 NMAC - Rp, 8.308.15.3 NMAC, 6-15-14]

8.308.15.4 DURATION: Permanent.
[8.308.15.4 NMAC - Rp, 8.308.15.4 NMAC, 6-15-14]

8.308.15.5 EFFECTIVE DATE: June 1, 2014, unless a later date is cited at the end of a section.
[8.308.15.5 NMAC - Rp, 8.308.15.5 NMAC, 6-15-14]

8.308.15.6 OBJECTIVE: The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance division programs.
[8.308.15.6 NMAC - Rp, 8.308.15.6 NMAC, 6-15-14]

8.308.15.7 DEFINITIONS:

A. "Administrative law judge (ALJ)" means the hearing officer appointed by the HSD fair hearings bureau (FHB) to oversee the claimant's administrative hearing process, to produce an evidentiary record and render a recommendation to the medical assistance division director.

B. "Appeal" means:

(1) the process open to a managed care organization's member when his or her managed care organization (MCO) has taken, or intends to take, an adverse action related to the member's benefits or services; or

(2) a provider requested review by the MCO of his or her payment.

C. "Authorized representative" means the individual designated to represent and act on the claimant's behalf during the appeal process. The claimant or authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time-frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the claimant.

D. "Grievance" means an expression of dissatisfaction by a member or contracted provider about any matter or aspect of the MCO or its operation with the exception of the MCO's notice of action and the member's appeal of an intended or taken adverse action.

E. "HSD administrative hearing" or "fair hearing" means a HSD administrative hearing which is an informal evidentiary hearing conducted by the HSD fair hearings bureau (FHB) so that evidence may be presented as it relates to an adverse action taken, or intended to be taken, by the MCO. A member may request a HSD administrative hearing only after exhausting his or her MCO appeal process.

F. "MAD" means the medical assistance division, which administers medicaid and other medical assistance programs under HSD.

G. "MAP" means the medical assistance programs administered under MAD.

H. "MCO" means the member's HSD contracted managed care organization.

I. "MCO appeal decision" means the MCO's final decision regarding a member's appealed adverse action it intends to take or has taken against its member.

J. "Member" means a MAP eligible recipient enrolled in a HSD contracted MCO; a member becomes a claimant after exhausting the MCO's appeal process and, being dissatisfied with the MCO's appeal final decision, requests a HSD administrative hearing.

K. "Notice of action" means the notice of an adverse action as outlined in Section A of 8.308.15.14 NMAC. If the adverse action is in the form of a termination, suspension, change or reduction of an existing service including level of care (LOC), 10 calendar days prior to the intended adverse action, the MCO must send the member or the member's authorized representative its notice of action.
[8.308.15.7 NMAC - Rp, 8.308.15.7 NMAC, 6-15-14]

8.308.15.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.308.15.8 NMAC - Rp, 8.308.15.8 NMAC, 6-15-14]

8.308.15.9 GENERAL REQUIREMENTS: The HSD MCO shall have a grievance system in place for its members and its MCO providers to express dissatisfaction about any matter or aspect of the MCO operation. The MCO shall have an appeal system in place that meets the requirements of 42 CFR Section 438 Subpart F to dispute adverse actions taken or intended to be taken by the MCO against its members.
[8.308.15.9 NMAC - Rp, 8.308.15.9 NMAC, 6-15-14]

8.308.15.10 GENERAL INFORMATION ON A CONTRACTED MCO PROVIDER GRIEVANCE:

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

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

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

(3) a description of how the MCO provider's grievance is resolved.

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

[8.308.15.10 NMAC - Rp, 8.308.15.10 NMAC, 6-15-14]

8.308.15.11 GENERAL INFORMATION ON MEMBER GRIEVANCES:

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

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

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

(3) a description of how the member's grievance is resolved.

B. Member rights:

(1) A member shall have the right to file a grievance with his or her MCO to express dissatisfaction about any matter or aspect of his or her MCO's operation; the member may file the grievance either orally or in writing in accordance with his or her MCO's procedures and processes. The member must file the grievance within 30 calendar days of the occurrence of the event for which the member wishes to register his or her dissatisfaction.

(2) The member's MCO will provide him or her with its resolution to the member's grievance.

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

(1) the member's authorized representative; or

(2) the member or the member's authorized representative may also choose a relative, friend or other spokesperson to represent or assist him or her through the MCO grievance process with or without designating that spokesperson with the right to make decisions on his or her behalf. A member or member's authorized representative will provide the MCO a signed release-of-information in order for a designated spokesperson to assist or represent the member or the member's authorized representative during the MCO's grievance process.

D. A member or the member's representative may have legal counsel assist him or her during the MCO grievance process.

[8.308.15.11 NMAC - Rp, 8.308.15.11 NMAC, 6-15-14]

8.308.15.12 MCO MEMBER GRIEVANCE PROCESS:

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

(1) providing interpreter services; and

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

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

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

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

C. The MCO shall ensure that the individuals who make decisions related to grievances are not involved in any previous level of review or decision-making as to the matter that is grieved.

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

(1) when a grievance request has been received;

(2) of the expected date of resolution; and

(3) of the final resolution of the grievance.

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

[8.308.15.12 NMAC - Rp, 8.308.15.12 NMAC, 6-15-14]

8.308.15.13 GENERAL INFORMATION ON A CONTRACTED MCO PROVIDER APPEAL:

A. Upon contracting with the MCO, the MCO shall provide, at no cost, a written description of its appeal procedure and process to the provider. The MCO will update each of its providers with any changes to these procedures and processes. The description shall include:

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

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

(3) a description of how the MCO provider's appeal is resolved.

B. Provider rights and limitations:

(1) A provider may file an appeal either orally or in writing in accordance with the MCO's procedures and processes.

(2) A provider shall have the right to file an appeal with the MCO related to the provider's payment.

(3) A provider may act as a spokesperson for a member during the member's MCO appeal process; however, the provider who is also the spokesperson may not file an appeal on his or her own concerning an adverse action intended or taken against a member; this remains the sole responsibility of the member or the member's authorized representative.

(4) The MCO shall ensure that punitive or retaliatory action is not taken against any provider that files an appeal.

(5) A MCO provider does not have the right to request a HSD administrative hearing following the MCO appeal decision.

[8.308.15.13 NMAC - Rp, 8.308.15.10 NMAC, 6-15-14]

8.308.15.14 GENERAL INFORMATION ON A MEMBER APPEAL:

A. Any of the following actions by an MCO constitute an adverse action for which a member may request a MCO appeal:

(1) the denial or reduction by the MCO of an authorized service or item, including level of care (with the exception of a MCO value-added service);

(2) the denial in whole or in part of a member's provider claim by the MCO which results in the member becoming liable for payment of all or part of the claim;

(3) the failure of the MCO to approve a service or item in a timely manner;

(4) the failure of the MCO to act on an appeal within the timeframes specified in 42 CFR Section 438.408 (b);

(5) a determination that a member be transferred or discharged; or

(6) the belief of a member or his or her authorized representative that the MCO's preadmission or annual resident review (PASRR) requirements determination is erroneous; when a claimant requests a HSD administrative hearing due to an adverse PASRR determination the parties to the hearing will comply with 8.354.2 NMAC in place of this rule.

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

(1) information on how the

member can file a MCO appeal and the resolution process;

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

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

(4) a description of how the member's appeal is resolved.

C. Member rights:

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

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

(3) A member shall have the right to request a HSD administrative hearing after the member has exhausted his or her MCO appeal process; see 8.352.2 NMAC for information on the HSD administrative hearing process.

(4) A member requesting a HSD administrative hearing must do so within 30 calendar days of the date of the letter that contains the MCO's appeal final decision.

D. A member or the member's authorized representative may have legal counsel assist him or her during the MCO appeal process.

[8.308.15.14 NMAC - Rp, 8.308.15.13 NMAC, 6-15-14]

8.308.15.15 MCO MEMBER APPEAL PROCESS:

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

(1) providing interpreter services; and

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

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

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

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

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

D. The MCO shall provide the member with written notices:

(1) when an appeal request has been received;

(2) of the expected date of resolution; and

(3) of the MCO appeal decision.

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

(1) previously authorized in accordance with 42 CFR Sections 431.213 and 431.214;

(2) newly requested services and the type of service or LOC; and

(3) denials of claims that may result in the member becoming financially liable.

F. A member may request from the MCO a continuation of his or her benefit during the member's MCO appeal. The MCO and member must follow the provisions of 42 CFR Section 438.420 regarding the continuation of the benefit that is the subject of the appeal during his or her MCO appeal and HSD administrative hearing processes.

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

(2) If the MCO appeal decision upholds the MCO's action, the MCO may recover from the member the cost of the continued benefit furnished during the MCO appeal process, providing the member was advised that he or she could be responsible for cost of the benefit as part of the information provided to the member; see 8.352.2 NMAC outlining the MCO recovery process. If the member requests a HSD administrative hearing, the MCO will not take action to recover the costs of the continued benefit until there is an HSD administrative hearing final decision.

(3) If the member is a party to an HSD administrative hearing and the HSD administrative hearing final decision reverses the MCO's appeal decision and the member received the disputed benefit during the MCO appeal and the HSD administrative hearing processes, the MCO may not recover any of the cost of a continued benefit.

(4) If the member is a party to a HSD administrative hearing and the HSD administrative hearing final decision upholds the MCO's appeal decision, the MCO may recover from the member the cost of the benefit furnished during the MCO appeal process and the HSD administrative hearing process, providing the member was advised that he or she could be responsible for cost of the benefit as part of the information provided to the member; see 8.352.2 NMAC outlining the MCO recovery process.

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

(1) an appeal that involves clinical issues;

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

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

[8.308.15.15 NMAC - Rp, 8.308.15.13 NMAC, 6-15-14]

8.308.15.16 EXPEDITED MEMBER APPEAL PROCESS: The MCO shall establish and maintain an expedited review process for appeals when the MCO determines that allowing the time for a standard resolution could seriously jeopardize the member's life, health; or his or her ability to attain, maintain, or regain maximum function. A member or the MCO may request an expedited MCO appeal process in cases involving a member's health, safety, or service availability issues. The request must be made in writing to the member's MCO; the reasons why an expedited MCO appeal process is necessary must be stated in detail in the request.

A. When the MCO determines that allowing the time for a standard resolution could seriously jeopardize the member's life, health; or his or her ability to attain, maintain, or regain maximum function, the MCO shall automatically file an appeal on behalf of the member, continue the benefit, make reasonable efforts to give the member prompt oral notice of the automatic appeal, following up within two calendar days with a written notice. The MCO will use its best effort to involve the member in the expedited appeal process. There is a continuation of benefits until an expedited appeal decision is rendered by the MCO. An expedited appeal is not subject to MCO recoupment for the continuation of benefits if the MCO expedited appeal decision is against the member or if the HSD expedited administrative hearing decision is against the member.

B. If the MCO denies the member's request for an expedited MCO appeal process, the member may then request a HSD expedited administrative hearing regarding the issue of an expedited appeal process. The granting of an expedited HSD administrative hearing is at the discretion of the HSD FHB ALJ.

C. If the ALJ grants the member the right to a MCO expedited appeal process, the MCO will follow its procedures and processes to comply with the ALJ decision.

D. If the ALJ upholds the MCO's denial of an expedited MCO appeal process, the member must exhaust his or her MCO's appeal process before requesting an HSD administrative hearing.

E. The MCO shall ensure that punitive or retaliatory action is not

taken against a member that files an appeal or a provider that supports a member's appeal.
[8.308.15.16 NMAC - N, 6-15-14]

HISTORY OF 8.308.15 NMAC:

History of Repealed Material:
8.308.15 NMAC, Grievances and Appeals - Repealed 6-15-14.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 352 ADMINISTRATIVE HEARINGS
PART 2 CLAIMANT HEARINGS

8.352.2.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.352.2.1 NMAC - Rp, 8.352.2.1 NMAC, 6-15-14]

8.352.2.2 SCOPE: The rule applies to the general public.
[8.352.2.2 NMAC - Rp, 8.352.2.2 NMAC, 6-15-14]

8.352.2.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq NMSA 1978.
[8.352.2.3 NMAC - Rp, 8.352.2.3 NMAC, 6-15-14]

8.352.2.4 DURATION: Permanent.
[8.352.2.4 NMAC - Rp, 8.352.2.4 NMAC, 6-15-14]

8.352.2.5 EFFECTIVE DATE: June 15, 2014, unless a later date is cited at the end of a section.
[8.352.2.5 NMAC - Rp, 8.352.2.5 NMAC, 6-15-14]

8.352.2.6 OBJECTIVE: The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance programs.
[8.352.2.6 NMAC - Rp, 8.352.2.6 NMAC, 6-15-14]

8.352.2.7 DEFINITIONS:

A. "Administrative law judge (ALJ)" means the hearing officer appointed by the HSD fair hearings bureau (FHB) to oversee the claimant's administrative hearing process, to produce and evidentiary record and render a recommendation to the medical assistance division director.

B. "Appeal" means the process open to a managed care organization's member when his or her managed care organization (MCO) has taken, or intends to take, an adverse action related to the member's benefits or services.

C. "Authorized representative" means the individual designated to represent and act on the claimant's behalf during the appeal process. The claimant or authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the claimant.

D. "Claimant" means the individual, or in case of eligibility determinations, the household, requesting a HSD administrative hearing that is claiming to be affected by an adverse action or actions taken or intended to be taken by MAD, its UR contractor or a MCO.

E. "HSD administrative hearing" or "fair hearing" means an informal evidentiary hearing that is conducted by the FHB so that evidence may be presented as it relates to an adverse action taken, or intended to be taken, by MAD, its UR contractor, or the MCO; see Section 10 of this rule for definitions of an adverse action.

F. "MAD" means the medical assistance division, which administers medicaid and other medical assistance programs under HSD.

G. "MAP" means the medical assistance programs administered by MAD.

H. "MCO" means a member's HSD contracted managed care organization.

I. "MCO appeal decision" means the MCO's final decision regarding a member's appealed adverse action it intends to take or has taken against its member.

J. "Member" means a MAP eligible recipient enrolled in a HSD contracted MCO.

K. "Notice of action" means the notice issued by MAD or its UR contractor or a MCO. Adverse actions include:

(1) the intent of MAD or its UR contractor or the MCO to take an adverse action against an individual in the form of a termination, suspension, change or reduction, of an existing service including level of care (LOC) or the transfer or discharge of a nursing facility (NF) resident. If the notice of action is for one of the listed adverse actions, MAD or its UR contractor or the MCO must send the notice of action 10 calendar days prior to the date of the intended adverse action; or

(2) an adverse determination made with regard to preadmission or annual resident review (PASRR) requirements; or

(3) the denial or reduction, or a limited authorization of a service including the type or level of care of a request for a new service or item.

L. "Parties to the hearing" are MAD and as appropriate, its designees, the individual's MCO or the MAD UR contractor, and the claimant or authorized representative.

M. "UR contractor" is a MAD contractor responsible for physical and behavioral health level of care (LOC) reviews, medical necessity reviews, and other determinations as directed by MAD when a MAP eligible recipient is enrolled in a medicaid fee-for-service plan.
[8.352.2.7 NMAC - Rp, 8.352.2.7 NMAC, 6-15-14]

8.352.2.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.352.2.8 NMAC - Rp, 8.352.2.8 NMAC, 6-15-14]

8.352.2.9 CLAIMANT OR THE CLAIMANT'S AUTHORIZED REPRESENTATIVE AND HSD ADMINISTRATIVE HEARING PROCESS: MAD has established a process to determine if an individual is eligible to request a HSD administrative hearing. MAD has also established a process for an individual or the individual's authorized representative to request a HSD administrative hearing when an adverse action is intended or has been taken by MAD, its UR contractor or the MCO against the individual; see Section 10 of this rule.

A. Eligible claimant:

(1) When an adverse eligibility determination is made by HSD against a MAP applicant, he or she may file as a claimant to request a HSD administrative hearing. See 8.100.970 NMAC for the rules governing a HSD administrative hearing for a MAP adverse eligibility determination.

(2) When an adverse action is taken or intended to be taken against a MAP eligible recipient by MAD or its

UR contractor, the MAP eligible recipient may file as a claimant to request a HSD administrative hearing.

(3) When an adverse action is taken or intended to be taken against a member by his or her MCO, and the member has exhausted his or her MCO's appeal process, he or she may file as a claimant to request a HSD administrative hearing.

B. A claimant or the claimant's authorized representative may have legal counsel assist him or her during the MCO appeal and HSD administrative hearing process. If a claimant or the claimant's authorized representative, MAD, its UR contractor or the MCO retains legal counsel, that legal counsel must submit an entry of appearance to the assigned ALJ and the ALJ will forward this information to the MAD administrative hearings unit (MAD AHU).

[8.352.2.9 NMAC - Rp, 8.352.2.9 NMAC, 6-15-14]

8.352.2.10 ADVERSE ACTION: The following constitute an adverse action for which an individual may request a MCO appeal and a HSD administrative hearing.

A. The denial or reduction by MAD, its UR contractor, or a MCO of an authorized service or item, including level of care (with the exception of a MCO value-added service).

B. When a notice of action against a member is not from his or her MCO, but instead is from an entity MAD has authorized to make utilization of service determinations, the member may request a HSD administrative hearing rather than request a MCO appeal.

C. The denial in whole or in part of an individual's provider claim by MAD, its UR contractor, or the MCO which results in the individual becoming liable for payment of all or part of the claim when the denial is based on medical necessity.

D. The failure of MAD, its UR contractor or the MCO to approve a service or item in a timely manner.

E. The failure of the MCO to act on an appeal within the time-frames specified in 42 CFR Section 438.408(b).

F. The MCO's final decision to deny a member a MCO expedited appeal hearing. The HSD administrative hearing will only address the member's request for a MCO expedited appeal hearing.

G. The denial of an individual's application for MAP enrollment.

H. A determination that an individual is to be transferred or discharged.

I. The belief of an individual or the individual's authorized representative that the MAD UR contractor or the MCO's preadmission, change in condition, or annual resident review (PASRR) requirements determination is erroneous. When a claimant requests a HSD administrative hearing due to an adverse PASRR determination, the parties to the hearing will comply with 8.354.2 NMAC in place of this rule.

[8.352.2.10 NMAC - Rp, 8.352.2.10 NMAC, 6-15-14]

8.352.2.11 RIGHT TO A HSD ADMINISTRATIVE HEARING: MAD must grant an individual or his or her authorized representative the opportunity for a HSD administrative hearing under specific circumstances pursuant to 42 CFR Section 431.220(a) and 27-3-3 NMSA 1978. A HSD administrative hearing occurs telephonically between the parties to the hearing and the assigned ALJ.

A. An individual or the individual's authorized representative may request a HSD administrative hearing based on his or her belief that MAD or its UR contractor intends to take, or has taken, an adverse action.

B. A member shall have the right to request a HSD administrative hearing after he or she has exhausted the MCO's appeal process and:

(1) the member does not agree with the MCO's final decision;

(2) the member requests an HSD administrative hearing within 30 calendar days of the date of the MCO's final decision; and

(3) the basis for the member's request for an HSD administrative hearing meets one of the definitions of an adverse action in Section 10 of this rule.

C. MAD, its UR contractor or the MCO will not be responsible for any fees or costs, incurred by the individual or his or her authorized representative as a result of a MCO appeal or a HSD administrative hearing, or if he or she files an appeal of the HSD administrative hearing final decision to a New Mexico district court.

[8.352.2.11 NMAC - Rp, 8.352.2.11 NMAC, 6-15-14]

8.352.2.12 NOTICE, TIME LIMITS, POSTPONEMENT, OR THE DISMISSAL OF MCO APPEAL OR A HSD ADMINISTRATIVE HEARING REQUEST:

A. **Notice:**

(1) MAD or its UR contractor shall issue a "notice of action" to an individual when it intends to take an adverse action against an individual. When the notice of action relates to a reduction or termination of a service, LOC, or another benefit the individual already receives, the notice of action shall be sent not less than 10 calendar days prior to the date of MAD's or its UR contractor's intended adverse action.

(2) The MCO appeal process is governed by and set forth in detail in 8.308.15 NMAC.

B. **Exceptions to a notice of action:** Notwithstanding the notice requirement set forth in the preceding subsection, MAD, its UR contractor or the MCO may mail a notice of action to the individual or the individual's authorized representative or estate (in the event of an individual's death) no later than the actual date of the intended adverse action when:

(1) MAD, its UR contractor or the MCO has confirmed the death of the individual;

(2) MAD, its UR contractor or the MCO has received a clear written statement signed by the individual or the individual's authorized representative that all or a portion of an authorized service is no longer wanted;

(3) the individual or the individual's authorized representative provides information to MAD, its UR contractor or the MCO that indicates his or her understanding that such information may require MAD, its UR contractor or the MCO to take the adverse action;

(4) MAD, its UR contractor or the MCO learns the individual is residing in an institution, which renders the individual ineligible for MAP enrollment and MAD services;

(5) MAD, its UR contractor or the MCO cannot determine the physical location of either the individual, or if designated, his or her authorized representative;

(6) MAD, its UR contractor or the MCO has established that the individual has been accepted for medicaid services outside of the state; or

(7) the primary care provider for the individual has prescribed a change in his or her LOC.

C. **Time limits:** An individual or his or her authorized representative must adhere to the time limits for requesting both a continuation of a benefit and a HSD administrative hearing.

(1) Requesting a HSD administrative hearing: an individual who is not enrolled in a MCO has 90 calendar days from the date of the "notice of action" to request a HSD administrative hearing. To be considered timely, the request must be received by FHB, the individual's local income support division (ISD) office or by the MAD director's office no later than the close of business on the 90th calendar day immediately following the date of the notice of action. If the request for a HSD administrative hearing is mailed by the individual, the request must be postmarked

by the 90th calendar day from the date of the notice of action. For a member of a MCO, see 8.308.15 NMAC for detailed description of the MCO appeal process.

(2) Continuation of a benefit:

(a) An individual who is not a member of a MCO, may request that the benefit that is the subject of an adverse action continue while his or her HSD administrative hearing proceeds. A request for a continuation of the benefit shall be accorded to any claimant who requests the continuation within 10 calendar days of the mailing of the notice of action by MAD or its UR contractor. The continuation of a benefit is only available to an individual that is currently receiving the appealed benefit and will be the same as the individual's current allocation, budget or LOC. MAD or its UR contractor must provide information in its notice of action of an individual's rights and limitations to continue a benefit during his or her HSD administrative hearing process and of the responsibility to repay MAD for the continued benefit if the HSD administrative hearing final decision is against the individual.

(b) A member of a MCO must follow his or her MCO appeal process. The member may request the benefit that is the subject of an adverse action continue while his or her MCO appeal process proceeds. A request for a continuation of a benefit shall be accorded to any member who requests the continuation within 10 calendar days of his or her MCO's mailing of the notice of action. The continuation of a benefit is only available to a member that is currently receiving the appealed benefit. The continuation of the benefit will be the same as the member's current allocation, budget or LOC. The MCO must provide information in its notice of action of a member's rights and limitations to continue a benefit during his or her MCO appeal process and of the responsibility to repay the MCO for the continued benefit if the MCO final appeal decision is against a member and, if the member requests a HSD administrative hearing, its final decision is also against the member as a claimant. The MCO appeal process is outlined in 8.308.15 NMAC.

(3) For a member who is enrolled in a MCO and who is dissatisfied with the MCO's final appeal process, the time limit to request a HSD administrative hearing is 30 calendar days following the MCO's final decision of his or her appeal.

(a) Upon requesting a HSD administrative hearing within this time limit, the member is referred to as the claimant and is governed by the remaining sections of this rule.

(b) If the member had a continuation of his or her benefit during the MCO appeal process, the claimant automatically maintains his or her continuation of the benefit throughout the remaining HSD administrative hearing process. If the claimant or the claimant's authorized representative opts to discontinue his or her benefit during the HSD administrative hearing process, the claimant or the claimant's authorized representative must contact the MCO to end services.

(4) The HSD administrative hearing is concluded within 90 calendar days from the date the claimant or the claimant's authorized representative requests a HSD administrative hearing unless the claimant or the claimant's authorized representative agrees to extend the HSD administrative hearing time frame in order to facilitate the process.

D. **Dismissal of a hearings request:** HSD authorizes FHB to issue a dismissal of a claimant or member's request for a HSD administrative hearing when:

(1) the request is not received within the time periods specified in the rules and notice of action, or if the claimant is a MCO member and the member has not followed or exhausted the appeal process available under the MCO;

(2) the request is withdrawn or cancelled in writing by the individual or the individual's authorized representative;

(3) the sole issue presented concerns a federal or state statue, regulation or rule requiring an adjustment of benefits for all or certain classes of individuals, including, but not limited to, a termination, modification, reduction, or suspension of a service;

(4) the same issue involving the individual has already been subject to a final decision by the MAD director following a HSD administrative hearing;

(5) the sole issue presented is regarding a New Mexico administrative code (NMAC) rule rather than the application of the rule to the claimant or the member; or

(6) the claimant, the member, or the authorized representative fails to appear telephonically or in person at a scheduled hearing without good cause at which time a HSD administrative hearing may be considered abandoned and therefore dismissed. However, if the claimant or the claimant's authorized representative presents to the ALJ good cause for failure to appear within 10 calendar days after the date of the scheduled HSD administrative hearing, the HSD administrative hearing may be rescheduled. Good cause includes a death in the family, a disabling personal illness or another significant emergency or at the discretion of the ALJ, as appropriate, another exceptional circumstance. If the ALJ determines that the claimant or the claimant's authorized representative has shown good cause, the HSD administrative hearing will be rescheduled.

(7) When an ALJ dismisses a claimant's request for a HSD administrative hearing, that decision becomes HSD's administrative hearing final decision. A claimant may elect to then file a state district court judicial appeal.

[8.352.2.12 NMAC - Rp, 8.352.2.13 NMAC, 6-15-14]

8.352.2.13 SCHEDULING OF A HSD ADMINISTRATIVE HEARING:

A. **Scheduling:** The ALJ will assign a date for a HSD administrative hearing that affords the MAD director the opportunity to render his or her HSD administrative hearing final decision within the 90 calendar day time limit. The claimant or the claimant's authorized representative must agree via a recorded message to the assigned ALJ or in writing to the assigned ALJ to extend the 90 calendar day time limit up to an additional 30 calendar days to provide the necessary time for the HSD administrative hearing to be conducted and a final decision rendered. The ALJ has the authority on a case-by-case basis to extent the 90-calendar day time limit to more than 30-calendar days when the claimant or the claimant's authorized representative requests such an extension in writing. If an accommodation is necessary for a disability, the claimant or the claimant's authorized representative must notify FHB at least 10 calendar days prior to the HSD administrative hearing.

B. **Rescheduling:** Any party to a HSD administrative hearing may request, and is entitled to receive, one postponement of a HSD administrative hearing, as long as it does not interfere with the HSD administrative hearing final decision time frames.

(1) A request for more than one postponement is at the ALJ's discretion on a case-by-case basis.

(2) The claimant or the claimant's authorized representative must agree to allow the ALJ to extend the 90 calendar day time limit up to an additional 30 calendar days to provide the necessary time for the HSD administrative hearing to be conducted and a final decision rendered.

C. **Expedited HSD administrative hearing:** Any party may request an expedited HSD administrative hearing in cases involving a claimant's health, safety, or service availability issues. The request must be made in writing to the claimant's assigned ALJ. The request must state in detail the reasons why an expedited HSD administrative hearing is necessary. The granting of an expedited HSD administrative hearing is at the discretion of the ALJ.

D. **Group hearing:**

An ALJ may respond to a series of individual claimant or the claimant's authorized representative requests for HSD administrative hearings by conducting a single group hearing. In all group hearings, the rules governing an individual HSD administrative hearing are followed. Each claimant or the claimant's authorized representative is permitted to present his or her own case. If a group hearing is arranged, any claimant or a claimant's authorized representative has the right to withdraw from the group hearing in favor of an individual HSD administrative hearing. [8.352.2.13 NMAC - Rp, 8.352.2.15 NMAC, 6-15-14]

8.352.2.14 SUMMARY OF EVIDENCE (SOE):

A. **Summary of evidence.**

(1) At a HSD administrative hearing, MAD has the burden to prove through the preponderance of the evidence that an adverse action against a claimant is correct. A summary of evidence (SOE) provides information concerning the basis of MAD, its UR contractor or the MCO's adverse action. MAD may have its designee complete an SOE for final review by MAD; however, MAD is ultimately responsible for the submission of its SOE. An SOE is submitted by MAD to the ALJ and claimant or the claimant's authorized representative within specified timeframes.

(2) A claimant or the claimant's authorized representative may submit an SOE to provide the ALJ with information to refute MAD's SOE. A claimant or the claimant's authorized representative is not required to provide a SOE, as the burden of proof falls on MAD.

(3) The MAD SOE shall, at a minimum, contain:

(a) the claimant's name, and as applicable, his or her authorized representative's or legal counsel's telephone number and address, and the status of any previous or concurrent appeal through his or her MCO or MAD UR contractor;

(b) the adverse action against the claimant;

(c) the documentation supporting MAD, its UR contractor, or the MCO basis for the intended or taken adverse action; and

(d) any applicable federal or state statutes, regulations, rules or any combination of these; however, that a failure by MAD, the UR contractor or a MCO to submit an applicable statute, regulation or rule shall not constitute per se grounds for the ALJ to find that MAD, the UR contractor or the MCO failed to meet its burden of proof.

B. **Timeframes.**

(1) The HSD administrative hearing.

(a) MAD's SOE shall be delivered to the ALJ and the parties to the HSD administrative hearing at least 10 working days prior to the HSD administrative hearing.

(b) MAD's SOE may be amended by MAD at any point prior to the HSD administrative hearing if the ALJ and the claimant or the claimant's authorized representative is delivered copies of the amended SOE at least two working days prior to the HSD administrative hearing. MAD is responsible for providing its UR contractor or MCO the amended SOE.

(c) If the claimant or his or her authorized representative has an SOE that he or she wants entered into evidence for the HSD administrative hearing, he or she must provide the ALJ the SOE not less than three working days prior to the HSD administrative hearing. The ALJ will provide MAD AHU with a copy of the claimant's SOE within one working day of its receipt. The MAD AHU will provide a copy of the SOE to either its UR contractor or the MCO within one working day of its receipt.

(d) If the claimant or the claimant's authorized representative has an amendment to his or her SOE, he or she shall follow the process in Subparagraph (c) of Paragraph (1) of Subsection B of this section.

(2) The failure of MAD to provide its SOE in a timely manner may, at the ALJ's discretion result in its exclusion or a postponement of the HSD administrative hearing charged against MAD.

(3) If the claimant or the claimant's authorized representative fails to provide the assigned ALJ a SOE or any amendments to the SOE within the specified timeframes, and the claimant or the claimant's authorized representative wishes to submit such documents for consideration at the HSD administrative hearing, the claimant or the claimant's authorized representative will utilize his or her one allowed postponement opportunity in which to submit the SOE or any amendments to the ALJ. The ALJ will follow the process in Subparagraph (b) of Paragraph (1) of Subsection B of this section for the disbursement of the amended SOE.

C. **Availability of information to the claimant or the claimant's representative:** MAD, its UR contractor or the MCO shall:

(1) provide upon request to the claimant or his or her authorized representative, any document in its possession concerning its adverse action against the claimant that is not already in its SOE;

(2) provide the claimant or the claimant's authorized representative the requested documents; such documents will be provided by MAD, its UR contractor or MCO to the claimant or the claimant's authorized representative in a timely manner and without charge.

D. No party to a HSD administrative hearing may present into evidence, as part of an amended SOE, any document or record that any other party of the hearing has not received at least two working days prior to the HSD administrative hearing. The ALJ will not take such information into consideration when reaching his or her recommendation. [8.352.2.14 NMAC - Rp, 8.352.2.16 NMAC, 6-15-14]

8.352.2.15 ADMINISTRATIVE HEARING STANDARDS:

A. **Administrative law judge.**

(1) A HSD administrative hearing is conducted by an impartial official who:

(a) does not have any personal stake or involvement in the case; and

(b) was not involved in the determination or the action which is being contested; if the ALJ had any involvement with the action in question, including giving advice or consultation on the points at issue, or is personally related in any relevant degree to the parties, the ALJ must disqualify his or herself as the assigned ALJ for that case.

(2) In conducting a HSD administrative hearing, the ALJ must:

(a) explain how the HSD administrative hearing will be conducted to participants at the start of the hearing, before administering oaths;

(b) administer oaths and affirmations;

(c) request, receive, and make part of the record all evidence that has been provided to each party within the required time-frames that the ALJ considers necessary to decide the issues raised;

(d) regulate the conduct and the course of the HSD administrative hearing to ensure an orderly HSD administrative hearing;

(e) request, if appropriate, an independent physical or behavioral health assessment or a professional evaluation from a source mutually satisfactory to the parties at no cost to the claimant; and

(f) produce the ALJ HSD administrative hearing report that includes findings of fact and recommendations for the MAD director's consideration.

(3) Appointment of the ALJ: the ALJ is appointed by FHB upon receipt of the request for a HSD administrative hearing. The ALJ will be copied on all written communications between the parties to HSD administrative hearing to ensure all parties are free of undue influence and receive written notices and documents

within the required time-frames.

B. **Record of the hearing:** A HSD administrative hearing is digitally recorded. The digital recording, findings of fact, SOEs and any amendments, pleadings, documents, NMAC rules, other relevant statutes or other exhibits admitted into evidence, as well as the ALJ's recommendations will be available to the parties for one calendar year following the HSD administrative hearing final decision. These items are referred to as the record of the HSD administrative hearing. Parties to the HSD administrative hearing may request one copy of the record without charge. Subsequent copies will be charged at a pre-determined rate set by HSD.

C. **Rights at an administrative hearing:** A claimant or the claimant's authorized representative will provide the assigned ALJ a signed release-of-information in order for a designated spokesperson to assist or represent the claimant or the claimant's authorized representative in presenting the claimant's case at a HSD administrative hearing. If the claimant or the claimant's authorized representative, MAD, its UR contractor or MCO have retained legal counsel, that legal counsel will submit a notice appearance to the assigned ALJ and the ALJ will forward this information to the MAD administrative hearings unit (MAD AHU). The parties are given an opportunity to:

(1) call witnesses to present information relevant to the case;

(2) submit evidence to establish all pertinent facts and circumstances in the case;

(3) advance arguments without undue interference; and

(4) question or contradict any testimony or evidence, including an opportunity to confront and cross-examine opposing witnesses.

D. **Evidence and procedure:** Formal rules of evidence and civil procedure do not apply to a HSD administrative hearing. A free, orderly exchange of relevant information is necessary for the decision-making process.

(1) Admissibility: all relevant evidence is admissible subject to the ALJ's authority to limit repetitive, scandalous or unduly cumulative evidence and his or her ability to conduct an orderly HSD administrative hearing. The ALJ must admit evidence that is relevant to the intended or taken adverse action by MAD, its UR contractor, or the MCO.

(2) Confidentiality: the confidentiality of records is to be maintained;

(3) Information not entered in the hearing record: information which is not presented during the HSD administrative hearing in the presence of the claimant or the claimant's authorized representative, MAD, its UR contractor, or the MCO may not be used by the ALJ in making his or her record of fact finding and recommendation.

(4) Administrative notice: the ALJ may take administrative notice of any matter in which courts of this state may take judicial notice.

(5) Privilege: the rules of privilege apply to the extent that they are required to be recognized in civil actions in the district courts of New Mexico.

(6) Medical issues: in a case involving physical or behavioral health issues, the parties may submit expert testimony, reports, affidavits or health care records into evidence as necessary. Admission of this evidence is at the discretion of the ALJ and must meet the SOE time-frames for submission. All parties of the HSD administrative hearing have the right to examine any documents which may influence the HSD administrative hearing final decision. [8.352.2.15 NMAC - Rp, 8.352.2.17 NMAC, 6-15-14]

8.352.2.16 CONDUCTING THE HSD ADMINISTRATIVE HEARING: A HSD administrative hearing is conducted in an orderly manner and in an informal atmosphere. The HSD administrative hearing is normally conducted telephonically and is not open to the general public. The assigned ALJ has the authority to limit the number of persons in attendance as necessary for the ALJ to control the hearing.

A. **Opening the hearing:** The HSD administrative hearing is opened by the assigned ALJ. All individuals present at the hearing must identify themselves for the record, including when the claimant or the claimant's authorized representative has other representation or legal counsel to assist him or her during the HSD administrative hearing. The ALJ shall explain his or her role in conducting the HSD administrative hearing that he or she will submit the record of the HSD administrative hearing to the MAD director and that the final decision of the HSD administrative hearing will be made by the MAD director or designee after review of the record of the HSD administrative hearing.

B. **Order of testimony:** The order of testimony is described, and the oath is administered to all who will testify at the HSD administrative hearing. Because the burden of proof is with MAD, it is at the claimant or the claimant's authorized representative's discretion to call witnesses or to present evidence. The order of testimony at the HSD administrative hearing is as follows:

(1) opening statements of parties, authorized representatives, or designees, or if the claimant or the claimant's authorized representative through a signed statement has identified a designated spokesperson or legal counsel to assist him or her during the HSD administrative hearing process;

(2) presentation of MAD's case; if witnesses are called, the order of examination of each witness is:

(a) examination by MAD, its UR contractor, the MCO, or another MAD designee;

(b) cross examination by the claimant, the claimant's authorized representative, designated spokesperson, or his or her legal counsel; and

(c) MAD's opportunity to redirect the witness;

(3) presentation of the claimant's case is at the claimant or the claimant's authorized representative discretion, if witnesses are called, the order of examination of each witness is:

(a) examination by claimant or the claimant's authorized representative, designated spokesperson or legal counsel;

(b) cross examination by MAD, its UR contractor, the MCO or another MAD designee; and

(c) the claimant, claimant's authorized representative or designated spokesperson, or legal counsel's opportunity to redirect the witness;

(4) presentation of rebuttal evidence by MAD, its UR contractor, the MCO or another designee and the claimant or the claimant's authorized representative, designated spokesperson or legal counsel respectively;

(5) the ALJ may direct further questions to any of the parties to the HSD administrative hearing to clarify inconsistencies or obtain an adequate evidentiary record; and

(6) the ALJ may ask specific parties to summarize and present closing arguments.

C. **Points of law:** The ALJ may direct the parties who have legal counsel to submit memoranda on points of law to assist the ALJ develop the HSD administrative hearing record and recommendation letter. The ALJ may dictate the length and scope of these submissions.

D. **Written closing argument:** At the discretion of the ALJ, the parties may be directed to make closing arguments, or submit written memoranda on points of law.

E. **Continuance:** The ALJ may, at his or her discretion, continue the HSD administrative hearing upon the request of the parties to the HSD administrative hearing or the ALJ's own motion, to allow for the admission of additional testimony or evidence. The

reasons for the continuance must be clearly stated for the record. Written notice of the date, time, and place of the continued HSD administrative hearing shall be sent to the parties if they are not set at the time of the approval of the continuance.

F. **Additional evidence:** If the ALJ requires additional evidence to further clarify documentary evidence presented during the HSD administrative hearing, he or she may close the HSD administrative hearing but keep the record open and direct the parties to submit such clarifying evidence. The assigned ALJ shall provide each party to the HSD administrative hearing with a copy of the direction for further evidence and the documentary evidence to be submitted. Any party may respond to the ALJ's direction, in writing, within 10 calendar days of its receipt of the ALJ's notice. The ALJ will provide the other parties to the HSD administrative hearing a copy of any such submissions and the additional evidence and responses, subject to the ALJ's discretion and appropriate objections by any of the parties to the HSD administrative hearing, shall become part of the HSD administrative hearing record.

G. **Re-opening a closed HSD administrative hearing:** The ALJ, at his or her discretion or subject to an order from a court of competent jurisdiction, may re-open a closed HSD administrative hearing when the evidentiary record fails to address an issue that is relevant to resolution of the HSD administrative hearing request. Written notice of the date, time and place of the re-opened HSD administrative hearing shall be sent by the ALJ to the parties not less than 10 calendar days before the re-opened HSD administrative hearing. Once the MAD director or designee has issued a HSD administrative final decision, the HSD administrative hearing cannot be re-opened absent an order from a court of competent jurisdiction. A claimant or the claimant's authorized representative may request a new HSD administrative hearing if additional material information becomes available that was not available at the time of the first HSD administrative hearing. The previously assigned ALJ has the discretion to determine if the additional information would necessitate a new HSD administrative hearing.

[8.352.2.16 NMAC - Rp, 8.352.2.18 NMAC, 6-15-14]

8.352.2.17 HSD ADMINISTRATIVE HEARING FINAL DECISION: The final decision concerning the HSD administrative hearing is made by the MAD director or designee after the review of the HSD administrative hearing record and the ALJ's recommendation. If the ALJ had rendered a decision to dismiss a HSD administrative hearing request, that decision becomes the HSD administrative hearing final decision and the following process detailed in this section of the rule does not apply.

A. **Decision based on the record:** The ALJ's HSD administrative hearing recommendation must be based solely on the record of the HSD administrative hearing.

B. **ALJ recommendation:** The ALJ shall review the record of the HSD administrative hearing and submit a complete copy of the record to the MAD director.

(1) Content of the ALJ recommendation: the ALJ shall specify the reasons for his or her conclusions, identifies the supporting evidence, references the pertinent federal and state statutes, regulations, and NMAC rules, and responds to the arguments of the parties within his or her written report.

(2) The ALJ recommends:

(a) in favor of the claimant if MAD, its UR contractor or the MCO's intended or taken adverse action is not supported by a preponderance of the evidence submitted during the HSD administrative hearing. The ALJ will provide specific recommendations to each appealed adverse action;

(b) in favor of MAD, if the preponderance of evidence submitted during the HSD administrative hearing supports the intended or taken of adverse action or actions; or

(c) any other result supported by the record of the HSD administrative hearing which may be a combination of recommendations for and against the claimant or MAD. If the HSD administrative hearing covered a number of services or components of a service, the ALJ will provide specific recommendations to each intended or taken adverse action.

C. **Review of the record:** The record of the HSD administrative hearing and the report and recommendation of the ALJ is reviewed by the MAD director or designee to ensure conformity with applicable federal and state statutes, regulations, and rules.

D. **Final decision:** The ALJ's recommendation may be adopted or rejected in a final written decision by the MAD director or designee on issues that were the subject of the HSD administrative hearing. The MAD director's final decision letter shall specify the reasons for his or her decision and identify the regulatory authority and those portions of the record, applicable federal and state law, rules and policies or any combination of these that support the final decision. No person who participated during the HSD administrative hearing process may participate in arriving at a HSD administrative hearing final decision.

E. **Notice to parties:** MAD shall promptly provide all parties with a copy of the HSD administrative hearing final written decision. When the claimant is represented by legal counsel or an authorized representative, each must receive a copy of the final decision. The HSD administrative hearing final decision letter shall include an explanation that the parties have exhausted all HSD administrative remedies and a claimant or the claimant's authorized representative may pursue judicial review of this decision.

[8.352.2.17 NMAC - Rp, 8.352.2.19 NMAC, 6-15-14]

8.352.2.18 CONTINUATION OF BENEFITS PURSUANT TO A TIMELY APPEAL AND A HSD ADMINISTRATIVE HEARING PROCEEDING: A continuation of an existing benefit is provided to a claimant who is not a member of a MCO when the claimant requests a continuation of the benefit through MAD or its UR contractor as directed on the claimant's notice of action within 10 calendar days of the mailing of the MAD or its UR contractor's notice of action. A continuation of the benefit is provided to a member who requests a continuation of the benefit through his or her MCO within 10 calendar days of the mailing of the MCO's notice of action. The MAD, its UR contractor or the MCO's notice of action will include information on the rights to the continued benefit and on the claimant or member's responsibility for repayment if the MCO final appeal decision and, as applicable, the HSD administrative hearing decision is not in his or her favor. The continuation of a benefit is only available to a member or claimant that is currently receiving the appealed benefit. The continuation of the benefit will be the same as the member or claimant's current allocation, budget or LOC.

[8.352.2.18 NMAC - Rp, 8.352.2.20 NMAC, 6-15-14]

8.352.2.19 IMPLEMENTATION OF THE HSD ADMINISTRATIVE FINAL DECISION: The HSD administrative hearing final decision is binding on all issues that have been the subject of the HSD administrative hearing as to the claimant unless stayed by either a court order or by the MAD director or designee. MAD is responsible for ensuring that the HSD administrative hearing final decision is fulfilled.

A. If the claimant is a member and he or she received a benefit under his or her approved continuation of

the benefit and the decision is favorable to the MCO, the claimant's MCO will take action to file a repayment claim to the claimant or the claimant's authorized representative for the services received during the MCO appeal and the HSD administrative hearing process up to the date of the HSD administrative hearing final decision. The claimant is responsible for repayment to his or her MCO the amount of paid claims for the continuation of the benefit beginning on the first date of service of the claimant's approved continuation of the benefit up to and including the date of the HSD administrative hearing final decision. The claimant's MCO is charged with the collection of this amount. The repayment amount must be used by the claimant's MCO to benefit its members.

B. If the claimant is not enrolled in a MCO and the HSD administrative hearing final decision is favorable to MAD or its UR contractor, MAD will take action to file a repayment claim to the claimant or the claimant's authorized representative for the services received during the HSD administrative hearing process up to the date of the HSD administrative hearing final decision.

C. When the HSD administrative hearing final decision is favorable to the claimant, MAD, its UR contractor or MCO will authorize the benefit and coverage set forth in the HSD administrative hearing final decision.

D. A request for a HSD administrative hearing concerning the MAD or MCO repayment claim is limited to alleging errors in how the repayment amount was determined. The HSD final administrative hearing decision serves as the claimant's notice of action from either the MCO or MAD to start collection proceedings.

[8.352.2.19 NMAC - Rp, 8.352.2.21 NMAC, 6-15-14]

8.352.2.20 JUDICIAL APPEAL: If the HSD administrative hearing final decision upholds MAD, its UR contractor or the MCO's intended or taken adverse action, the claimant or the claimant's authorized representative has the right to pursue judicial review of the HSD administrative hearing final decision and is notified of that right in the HSD administrative final decision letter. Judicial appeals for the HSD administrative hearing final decision are governed by New Mexico statutes and court rules. While the following subsections highlight applicable procedures, they should not be considered a substitute for examining the statutes and rules themselves.

A. **Jurisdiction:** Administrative appeals for a claimant are governed by the Section 39-3-1.1 NMSA 1978 and by Rule 1-074, Rules of Civil Procedures for the District Courts.

B. **Timeliness:** Unless otherwise provided by law, a claimant or the claimant's authorized representative must appeal the HSD administrative hearing final decision within 30 calendar days of the date of the HSD administrative hearing final decision by filing a notice of appeal with the clerk of the appropriate New Mexico district court.

C. **Jurisdiction and standard of review:** All judicial appeals are based on the record made at the HSD administrative hearing, and in accordance with state statute and court rules. HSD files a copy of the HSD administrative hearing record with the court clerk and furnishes one copy to the claimant or the claimant's authorized representative and if applicable, his or her legal counsel within 30 calendar days after receipt of the notice of appeal. The court may set aside the HSD administrative hearing final decision if it finds the decision is:

(1) arbitrary, capricious, or an abuse of discretion;

(2) is not supported by substantial evidence in the record as a whole; or

(3) is otherwise not in accordance with the applicable law, statutes or rules.

D. **Benefits pending state district court appeal:** The filing of a notice of appeal shall not stay the enforcement of the HSD administrative hearing final decision. The claimant or the claimant's authorized representative may seek a stay upon a motion to the court or the claimant may request the MAD director or designee to stay the HSD administrative hearing final decision while the adverse action is on appeal in a New Mexico district court. If the court orders a stay, MAD, it UR contractor or the MCO will maintain the benefit at issue in accordance with the state district court's order. If the New Mexico district court's final decision is in favor of MAD, its UR contractor or the MCO and the claimant continued utilizing his or her benefit during the district court appeal process, see 8.352.2.19 NMAC for the repayment process.

[8.352.2.20 NMAC - Rp, 8.352.2.22 NMAC, 6-15-14]

HISTORY OF 8.352.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

SP-004.0200 Section 4, General Program Administration Hearing For Applicants, 1-23-81

SP-004.2800 Section 4, General Program Administration Appeals Process For Skilled Nursing Facilities And Intermediate Care Facilities, 3-5-81

NMAC History: 8 NMAC 4.MAD.970 Oversight Policies, Recipient Hearing Policies, Recipient Hearings, 10-16-96

8 NMAC 4.MAD.970 Oversight Policies, Recipient Hearing Policies, Recipient Hearings; 12-15-99.

History of Repealed Material:

8.352.2 NMAC, Recipient Hearings, filed 6-15-01 - Repealed effective, 1-1-14.

8.352.2 NMAC, Claimant Hearings, filed 12-17-13 - Repealed effective, 6-15-14.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.227.600 NMAC, Section 9, effective July 1, 2014.

8.227.600.9 BENEFIT DESCRIPTION: When a JUL medicaid assistance unit receives medicaid in three of the most recent six months, and loses medicaid wholly or in part due to new or increased child or spousal support, the assistance unit is eligible for transitional medicaid for four calendar months. A medicaid eligible recipient under this category is eligible to receive the full range of medicaid covered services. [~~Effective January 1, 2014, the loss of JUL family medicaid from increased child or spousal support will not qualify recipients for transitional medicaid.~~] The eligibility requirements for transitional medicaid effective January 1, 2014 can be found in 8.297.400 NMAC.

[8.227.600.9 NMAC - Rp, 8.227.600.9 NMAC, 1-1-14; A, 7-1-14]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.228.600 NMAC, Section 9, effective July 1, 2014.

8.228.600.9 BENEFIT DESCRIPTION: When a JUL medicaid assistance unit loses medicaid due to earnings, the assistance unit is eligible for transitional medicaid for 12 calendar months. A medicaid eligible recipient under this category is eligible to receive the full range of medicaid covered services. [~~Effective January 1, 2014 the loss of JUL medicaid from increased earnings from employment does not qualify recipients for transitional medicaid.~~] The eligibility requirements for transitional medicaid effective January 1, 2014 can be found in 8.298.400 NMAC.

[8.228.600.9 NMAC - Rp, 8.228.600.9 NMAC, 1-1-14; A, 7-1-14]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.291.410 NMAC, Section 15, effective July 1, 2014.

8.291.410.15 RESIDENCE: To be eligible for medicaid, applicants or recipients must be living in New Mexico on the date of application or final determination of eligibility and have demonstrated an intention to remain in the state.

A. Establishing residence: Residence in New Mexico is established by living in the state and carrying out the types of activities associated with day-to-day living, such as occupying a home, enrolling child(ren) in school, getting a state driver's license, or renting a post office box. An applicant or recipient who is homeless is considered to have met the residence requirements if he or she intends to remain in the state.

B. Recipients receiving benefits out-of-state: Applicants or recipients who receive financial or medical assistance in another state which makes residence in that state a condition of eligibility are considered residents of that state until the ISD office receives verification from the other state agency indicating that it has been notified by an applicant or recipient of the abandonment of residence in that state.

C. Individuals court ordered into full or partial responsibility of the state children youth and families department (CYFD): When CYFD places a child in a new state of residence, the new state of residence is responsible for the provision of medicaid; however, New Mexico must provide limited coverage for services that are part of the New Mexico medicaid benefit package and not available in the new state of residence.

D. Abandonment: Residence is not abandoned by temporary absences. Temporary absences occur when recipients leave New Mexico for specific purposes with time-limited goals. An individual may be temporarily absent from the state if the person intends to return when the purpose of the absence has been accomplished, unless another state has determined the individual is a resident there for purposes of medicaid. Residence is considered abandoned when the applicant or recipient leaves New Mexico for any of the following reasons:

(1) intends to establish residence in another state;

(2) for no specific purpose with no clear intention of returning;

(3) applies for financial, food or medical assistance in another state which makes residence in that state a condition of eligibility; or

(4) for more than 30 days, without notifying HSD of his or her departure or intention of returning.

E. Dispute in residency: If there is a dispute in state residency, the individual may be considered a resident in the state in which the individual is physically located.

[8.291.410.15 NMAC - Rp, 8.291.410.15 NMAC, 1-1-14; A, 7-1-14]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.291.430 NMAC, Section 11, effective July 1, 2014.

8.291.430.11 INCOME STANDARD FOR PREGNANT WOMEN AND PARENT CARETAKER ELIGIBILITY: This part contains the fixed monthly standard for individuals eligible for pregnant women and parent caretaker medicaid:

HOUSEHOLD SIZE	MONTHLY INCOME LIMIT
1	$451
2	$608
3	$765
4	$923
5	$1,080
6	$1,238
7	$1,395
8	$1,553
+1	$158

[8.291.430.11 NMAC - Rp, 8.291.430.11 NMAC, 1-1-14; A, 7-1-14]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.293.500 NMAC, Sections 10 and 13, effective July 1, 2014.

8.293.500.10 INCOME STANDARD:

A. Financial eligibility: An individual's financial eligibility is based on the rules in this chapter and 8.291.430 NMAC.

B. Income test: In order to become eligible for pregnant women medicaid, the total countable income of the budget group must be less than [~~138 percent of the FPL~~] the income standard for pregnant woman eligibility found [~~at~~] in 8.291.430 NMAC.

[8.293.500.10 NMAC - Rp, 8.293.500.10 NMAC, 1-1-14; A, 7-1-14]

8.293.500.13 DISREGARDS: [~~Disregards are not applicable for this eligibility group.~~] An income disregard according to 8.291.430 NMAC will be given only to individuals whose countable modified adjusted gross income (MAGI) exceeds the fixed dollar amount for the size of the budget group.

[8.293.500.13 NMAC - Rp, 8.293.500.13 NMAC, 1-1-14; A, 7-1-14]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.308.14 NMAC, Section 9, effective June 15, 2014.

8.308.14.9 COST SHARING IN MEDICAID MANAGED CARE PROGRAM: The medical assistance division (MAD) imposes cost-sharing (out-of- pocket) provisions on certain members and on certain services. Cost-sharing includes co-payments, coinsurance, deductibles, and other similar charges. The member's HSD contracted managed care organization (MCO) is required to impose the following co-payments as directed by MAD and in accordance with federal regulations.

A. **General requirements regarding cost sharing:**

(1) The MCO or its contracted providers may not deny services for a

member's failure to pay the co-payment amounts.

(2) The MCO must take measures to educate and train both its contracted providers and members on cost-sharing requirements, and must include, at a minimum:

(a) educating and working with the MCO's hospital providers on the requirements related to non-emergency utilization of the emergency department (ED); and

(b) for co-payments required in the case of a non-emergency utilization of an ED (an unnecessary use of services) the hospital is required, before imposing cost sharing, to provide the member with a name of and location of an available and accessible provider that can provide the service with lesser or no cost sharing and provide a referral to coordinate scheduling; if geographical or other circumstances prevent the hospital from meeting this requirement, the cost sharing may not be imposed.

(3) The MCO shall not impose cost-sharing provisions on certain services that, in accordance with federal regulations, are always exempt from cost-sharing provisions. See CFR 447.56, *Limitations on Premiums and Cost Sharing,* 8.200.430 NMAC and 8.302.2 NMAC.

(4) The MCO shall not impose cost-sharing provisions on certain member populations that, in accordance with federal and state regulations and rules, are exempt from cost-sharing provisions. The MCO and its contracted providers are required to impose co-payments on its members in the case of unnecessary utilization of specific services as outlined in Subsection B of Section 9 of this rule, unless the eligible recipient is exempt from the copayments; see Subsection B of Section 10 of this rule.

(5) Payments to MCO contracted providers: In accordance with 42 CFR 447.56, *Limitations on Premiums and Cost Sharing* and New Mexico state statute 27-2-12.16:

(a) the MCO must reduce the payment it makes to a non-hospital contracted provider by the amount of the member's applicable cost sharing obligation, regardless of whether the provider has collected the payment or waived the cost sharing; and

(b) the MCO must not reduce the payment it makes to a contracted hospital provider by the amount of the member's cost sharing obligation if the contracted hospital provider is not able to collect the cost sharing obligation from the member.

(6) At the direction of MAD, the MCO must report all cost-sharing amounts collected.

(7) The MCO may not impose more than one type of cost sharing for any service, in accordance with 42 CFR 447.52.

(8) The MCO must track, by month, all co-payments collected from each individual member in the household family to ensure that the family does not exceed the aggregate limit (cap). The cap is five percent of countable family income for all individual members in a household family calculated as applicable for a[~~month~~] quarter. The MCO must be able to provide each member, at his or her request, with information regarding co-payments that have been applied to claims for the member.

(9) The MCO must report to the provider when a copayment has been applied to the provider's claim and when a copayment was not applied to the provider's claim. The MCO shall be responsible for assuring the provider is aware that:

(a) the provider shall be responsible for refunding to the member any copayments the provider collects after the eligible recipient has reached the co-payment cap (five percent of the eligible recipient's family's income, calculated on a [~~monthly~~] quarterly basis) which occurs because the MCO was not able to inform the provider of the exemption from copayment due to the timing of claims processing;

(b) the provider shall be responsible for refunding to the member any copayments the provider collects for which the MCO did not deduct the payment from the provider's payment whether the discrepancy occurs because of provider error or MCO error; and

(c) failure to refund a collected copayment to a member and to accept full payment from the MCO may result in a credible allegation of fraud, see 8.351.2 NMAC.

B. **Unnecessary utilization of services co-payments:** The use of a brand name prescription drug in place of a generic therapeutic equivalent on the PDL and the utilization of the emergency room for non-ED services are both considered to be unnecessary utilization of services. Some members are exempt from copayments for unnecessary utilization of services.

(1) When a member obtains a brand name prescription drug in place of a generic therapeutic equivalent on his or her MCO's PDL, the MCO and dispensing pharmacy must impose a co-payment in the amount specified by MAD for the member, unless the member is exempt from copayments for unnecessary utilization of services or the use of the drug does not meet the definition for unnecessary utilization of a brand name drug as defined in this section. The MCO is responsible for determining when this unnecessary utilization of service has taken place and if so, the dispensing pharmacy is responsible for collecting the co-payment from the member.

(2) The unnecessary utilization of a brand name drug shall not apply to legend drugs that are classified as psychotropic drugs for the treatment of behavioral health conditions. Minor tranquilizers, sedatives, hypnotics and stimulants to treat attention deficit disorders are not considered psychotropic medications for the purpose of this provision.

(3) The MCO shall develop a co-payment exception process, to be prior approved by MAD, for legend drugs when generic alternatives are not tolerated by a member.

[8.308.14.9 NMAC - N, 1-1-14; A, 6-15-14]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.5 NMAC, Sections 7, 10, 11, 13, 14, 15, 16, 17, 18, 19 and 20, effective June 15, 2014.

8.314.5.7 DEFINITIONS:

A. **Activities of daily living (ADLs):** Those activities associated with a person's daily functioning.

B. **Individual service plan (ISP):** A treatment plan for an eligible recipient that includes the eligible recipient's needs, functional level, intermediate and long range goals, statement for achieving the goals and specifies responsibilities for the care needs. The plan determines the services allocated to the eligible recipient within program allowances.

C. **Person centered planning:** addresses health and long-term services and support needs in a manner that reflects individual preferences and goals.

D. **SIS sum ABE:** refers to the sum of the standards scores from supports intensity scale (SIS) Section 1. support needs scale, part A: home living activities; part B: community living activities; and part E: health and safety activities.

[~~D.~~] E. **Supports intensity scale (SIS):** A standardized assessment tool that provides a reliable framework to quantify the support needs of individuals with developmental disabilities.

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

[8.314.5.7 NMAC - N, 11-1-12; A, 6-15-14]

8.314.5.10 ELIGIBLE PROVIDERS:

A. Health care to [~~New~~

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

B. Eligible providers must be approved by the department of health/developmental disabilities support division (DOH/DDSD) or its designee and have an approved MAD [~~provider participation agreement~~] PPA as a developmental disabilities waiver (DDW) provider.

C. MAD through its designee, DOH/DDSD, follows a subcontractor model for certain DDW services. A provider agency, following the DOH/DDSD model, must ensure the subcontractors or employees meet all required qualifications. Provider agencies must provide oversight of subcontractors and employees to ensure subcontractors or employees meet all required MAD and DOH/DDSD qualifications. There must be oversight of subcontractors and employees by the provider agency to ensure the services are delivered in accordance with the all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW services standards and the [~~MAD~~] applicable NMAC rules. Pursuant to federal regulations, an agency may not employ or subcontract with the spouse or the parent of a minor child receiving services to provide direct care services for the their spouse or minor child.

D. **Qualifications of case management agency providers:** Case management providers must comply with all accreditation policies and requirements set forth by the DOH/DDSD, DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Case management providers must ensure that all case managers, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD and its DDW service standards and the [~~MAD~~] applicable NMAC rules. Case management providers must ensure that case managers meet the following qualifications:

(1) one year clinical experience, related to the target population; and

(2) one of the following:

(a) social worker licensure as defined by the NM board of social work examiners; or

(b) registered nurse licensure as defined by the NM board of nursing; or

(c) bachelor's or master's degree in social work, psychology, counseling, nursing, special education, or closely related field;

(3) training requirements as specified by [~~DDSD/DOH~~] DOH/DDSD; and

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

E. **Qualifications of respite provider agencies:** Respite provider agencies must comply with DOH/DDSD accreditation policy and all requirements set forth by the DOH/DDSD service definition, all requirements outlined in the DDW service standards, and the [~~MAD~~] applicable NMAC rules. Respite provider agencies must ensure that all direct support personnel, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD and in its DDW service standards and the [~~MAD~~] applicable NMAC rules. Respite provider agencies and direct support personnel must:

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

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

(3) have written notification from [~~DOH~~] DOH/DDSD that he or she does not have a disqualifying conviction after submitting to the caregiver criminal history screening (CCHS).

F. **Qualifications of adult nursing provider agencies:** Adult nursing provider agencies must comply with all requirements set forth by DOH/DDSD, DDW service standards and all applicable state and federal laws and all medicaid rules. Adult nursing provider agencies must ensure that all nurses, whether subcontractors or employees, meet all qualifications set forth by the DOH/DDSD, and its DDW service standards and [~~MAD~~] applicable NMAC rules. Adult nursing provider agencies must ensure that all nurses, whether subcontractors or employees meet all qualifications set forth by the DOH/DSD service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Direct nursing services are provided by registered or practical nurses licensed by the New Mexico state board of nursing. Nurses must have a minimum of one year of supervised nursing experience, in accordance with the New Mexico Nursing Practice Act and must comply with all aspects of the New Mexico Nursing Practice Act, including requirements regarding delegation of specific nursing functions.

G. **Qualifications of therapy provider agencies:** Therapy provider agencies must comply with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Therapy provider agencies must ensure that all therapists including physical, occupational, and speech therapists, physical therapy assistants (PTAs) and certified occupational therapy assistants (COTAs) whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD and the [~~MAD~~] applicable NMAC rules and DDW service standards including relevant licensure or certification in their respective discipline from the New Mexico regulation and licensing department.

H. **Qualifications for community living supports provider agencies:** Living supports consist of family living and supported living. Living supports provider agencies must comply with accreditation policy and all requirements set forth by the DOH/DDSD, DDW service definition, all requirements outlined in the DDW service standards and the MAD rules. Living supports provider agencies must ensure that all direct support personnel meet all qualifications set forth by DOH/DDSD and its DDW service standards and [~~MAD~~] applicable NMAC rules. Living supports provider agencies and direct support personnel must: (a) comply with all training requirements as specified by DOH/DDSD; (b) have and maintain documentation of current CPR and first aid certification; and (c) have written

notification from DOH that he or she does not have a disqualifying conviction after submitting to the [~~caregiver criminal history screening~~] CCHS.

(1) Family living provider agencies must ensure that all direct support personnel, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD and its DDW service standards and the [~~MAD~~] applicable NMAC rules. The direct support personnel employed by or subcontracting with the provider agency must be approved through a home study completed prior to provision of services and conducted at subsequent intervals required of the provider agency.

(2) Supported living provider agencies must ensure that all direct support personnel meet all qualifications set forth by DOH/DDSD and the [~~MAD~~] applicable NMAC rules and its DDW service standards. Supported living provider agencies must employ or subcontract with at least one licensed registered nurse and comply with the New Mexico Nurse Practicing Act.

I. **Qualifications of customized community supports provider agencies:** Customized community supports provider agencies must comply with accreditation policy and all requirements set forth by the DOH/DDSD, DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. [~~Customized community supports providers must comply with all provisions of the performance based measure requirements.~~] Customized community supports provider agencies must ensure that all direct support personnel meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Customized community supports provider agencies and direct support personnel must:

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

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the [~~caregiver criminal history screening~~] CCHS.

J. **Qualifications of community integrated employment provider agencies:** Community integrated employment provider agencies must comply with the DOH/DDSD accreditation policy and all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW services standards and the [~~MAD~~] applicable NMAC rules. [~~Community integrated employment provider agencies must comply with all provisions of the performance based measure requirements.~~] Community integrated employment provider agencies must ensure that all direct support personnel meet all qualifications set forth by DOH/DDSD and the DDW service standards and [~~MAD~~] applicable NMAC rules. Community integrated employment provider agencies [~~and~~] direct support personnel must:

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

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the [~~caregiver criminal history screening~~] CCHS.

K. **Qualifications of behavioral support consultation provider agencies:** Behavioral support consultation provider agencies must comply with all requirements set forth by the DOH/DDSD, DDW service standards and [~~MAD~~] applicable NMAC rules. Behavioral support consultation provider agencies must ensure that all behavioral support consultants, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

(1) Providers of behavioral support consultation services must be currently licensed in one of the following professions and maintain that licensure by the NM appropriate board or licensing authority:

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

[~~(b) a licensed psychiatrist; or~~]

[~~(c)~~] (b) a licensed clinical psychologist; or

[~~(d)~~] (c) a licensed psychologist associate, (masters or Ph.D. level); or

[~~(e)~~] (d) a licensed independent social worker (LISW); or

[~~(f)~~] (e) a licensed master social worker (LMSW); or

[~~(g)~~] (f) a licensed professional clinical counselor (LPCC); or

[~~(h) a licensed professional counselor (LPC); or~~

~~(i) a licensed psychiatric nurse (MSN/RNCS); or~~]

[~~(j)~~] (g) a licensed marriage and family therapist (LMFT); or

[~~(k)~~] (h) a licensed practicing art therapist (LPAT).[; or]

[~~(l)~~] (2) Other related licenses and qualifications may be considered with DOH/DDSD prior written approval.

[~~(2)~~] (3) Providers of behavioral support consultation must have a minimum of one year of experience working with [~~persons with developmental disabilities~~] individuals with intellectual disabilities (IID).

[~~(3)~~] (4) Behavioral support consultation providers must receive training in accordance with [~~DDSD~~] DOH/DDSD training policy.

L. **Qualifications of nutritional counseling provider agencies:** Nutritional counseling provider agencies must comply with all requirements set forth by DOH/DDSD DDW service definitions, all requirements outlined in the DDW service standards and [~~MAD~~] applicable NMAC rules. Nutritional counseling provider agencies must ensure that all nutritional counseling providers, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Nutritional counseling providers must be registered as dietitians by the commission on dietetic registration of the American dietetic association and licensed in New Mexico as a nutrition counselor.

M. **Qualifications of environmental modification provider agencies:** Environmental modification contractors must be bonded, licensed by the state of New Mexico and authorized to complete the specified project. Environmental modification provider agencies must comply with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Environmental modification provider agencies must meet all qualifications set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. All services shall be provided in accordance with applicable federal, state and local building codes.

N. **Qualifications of crisis supports provider agencies:** Crisis supports provider agencies must comply with all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Crisis supports provider agencies must ensure that direct support personnel, whether subcontractors or employees, meet all qualifications set forth by the DOH/DDSD and the DDW service standards. Crisis supports provider agencies and direct support personnel must:

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

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the [~~caregiver criminal history screening~~] CCHS.

O. **Qualifications for non-medical transportation provider agencies:** Non-medical transportation provider agencies must comply with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Non-medical transportation provider agencies must ensure that all transportation provider agencies meet all qualifications set forth by DOH/DDSD DDW definition, all requirements outlined in the DDW service standards and [~~MAD~~] applicable NMAC rules. Non-medical transportation provider agencies and direct support personnel must:

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

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the [~~caregiver criminal history screening~~] CCHS.

P. **Qualifications of supplemental dental care provider agencies:** Supplemental dental care provider agencies must comply with all requirements set forth by the DOH/DDSD, DDW service standards and all applicable state and federal laws. Supplemental dental care providers must contract with New Mexico licensed dentists and dental hygienists who are licensed as per New Mexico regulation and licensing department, 61-5A-1 et seq., NMSA 1978. The supplemental dental care provider will ensure that a licensed dentist per New Mexico regulation and licensing provides the oral examination; ensure that a dental hygienist certified by the New Mexico board of dental health care provides the routine dental cleaning services; demonstrate fiscal solvency; and will function as a payee for the service.

Q. **Qualifications of assistive technology purchasing agent providers and agencies:** Assistive technology purchasing agent providers and agencies must comply with all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

R. **Qualifications of independent living transition service provider agencies:** Independent living transition service provider agencies must comply with all requirements and must meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

S. **Qualifications of** personal support technology/on-site response service provider agencies: Personal support technology/on-site response service provider agencies must comply and must meet all qualifications with all requirements set forth by DOH/DDSD DDW service definition and all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Personal support technology/on-site response service provider agencies must comply with all laws, rules, and regulations from the federal communications commission (FCC) for telecommunications.

T. **Qualifications of** preliminary risk screening and consultation related to inappropriate sexual behavior provider agencies: Preliminary risk screening and consultation related to inappropriate sexual behavior provider agencies must comply with all requirements set forth by the DOH/DDSD, DDW service standards and all applicable state and federal laws. Preliminary risk screening and consultation related to inappropriate sexual behavior provider agencies must meet all qualifications set forth by the DOH/DDSD and the DDW service standards. Preliminary risk screening and consultation related to inappropriate sexual behavior provider agencies must have a current independent practice license through a board of the New Mexico regulation and licensing department in a counseling or counseling-related field (e.g., counseling and therapy practice, psychologist examiners, social work examiners), and a master's or doctoral degree in a counseling or counseling-related field from an accredited college or university. Preliminary risk screening and consultation related to inappropriate sexual behavior provider agencies must comply with all training requirements as specified by DOH/DDSD.

U. **Qualifications of socialization and sexuality education provider agencies:** Socialization and sexuality education provider agencies must comply with all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Socialization and sexuality education provider agencies must meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Socialization and sexuality education provider agencies must have one of the following providers rendering the service:

(1) a master's degree or higher in psychology;

(2) a master's degree or higher in counseling;

(3) a master's degree or higher in special education;

(4) a master's degree or higher in social work;

(5) a master's degree or higher in a related field;

(6) a New Mexico registered nurse or as a licensed practical nurse;

(7) a bachelor's degree in special education;

(8) hold a certification in special education; and

(9) been approved by the DDS office of behavioral services as a socialization and sexuality education provider; and

(10) must meet training requirements as specified by DDSD.

V. **Qualifications of customized in-home supports provider agencies:** The customized in-home supports provider agencies must comply with DOH/DDSD accreditation policy and all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Customized in-home supports provider agencies must ensure that all direct support personnel, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Customized in-home supports provider agencies and direct support personnel must:

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

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the [~~caregiver criminal history screening~~] CCHS.

W. **Qualifications of intense medical living supports provider agencies:** Intense medical living supports provider agencies must comply with the accreditation policy and all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Intense medical living supports provider agencies must employ or subcontract with at least one licensed registered nurse by the New Mexico state board of nursing. Nurses must have a minimum of one year of supervised nursing experience, in accordance with the New Mexico Nursing Practice Act. Intense

medical living supports provider agencies must ensure that all direct support personnel meet all qualifications set forth by the DOH/DDSD, DDW service standards and [~~MAD~~] applicable NMAC rules. Intense medical living supports provider agencies and direct support personnel must:

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

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the [~~caregiver criminal history screening~~] CCHS.

[8.314.5.10 NMAC - Rp, 8.314.5.10 NMAC, 11-1-12; A, 6-15-14]

8.314.5.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to a medicaid or other health care programs eligible recipient must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD [~~provider participation agreement~~] PPA. A provider also must conform to [~~MAD program~~] NMAC rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services.

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

C. When services are billed to and paid by a MAD fee-for-service coordinated services contractor authorized by HSD, under an administrative services contract, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services. See 8.302.1 NMAC[~~, *General Provider Policies*~~].

[8.314.5.11 NMAC - Rp, 8.314.5.11 NMAC, 11-1-12; A, 6-15-14]

8.314.5.13 RECIPIENT STANDARDIZED ASSESSMENT:

A. DOH/DDSD shall utilize the supports intensity scale (SIS) to assess the needs of all adult recipients transitioning into the waiver and of adults who are new allocations into the waiver, to conduct assessments on each recipient every three years thereafter. The SIS assessment shall be administered to eligible recipients who are 17 years of age or older and will be at least 18 years of age at the time of their individual service plan (ISP) start date. The SIS quantifies the pattern and intensity of support needs of an eligible recipient with intellectual or developmental disabilities by obtaining information about the needs of each eligible recipient through an assessment process. Supplemental questions related to exceptional behavior and exceptional medical support needs are asked at the end of the SIS assessment.

B. The SIS assessment shall be scheduled 30-90 days prior to the individual's individual service plan begin date so that the interdisciplinary team can receive results and plan services accordingly. Recipients shall be offered options for dates and times to schedule the SIS assessment.

C. The SIS scheduling process shall include planning for accommodations, education about choice of respondents, and setting the time and location.

D. The person being assessed is strongly encouraged to be involved in the entire assessment but must at least meet the SIS interviewer.

E. At least two primary respondents who are usually primary caregivers and direct support professionals in residential and day service programs must attend the assessment. The individual being assessed can also be a primary respondent. Primary respondents are not required to have to have clinical expertise or professional degrees. Qualifications for primary respondents include:

(1) knowing the person for at least three months;

(2) recently observed the person in one or more settings at least several hours per setting; and

(3) having the ability to describe the individual's support needs.

F. A guardian or close family member are strongly encouraged and welcome to be involved and may or may not be a primary respondent.

G. The attendance of ancillary respondents is optional. Typically, medical, behavioral or therapy professionals may serve as ancillary respondents. They can provide clinical information that adds perspective particularly for individuals with complex support needs.

H. Standard guidelines for administering the SIS assessment include:

(1) the SIS assessor is trained and certified to provide SIS assessments;

(2) the SIS assessor provides information to the primary and secondary respondents about the SIS assessment process prior to starting the assessment;

(3) the SIS assessment is conducted face to face;

(4) the SIS assessor met the individual (DDW participant);

(5) each question in the assessment is explained to respondents prior to it being scored;

(6) each question is asked and discussed during the assessment;

(7) the final score of each question is shared with the respondents; and

(8) medical and behavioral needs are discussed with the respondents.

I. An eligible recipient may request a SIS reassessment (prior to three year schedule) when:

(1) the recipient believes there is a substantial departure from standard guidelines for administering the SIS; and

(2) the recipient has experienced a change of condition that results in a significant change to the pattern and intensity of supports and services needed to maintain the health and safety of the eligible recipient.

J. SIS reassessments require the prior written approval of DOH/DDSD.

K. NM DDW groups A through G are assigned through standardized application of decision rules associated with select SIS scores, and when relevant, the supplemental question verification process.

(1) Medical support score refers to the total score in SIS section 3.A. titled: medical support needed.

(2) Behavior support score refers to the total score in SIS section 3.B. titled: behavioral support needed.

(3) Extraordinary medical risk is determined by verification of positive responses to supplemental questions through a document review by subject matter experts.

(4) Dangerousness to others or extreme self injury risk is determined by verification of responses to supplemental questions through a document review by two subject matter experts.

(5) Table identifying standard decision rules to define the NM DDW groups A through G:

[*See Table on page 267*]

New Mexico DDW groups	SIS sum ABE	SIS sum ABE national percentile	Section 3A medical support score	Section 3B behavior support score
A: Mild support needs and low to moderate behavioral challenges	≥ 0 to ≤ 24	25th percentile or less	≥ 0 to ≤ 6	≥ 0 ≤ to 6
B: Low to moderate support needs and behavioral challenges	≥ 25 to ≤ 30	26th to 50th percentile	≥ 0 to ≤ 6	≥ 0 to ≤ 6
C: Mild to above average support needs and moderate to above average behavioral challenges	≥ 0 to ≤ 36	1st to 75th percentile	≥ 0 to ≤ 6	≥ 7 to ≤ 10
D: Above average support needs and low to moderate behavioral challenges	≥ 31 to ≤ 36	51st to 75th percentile	≥ 0 to ≤ 6	≥ 0 to ≤ 6
E: High support needs and mild to above average behavioral challenges	≥ 37 to ≤ 55	76th percentile or greater	≥ 0 to ≤ 6	≥ 0 to ≤ 10
F: Extraordinary medical challenges	any	any	≥ 7 to ≤ 32 **OR** extraordinary medical risk	≥ 0 to ≤ 10
G: Extraordinary behavioral challenge	any	any	any	≥ 11 to ≤ 26 **OR** dangerousness to others or extreme self injury risk

L. Information from the SIS assessment can be used for person centered planning.

[8.314.5.13 NMAC - Rp, 8.314.5.13 NMAC, 11-1-12; 8.314.5.13 NMAC - N, 6-15-14]

[~~8.314.5.13~~] 8.314.5.14 COVERED WAIVER SERVICES: The program is limited to the number of federally authorized unduplicated recipient (UDR) positions and program funding. All covered services in an individual service plan (ISP) must be authorized and cannot exceed the allowable amount associated with the assigned service package. Covered services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. MAD covers the following services for a specified and limited number of waiver eligible recipients as a cost effective alternative to institutionalization in an ICF-IID.

[~~A. Assessment: DOH/DDSD utilizes the supports intensity scale (SIS) as its standardized assessment tool that is conducted for all recipients transitioning into the new waiver, new allocations into the waiver, and at least ever three years thereafter. The SIS assessment is applied to eligible recipients that are 18 years of age or older. The SIS provides a reliable framework to quantify the support needs of an eligible recipient with developmental disabilities. The SIS assessment obtains information about the needs of each eligible recipient, which may include an exceptional behavioral needs assessment and medical support needs assessment, as appropriate. A standardized algorithm (calculation) for home and community-based waivers is applied to the SIS score to determine the NM SIS group.~~

~~The results of the NM SIS group may be reviewed by a DOH verification team for quality assurance purposes.~~

~~(1) There are seven NM SIS groups, each has a benefit service package known as the service package. The service package consists of a base budget a professional service budget, other services budget that make up the total funding authorized in the eligible recipient's ISP. Services included in the service package for each NM SIS group are specified in the DDW service standards. The service package for each NM SIS group allows an eligible recipient flexibility to choose services to meet his/her needs within the maximum amount allowed in the service package assigned to the corresponding NM SIS group.~~

~~(2) An eligible recipient may request a subsequent SIS assessment (prior to three year schedule) based on a change of circumstances or condition that results in a significant change to the amount of supports and services needed to maintain the health and safety of the eligible recipient. A subsequent SIS will not be conducted unless approved by DOH/DDSD.~~

~~(3) Administration of the SIS assessments shall be reviewed by DOH/DDSD for the purpose of quality assurance.~~]

A. There are seven NM DDW groups (labeled A-G) each of which has a corresponding service package and budget. The service package for each NM DDW group is based on assessed need and consists of a base budget, a professional services budget, and other services budget that make up the total funding authorized in the eligible recipient's ISP. The service package for each of the seven NM DDW groups allows an eligible recipient flexibility to choose services to meet his or her needs within the maximum amount allowed in the service package assigned to the corresponding NM DDW group.

B. Covered waiver services by NM DDW group assignments:

NM DDW GROUP	BASE BUDGET ELIGIBILITY	PROFESSIONAL SERVICES
A: Mild support needs and low to moderate behavioral challenges	case management customized in-home supports: independent or family/natural supports including respite day services-including employment, customized community supports	physical therapy, speech therapy, occupational therapy- prioritize one discipline behavior support consultation
B: Low to moderate support needs and behavioral challenges	case management customized in-home supports: independent or family/natural supports including respite day services-including employment, customized community supports	physical therapy, speech therapy, occupational therapy- prioritize one discipline behavior support consultation
C: Mild to above average support needs and moderate to above average behavioral challenges	case management customized in-home supports, family living or supported living: independent or family/natural supports including respite day services- including employment, customized community supports	physical therapy, speech therapy, occupational therapy- prioritize one discipline behavior support consultation, increase to core hours
D: Above average support needs and low to moderate behavioral challenges	case management customized in-home supports, family living or supported living: independent or family/natural supports including respite day services- including employment, customized community supports	physical therapy, speech therapy, occupational therapy- prioritize two disciplines behavior support consultation
E: High support needs and mild to above average behavioral challenges	case management customized in-home supports, family living or supported living: independent or family/natural supports including respite day services-including employment, customized community supports	physical therapy, speech therapy, occupational therapy- three disciplines if clinical criteria met for each behavior support consultation

F: Extraordinary medical challenges	case management customized in-home supports, family living or supported living: independent or family/natural supports including respite, intensive medical living services day services- including employment, customized community supports	physical therapy, speech therapy, occupational therapy- three disciplines if clinical criteria met for each behavior support consultation
G: Extraordinary behavioral challenges	case management customized in-home supports, family living or supported living: family/natural supports including respite day services- including employment, customized community supports, individualized Intensive behavior customized community supports with prior approval	physical therapy, speech therapy, occupational therapy- prioritize two disciplines behavior support consultation, increase to core hours

C. Other services in the service standards are available to all NM DDW groups with prior authorization from the DDSD regional director:

(1) environmental modifications every five years;

(2) personal support technology;

(3) assistive technology;

(4) independent living transition;

(5) supplemental dental care, one visit per year;

(6) non-medical transportation, with caps applicable by mileage of passes;

(7) adult nursing;

(8) nutritional counseling;

(9) initial assessments for therapies and behavior support consultation;

(10) preliminary risk screening and consultation related to inappropriate sexual behavior;

(11) socialization and sexuality education, six classes per lifetime; and

(12) crisis supports.

D. Group H is reserved for individuals who have extenuating circumstances or extremely complex needs that may require services that exceed the service package options corresponding to the assigned NM DDW Group. Services outside of the maximum amount allowed in the services package assigned to the corresponding NM DDW group may be authorized for individuals through group H designation on a categorical basis as deemed appropriate by DDSD, on either a temporary (less than 90 days) or long term basis (greater than 90 days).

(1) Categorical group H assignment includes:

(a) individuals included in the class established in the matter of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990) are to receive categorical NM DDW group H approval, regardless of their NM DDW group assignment. Jackson class members may receive service types and amounts consistent with those approved in their ISP; and

(b) individuals assigned to DDW group A or B who are 55 or older and who have been receiving DDW supported living prior to March 1, 2013 may continue to receive supported living services if desired.

(2) The review process for temporary group H requests for service is as follows:

(a) the interdisciplinary team (IDT) convenes and determines the need for consideration for a temporary group H request by identifying the specific need or service, and number of units necessary;

(b) the IDT is responsible for first completing any prior authorization processes and obtaining the maximum amounts of services available within the current NM DDW group assignment;

(c) the case manager submits a group H request for services to the regional office (RO);

(d) the RO director or designee makes a determination based on criteria from the DDSD whether the request meets the definition of extenuating circumstances or extremely complex needs; once a determination on the review is made, the case manager or individuals legal representative will be notified of the decision in writing;

(e) if temporary group H request for services is approved by DDSD, the case manager shall submit a budget revision with the DDSD prior authorization to the third party assessor (TPA).

(3) The review process for long term group H requests for service is as follows:

(a) the IDT convenes and determines the need for consideration for a long term group H request by identifying the specific need or service, and number of units necessary;

(b) the IDT is responsible for first completing any prior authorization processes and obtaining the maximum amounts of services available within the current NM DDW group assignment;

(c) the case manager submits a group H request for services to the regional office;

(d) the RO director or designee makes a determination whether the request is appropriate for review by the group H committee for long term group H by verifying:

(i) the options within the individual's current NM DDW group assignment have been fully explored;

(ii) that generic/ natural resources to address the extenuating circumstance or complex need have been explored;

(iii) that the nature of the extenuating circumstance or complex need is anticipated to last longer than 90 days, and

(iv) that the individual's need for a long term group H request for services is not exclusively due to a significant change in condition that can otherwise be addressed through temporary group H assignment while waiting for a SIS reassessment;

(e) the group H review committee makes a determination based on criteria from the DDSD whether the request meets the definition of extenuating circumstances or extremely complex needs; once a determination is made, the case manager and the individual or individual's legal representative will be notified of the decision in writing;

(f) in the long term group H request for services is approved by DDSD, the case manager shall submit a budget revision with the DDSD prior authorizations to the TPA.

[~~B.~~] E. Services available in service packages:

(1) **Case management services:** Case management services assist eligible recipients to access medicaid waiver services and medicaid state plan services. Case managers also link the eligible recipient to needed medical, social, educational and other services, regardless of funding source. Waiver services are intended to enhance, not replace existing natural supports and other available community resources. Services will emphasize and promote the use of natural and generic supports to address the eligible recipient's assessed needs in addition to paid supports. Case managers facilitate and assist in assessment activities, as appropriate. Case management services are person-centered and intended to support eligible recipients in pursuing his or her desired life outcomes while gaining independence, and access to services and supports. Case management is a set of interrelated activities that are implemented in a collaborative manner involving the active participation of the eligible recipient, his or her designated representative/guardian, and the entire interdisciplinary team. The case manager is an advocate for the eligible recipient they serve, is responsible for developing the individualized service plan (ISP) and for ongoing monitoring of the provision of services included in the ISP. Case management services include but are not limited to activities such as: assessing needs; facilitating eligibility determination for persons with developmental disabilities; directing the service planning process; advocating on behalf of the eligible recipient; coordinating service delivery; assuring services are delivered as described in the individualized service plan (ISP); and maintaining a complete current central eligible recipient record (e.g. ISP, ISP budget, level of care documentation, assessments).

(a) Cost-effectiveness is a waiver program requirement mandated by federal policy; the fiscal responsibilities of the case manager include assuring cost containment by preventing the expense of waiver services from exceeding a maximum cost established by DOH and by exploring other options to address expressed needs.

(b) Case managers must evaluate and monitor direct service through face-to-face visits with the eligible recipient to ensure the health and welfare of the eligible recipient, and to monitor the implementation of the ISP.

(c) Case management services must be provided in accordance with the accreditation policy and with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and [~~MAD~~] applicable NMAC rules.

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

(3) **Adult nursing services:** Adult nursing services are provided by licensed registered nurses or licensed practical nurses to an eligible adult recipient. Adult nursing services are intended to support the highest practicable level of health, functioning and independence for a DDW eligible recipient age 21 and older with a variety of health conditions, except for an eligible recipient receiving nursing supports through supported living and intensive medical living services, where such nursing supports are included as part of the living service and addressed within those respective services standards. Any adult nursing service provided during the hours of customized community supports cannot be billed as a separate rate because nursing is included in the customized community supports rate. There are two categories of adult nursing services: (a) assessment and consultation services which include a comprehensive health assessment and basic nurse consultation of and with an eligible recipient; and (b) ongoing services, which require prior authorization and are tied to the eligible recipient's specific health needs revealed in the comprehensive health assessment.

(a) Adult nursing services support the delivery of professional nursing services in compliance with the New Mexico Nurse Practice Act and in accordance with professional standards of practice.

(b) Eligible children and youth recipients receive medically necessary nursing services through the medicaid state plan early periodic screening, diagnostic and treatment (EPSDT) program and are, therefore, not eligible for this service through the waiver.

(c) Adult nursing services for eligible recipients must be provided in accordance with [~~the accreditation policy and~~] all requirements set forth by DOH/ DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

(4) **Therapy services:** Therapy services are to be delivered consistent with the participatory approach philosophy and two models of therapy services (collaborative-consultative and direct treatment). These models support and emphasize increased participation, independence and community inclusion in combination with health and safety. Therapy services are designed to support achievement of ISP outcomes and prioritized areas of need identified through therapeutic assessment. Physical therapy (PT), occupational therapy (OT) and speech-language pathology (SLP) are skilled therapies that are recommended by an eligible recipient's interdisciplinary team (IDT) members and a clinical assessment that demonstrates the need for therapy services. Therapy services for eligible adult recipients require a prior authorization except for an initial assessment. A licensed practitioner, as specified by applicable state laws and standards, provides the skilled therapy services. Therapy services for eligible adult recipients must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. For therapy services, eligible children and youth recipients receive medically necessary nursing services through the medicaid state plan EPSDT benefits.

(a) **Physical therapy:** Physical therapy is a skilled licensed therapy service involving the diagnosis and management of movement dysfunction and the enhancement of physical and functional abilities. Physical therapy addresses the restoration, maintenance, and promotion of optimal physical function, wellness and quality of life related to movement and health. Physical therapy prevents the onset, symptoms and progression of impairments, functional limitations, and disability that may result from diseases, disorders, conditions or injuries. Licensed physical therapy assistant (PTA) may perform physical therapy procedures and related tasks pursuant to a plan of care/therapy intervention plan written by the supervising physical therapist

(b) **Occupational therapy:** Occupational therapy is a skilled, licensed therapy service involving the use of everyday life activities (occupations) for the purpose of evaluation, treatment, and management of functional limitations. Occupational therapy addresses physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being and quality of life. Certified occupational therapy assistants (COTAs) may perform occupational therapy procedures and related tasks pursuant to a therapy intervention plan written by the supervising occupational therapist (OT) and in accordance with the current NM Occupational Therapy Act. Occupational therapy services typically include:

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

(ii) evaluation and treatment for enhancement of performance skills;

(iii) health and wellness promotion;

(iv) environmental access and assistive technology evaluation and treatment; and

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

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

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

(ii) treat a specific condition clinically related to an intellectual developmental disability; or

(iii) improve or maintain the eligible recipient's ability to safely eat foods, drink liquids or manage oral secretions while minimizing the risk of aspiration or other potential injuries or illness related to swallowing disorders.

(5) **Living supports:** Living supports are residential habilitation services intended for NM DDW groups C-G that are individually tailored to assist an eligible recipient 18 years or older who is assessed to need daily support or supervision with the acquisition, retention, or improvement of skills related to living in the community to prevent institutionalization. Living supports include residential instruction intended to increase and promote independence and to support an eligible recipient to live as independently as possible in the community in a setting of his or her own choice. Living support services assist and encourage an eligible recipient to grow and develop, to gain autonomy, become self-governing and pursue their own interests and goals. Living support providers take positive steps to protect and promote the dignity, privacy, legal rights, autonomy and individuality of each eligible recipient who receives services. Services promote inclusion in the community and eligible recipients are afforded the opportunity to be involved in the community and actively participate using the same resources and doing the same activities as other community members. Living supports will assist an eligible recipient to access generic and natural supports and opportunities to establish or maintain meaningful relationships throughout the community. Living supports providers are responsible for providing an appropriate level of services and supports up to 24 hours per day, seven days per week. Room and board costs are reimbursed through the eligible recipient's SSI or other personal accounts and cannot be paid through the medicaid waiver. Living supports services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. Living supports consists of family living and supported living as follows.

(a) **Family living:** Family living is intended for an eligible recipient who is assessed to need residential habilitation to ensure health and safety while providing the opportunity to live in a typical family setting. Family living is a residential habilitation service that is intended to increase and promote independence and to provide the skills necessary to prepare an eligible recipient to live on his or her own in a non-residential setting. Family living services are designed to address assessed needs and identified individual eligible recipient outcomes. Family living is direct support and assistance to no more than two eligible recipients furnished by a natural or host family member, or companion who meets the requirements and is approved to provide family living services in the eligible recipient's home or the home of the family living direct care personnel. The eligible recipient lives with the paid direct support personnel. The provider agency is responsible for substitute coverage for the primary direct support personnel to receive sick leave and time off as needed. Home studies: The family living services provider agency shall complete all DOH/DDSD requirements for approval of each direct support personnel, including completion of an approved home study and training

prior to placement. After the initial home study, an updated home study shall be completed annually. The home study must also be updated each time there is a change in family composition or when the family moves to a new home. The content and procedures used by the provider agency to conduct home studies shall be approved by DDSD. Family living services: Family living can be provided to no more than two eligible recipients with developmental disabilities at a time. An exception may be granted by DOH/DDSD if three eligible recipients are in the residence, but only two of the three are on the waiver and the arrangement is approved by DOH/DDSD based on the home study documenting the ability of the family living services provider agency to serve more than two eligible recipients in the residence; or there is documentation that identifies the eligible recipients as siblings or there is documentation of the longevity of a relationship (e.g., copies of birth certificates or social history summary); documentation shall include a statement of justification from a social worker, psychologist, and any other pertinent professionals working with the eligible recipients. Family living services cannot be provided in conjunction with any other living supports service, respite, or nutritional counseling.

(b) **Supported living:** Supported living is intended for an eligible recipient who is assessed to need residential habilitation to ensure health and safety. Supported living is a residential habilitation service that is intended to increase and promote independence and to provide the skills necessary to prepare an eligible recipient to live on his or her own in a non-residential setting. Supported living services are designed to address assessed needs and identified individual eligible recipient outcomes. The service is provided to two to four eligible recipients in a community residence. Prior authorization is required from DOH/DDSD for an eligible recipient to receive this service when living alone. [~~When DOH/DDSD approves an eligible recipient utilizing the supports intensity scale (SIS) group G, the supported living providers will ensure that agency's direct support personnel receive individualized, eligible recipient specific behavior training and access ongoing behavior support from the behavior support consultant. The provider agency will provide the necessary levels of staffing for the eligible recipient during times of increased risk of harm to self or others. The support will return to a typical staffing pattern once the circumstance associated with the increased risk has ended.~~] Supported living services cannot be provided in conjunction with any other living supports service, respite, or nutritional counseling.

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

(a) Customized community supports services will include based on assessed need, personal support, nursing oversight, medication assistance/ administration, and integration of strategies in the therapy and healthcare plans into the eligible recipient's daily activities.

(b) The customized community supports provider will [~~act as a~~] provide fiscal management [~~agency~~] for the payment of [~~adult~~] education opportunities as determined necessary for the eligible recipient.

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

(d) Customized community supports may be provided in a variety of settings to include the community, classroom, and site-based locations. Services provided in any location are required to provide opportunities that lead to participation and integration in the community or support the eligible recipient to increase his/her growth and development.

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

(f) Customized community supports services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

(7) **Community integrated employment:** Community integrated employment provides supports that achieve employment in jobs of the eligible recipient's choice in his or her community to increase his or her economic independence, self-reliance, social connections and ability to grow within a career. Community integrated employment results in employment alongside non-disabled coworkers within the general workforce or in business ownership. This service may also include small group employment including mobile work crews or enclaves. An eligible recipient is supported to explore and seek opportunity for career advancement through growth in wages, hours, experience or movement from group to individual employment. Each of these activities is reflected in individual career plans. Community integrated employment services must not duplicate services covered under the Rehabilitation Act or the Individuals with Disabilities Education Act (IDEA). Compensation shall comply with state and federal laws including the Fair Labor Standards Act. Medicaid funds (e.g., the provider agency's reimbursement) may not be used to pay the eligible recipient for work. Community integrated employment services must be provided in accordance with the DOH/DDSD DDW service definitions and standards. Community integrated employment consists of job development, self-employment, individual community integrated employment and group community integrated employment models.

(a) **Self-employment:** The community integrated employment provider provides the necessary assistance to develop a business plan, conduct a market analysis of the product or service and establish necessary infrastructure to support a successful business. Self-employment does not preclude employment in the other models. Self-employment may include but is not limited to the following: complete a market analysis of product/ business viability; creation of a business plan including development of a business infrastructure to sustain the business over time, including marketing plans; referral to and coordination with the division of vocational rehabilitation (DVR) for possible funds for business start up; assist in obtaining required licenses necessary tax IDs, incorporation documents and completing any other business paperwork required by local and state codes; support the eligible recipient to develop and implement a system for bookkeeping and records management.; provide effective job coaching and on-the-job training and skill development; and arrange transportation or public transportation during self-employment services.

(b) **Individual community integrated employment:** Job coaching for

employed eligible recipients in integrated community based settings. The amount and type of individual support needed will be determined through vocational assessment including on-the-job analysis. Individual community integrated employment may include, but is not limited to the following: provide effective job coaching and on-the-job training as needed to assist the eligible recipient to maintain the job placement and enhance skill development; and arrange transportation or public transportation during individual community integrated employment services.

(c) **Group community integrated employment:** More than one eligible recipient works in an integrated setting with staff supports on site. Regular and daily contact with non-disabled coworkers or the public occurs. Group community integrated employment may include but is not limited to the following: participate with the interdisciplinary team (IDT) to develop a plan to assist an eligible recipient who desires to move from group employment to individual employment; and provide effective job coaching and on-the-job training as needed to assist the eligible recipient to maintain the job placement and enhance skill development.

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

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

(b) Behavioral support consultation services must be provided in accordance with [~~the accreditation policy and~~] all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

(9) **Nutritional counseling services:** Nutritional counseling services include the assessment, evaluation, collaboration, planning, teaching, consultation and implementation and monitoring of a nutritional plan that supports the eligible recipient to attain or maintain the highest practicable level of health. Nutritional counseling services are in addition to those nutritional or dietary services allowed in the eligible recipient's medicaid state plan benefit, or other funding source. This service does not include oral-motor skill development services, such as those services provided by a speech pathologist. Because nutritional counseling is included in the reimbursement rate for living supports, nutritional counseling cannot be billed as a separate service during the hours of living supports. Nutritional counseling services must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

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

(a) Adaptations, instillations and modifications include:

(i) heating and cooling adaptations;

(ii) fire safety adaptations;

(iii) turnaround space adaptations;

(iv) specialized accessibility, safety adaptations or additions;

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

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

(vii) installation of ramps and grab-bars;

(viii) widening of doorways or hallways;

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

(x) purchase or installation of air filtering devices;

(xi) purchase or installation of lifts or elevators;

(xii) purchase and installation of glass substitute for windows and doors;

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

[~~(xiii)~~] (ix) purchase and installation of alarm and alert systems or signaling devices.

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

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

(d) Environmental modification services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

(11) **Crisis supports:** Crisis supports are services that provide intensive supports by appropriately trained staff to an eligible recipient experiencing a behavioral or medical crisis either within the eligible recipient's present residence or in an alternate residential setting. Crisis support must be provided in accordance with the DOH/DDSD DDW service definitions and standards.

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

(b) **Crisis supports in an alternate residential setting:** These services arrange an alternative residential setting and provide crisis response staff to support the eligible recipient in that setting, to stabilize and prepare the eligible recipient to return home or to move into another permanent location. In addition, staff will arrange to train and mentor staff or family members who will support the eligible recipient long term once the crisis has stabilized, in order to minimize or prevent recurrence [~~all requirements set forth by DOH/DDSD DDW service definition~~] of the crisis.

(c) Crisis support staff will deliver

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

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

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

(12) **Non-medical transportation:** Non-medical transportation services assists the eligible recipient in accessing other waiver supports and non-waiver activities identified in the individual service plan (ISP). Non-medical transportation enables eligible recipient to gain physical access to non-medical community services and resources promoting the eligible recipient opportunity and responsibility in carrying out ISP activities. This service is to be considered only when transportation is not available through the state medicaid state plan or when other arrangements cannot be made. Non-medical transportation includes funding to purchase a pass for public transportation for the eligible recipient. Non-medical transportation provider services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition.

(13) **Supplemental dental care:** Supplemental dental care provides one routine oral examination and cleaning to eligible recipients on the waiver for the purpose of preserving or maintaining oral health. Supplemental dental care provided on the waiver is for eligible recipients that require routine cleaning more frequently than covered under the medicaid state plan. The supplemental dental care service must be provided in accordance with the DOH/DDSD DDW service definition, all requirements outlined in the DW service standards and the [~~MAD~~] applicable NMAC rules.

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

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

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

(c) Assistive technology purchasing agent services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

(15) **Independent living transition services:** Independent living transition services are one-time set-up expenses for an eligible recipient who transitions from a 24 hour living supports setting into a home or apartment of their own with intermittent support that allows [~~his or her~~] the individual to live more independently in the community. The service covers expenses associated with security deposits that are required to obtain a lease on an apartment or home, set-up fees or deposits for utilities (telephone, electricity, heating, etc.), furnishings to establish safe and healthy living arrangements: bed, chair, dining table and chairs, eating utensils and food preparation items, and a telephone. The service also covers services necessary for the eligible recipient's health and safety such as initial or one-time fees associated with the cost of paying for pest control, allergen control or cleaning services prior to occupancy. Independent living transition services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

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

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

(a) The key functions of preliminary risk screening and consultation related to inappropriate sexual behavior services are:

(i) provide a structured screening of behaviors that may be sexually inappropriate;

(ii) develop and document recommendations in the form of a report or consultation notes;

(iii) development and periodic revisions of risk management plans, when recommended; and

(iv) consultation regarding the management and reduction of sexually inappropriate behavioral incidents that may pose a health and safety risk to the eligible recipient or others.

(b) Preliminary risk screening and consultation related to inappropriate sexual behavior services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

(18) **Socialization and sexuality education service:** Socialization and sexuality education service is carried out through a series of classes intended to provide a proactive educational program about the values and critical thinking skills needed to form and maintain meaningful relationships, and about healthy sexuality

and sexual expression. Social skills learning objectives include positive self-image, communication skills, doing things independently and with others, and using paid and natural supports. Sexuality learning objectives include reproductive anatomy, conception and fetal development, safe sex and health awareness. Positive outcomes for the eligible recipient include safety from negative consequences of being sexual, assertiveness about setting boundaries and reporting violations, expressing physical affection in a manner that is appropriate and making informed choices about the relationships in his/her life. Independent living skills are enhanced and improved work outcomes result from better understanding of interpersonal boundaries, and improved communication, critical thinking and self-reliance skills. Socialization and sexuality education services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

(19) **Customized in-home supports:** Customized in-home support services is not a residential habilitation service and is intended for an eligible recipient that does not require the level of support provided under living supports services. Customized in-home supports provide an eligible recipient the opportunity to design and manage the supports needed to live in their own home or their family home. Customized in-home supports includes a combination of instruction and personal support activities provided intermittently as he or she would normally occur to assist the eligible recipient with ADLs, meal preparation, household services, and money management. The services and supports are individually designed to instruct or enhance home living skills, community skills and to address health and safety as needed. This service provides assistance with the acquisition, improvement or retention of skills that provides the necessary support to achieve personal outcomes that enhance the eligible recipient's ability to live independently in the community. Customized in-home support services must be provided in accordance with policy and all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

(20) **Intense medical living supports:** Intense medical living supports agencies provide community living supports for an eligible recipient who requires daily direct skilled nursing, in conjunction with community living supports that promote health and assist the eligible recipient to acquire, retain or improve skills necessary to live in the community and prevent institutionalization, consistent with each eligible recipient's ISP. An eligible [~~recipients~~] recipient must be assigned to NM DDW group F and meet criteria for intense medical living supports according to eligibility parameters in the DOH/DDSD service definitions and standards for this service and require nursing care, ongoing assessment, clinical oversight and health management that must be provided directly by a registered nurse or a licensed practical nurse in accordance with the New Mexico Nursing Practice Act at least once per day.

(a) These medical needs include:

(i) skilled nursing interventions;

(ii) delivery of treatment;

(iii) monitoring for change of condition; and

(iv) adjustment of interventions and revision of services and plans based on assessed clinical needs.

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

(c) The intense medical living provider will be responsible for providing the appropriate level of supports, 24 hours per day seven days a week, including necessary levels of skilled nursing based on assessed need. Daily nursing visits are required, however a nurse is not required to be present in the home during periods of time when skilled nursing services are not required or when an eligible recipient is out in the community. An on-call nurse must be available to staff during periods when a nurse is not present. Intense medical living supports require supervision by a registered nurse in compliance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

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

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

(f) Intense medical services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules.

[8.314.5.14 NMAC - Rp, 8.314.5.14 NMAC, 11-1-12; 8.314.5.14 NMAC - Rn & A, 8.314.5.13 NMAC, 6-15-14]

[~~8.314.5.14~~] 8.314.5.15 NON-COVERED SERVICES: Only the services listed as covered waiver services are covered under the MAD [~~DDW~~] DOH/DDW program. Medicaid non-waiver services may also be available to an eligible waiver recipient through state plan medicaid services. Medicaid does not cover room and board as waiver service or ancillary services.

[8.314.5.15 NMAC - Rp, 8.314.5.15 NMAC, 11-1-12; 8.314.5.15 NMAC - Rn & A, 8.314.5.14 NMAC, 6-15-14]

[~~8.314.5.15~~] 8.314.5.16 INDIVIDUALIZED SERVICE PLAN (ISP): An ISP must be developed by an interdisciplinary team (IDT) of professionals in consultation with the eligible recipient and others involved in the eligible recipient's care. The ISP is developed using information relevant to the care of the individual. The ISP will be developed utilizing the service package available with the individual's NM [~~SIS~~] DDW group. The ISP must be in accordance with policy and all requirements

set forth by DOH/DDSD DDW services definition, all requirements outlined in the DDW service standards and the [~~MAD~~] applicable NMAC rules. The ISP is submitted to DOH/DDSD or its designee for final approval. DOH/DDSD or its designee must approve any changes to the ISP. See 7.26.5 NMAC.

A. The IDT must review the treatment plan every 12 months or more often if indicated.

B. The ISP must contain the following information:

(1) statement of the nature of the specific needs of the eligible recipient;

(2) description of the functional level of the eligible recipient;

(3) statement of the least restrictive conditions necessary to achieve the purposes of treatment;

(4) description of intermediate and long-range goals, with a projected timetable for eligible recipient's attainment and the duration and scope of services;

(5) statement and rationale of the treatment plan for achieving these intermediate and long-range goals, including provision for review and modification of the plan; and

(6) specification of responsibilities for areas of care, description of needs, and orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the eligible recipient.

C. All services must be provided as specified in the ISP.

[8.314.5.16 NMAC - Rp, 8.314.5.16 NMAC, 11-1-12; 8.314.5.16 NMAC - Rn & A, 8.314.5.15 NMAC, 6-15-14]

[~~8.314.5.16~~] 8.314.5.17 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: All MAD services, including services covered under this medicaid waiver, are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC[~~, *Prior Authorization and Utilization Review*~~]. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.

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

B. **DDSD prior authorization:** Certain services are subject to utilization review by DDSD, including group H services.

[~~B.~~] C. **Eligibility determination:** Prior authorization of services does not guarantee that individuals are eligible for MAD services. Providers must verify that individuals are eligible for MAD, DDW services or other health insurance prior to the time services are furnished. An eligible recipient may not be institutionalized, hospitalized, or receive personal care option (PCO) services or other HCBS waiver services at the time DDW services are provided, except for certain case management services that are required to coordinate discharge plans or transition of services to DDW services.

[~~C.~~] D. **Reconsideration:** Providers who disagree with the denial of a prior authorization request or other review decisions may request a reconsideration. See 8.350.2 NMAC[~~, *Reconsideration of Utilization Review Decisions*~~].

[8.314.5.17 NMAC - Rp, 8.314.5.17 NMAC, 11-1-12; 8.314.5.17 NMAC - Rn & A, 8.314.5.16 NMAC, 6-15-14]

[~~8.314.5.17~~] 8.314.5.18 REIMBURSEMENT: Waiver service providers must submit claims for reimbursement to the MAD medicaid management information system (MMIS) contractor for processing. Claims must be filed per the billing instructions in the medicaid policy manual. Providers must follow all medicaid billing instructions. See 8.302.2 NMAC[~~, *Billing for Medicaid Services]*~~. Once enrolled, providers receive instructions on documentation, billing, and claims processing. Reimbursement to providers of waiver services is made at a predetermined reimbursement rate.

[8.314.5.18 NMAC - N, 11-1-12; 8.314.5.18 NMAC - Rn & A, 8.314.5.17 NMAC, 6-15-14]

[~~8.314.5.18~~] 8.314.5.19 RIGHT TO A HEARING: [~~The HSD/MAD must grant an opportunity for an administrative hearing as described in this section on the following circumstances and pursuant to 8.352.2.10 NMAC, *Recipient Hearings*. This rule is meant to be more specific than 8.352.2 NMAC and will be the controlling rule for any conflicts with 8.352.2 NMAC.~~] HSD/MAD must grant an opportunity for an administrative hearing pursuant to 42 CFR Section 431.220(a)(1) and (2), Section 27-3-3 NMSA 1978, and 8.352.2 NMAC.

[~~A. DDW eligible recipients may request a fair hearing when:~~

~~(1) a DDW eligible recipient has been determined not to meet the LOC requirement for waiver services;~~

~~(2) a DDW eligible recipient alleges that the SIS interviewer did not substantially follow the standard procedures (as found in the DD waiver service standards) for conducting a SIS assessment; or~~

~~(3) the service package does not adequately meet the health and safety needs of the eligible recipient; the DDW eligible recipient must develop and submit a budget within the NM SIS group placement and will receive a notice of fair hearing rights along with the decision regarding the proposed budget.~~

~~B. Notification of fair hearing rights: DDW eligible recipients are notified of their right to a fair hearing:~~

~~(1) when the SIS assessment is completed and the NM SIS group is sent to the DDW eligible recipient; and~~

~~(2) when a submitted budget is approved, partially approved, or denied.~~]

[~~C.~~] A. Agency conference.

(1) At the eligible recipient's request, or upon initiation by DOH/DDSD, an agency conference may be scheduled at any time prior to the date of the hearing to discuss the issues that are the subject of the fair hearing. The agency conference is optional and does not delay or replace the hearing process.

(2) The conference may include the eligible recipient and the eligible recipient's authorized representative, if applicable and DOH/DDSD staff. The purpose of the conference is to informally review the agency action and to determine whether the issues can be resolved by mutual agreement. The issues to be decided at the hearing may also be clarified or further defined. Regardless of the outcome of the agency conference, the hearing shall still be held as scheduled, unless the eligible recipient makes an oral or written withdrawal of the request for the hearing. An oral withdrawal shall be confirmed by the agency or designee in writing, sent to the eligible recipient, and allow for the eligible recipient to change his/her mind within ten days of the date of the confirmation letter.

[8.314.5.19 NMAC - N, 11-1-12; 8.314.5.19 NMAC - Rn & A, 8.314.5.18 NMAC, 6-15-14]

[~~8.314.5.19~~] 8.314.5.20 CONTINUATION OF BENEFITS PURSUANT TO TIMELY APPEAL:

A. Continuation of benefits may be provided to an eligible recipient who requests a hearing and continuation of benefits within 13 calendar days of the date on the notice of fair hearing. The

notice will include information on the right to continued benefits and on the eligible recipient's potential responsibility for repayment if the hearing decision is not in the eligible recipient's favor. Repayment of benefits shall be in accordance with 8.352.2.16 NMAC.

B. Once the eligible recipient requests a continuation of benefits, his/her budget that is in place at the time of the request is termed a continuation budget. The continuation budget may not be revised until the conclusion of the fair hearing process, unless a revision is agreed to in writing by the DDW eligible recipient (or appropriate representative) and DDSD.

[8.314.5.20 NMAC - Rn & A, 8.314.5.19 NMAC, 6-15-14]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.30.5 NMAC, Sections 7, 10, 12, 14 and 15, effective June 13, 2014.

6.30.5.7 DEFINITIONS:

A. "Scientifically-based reading research" is the application of rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties.

B. "Developmentally appropriate practices" result from the process of professionals making decisions about the well-being and education of children based on at least three important kinds of information:

(1) child development and learning;

(2) strengths, interests, and needs of each individual child; and

(3) knowledge of the social and cultural contexts in which children live.

C. "MEM" [~~as referenced in 6.6.104.8 A.~~] means "membership," which is total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days. (Subsection B of Section 22-8-2 NMSA 1978).

D. "Department" means the public education department.

E. "Kindergarten entry assessment" means an assessment conducted within the first 30 calendar days of the school year.

F. "Progress monitoring" means assessments conducted between screenings on students who are receiving targeted and intensive interventions to determine whether the student is benefitting from interventions.

G. "Screening" means an assessment conducted three to four times a year for all students to assess specific skills and to identify those at risk academically.

[6.30.5.7 NMAC - N, 11-14-2000; A, 06-13-2014]

6.30.5.10 LENGTH OF SCHOOL DAY-MINIMUM:

[~~A. For the 2009-2010 school year, students in full-day kindergarten programs must be in school-directed programs, exclusive of lunch, for a minimum of five and one-half hours per day or nine hundred hours per year (Section 22-2-8.1 NMSA 1978).~~

~~B. For the 2010-2011 and subsequent school years, students in full-day kindergarten programs must be in school-directed programs, exclusive of lunch, for a minimum of five and one-half hours per for a minimum of 180 school days or for a minimum of 150 school days for districts on alternative schedules (Section 22-2-8.1 NMSA 1978 and 6.10.5 NMAC).~~]

Students in full-day kindergarten programs must comply with the minimum length of school day and school year as required in Section 22-2-8.1 NMSA 1978 and 6.10.5 NMAC.

[6.30.5.10 NMAC - N, 11-14-2000; A, 11-13-2009; A, 06-13-2014]

6.30.5.12 PROGRAM ELEMENT: ASSESSMENT

A. [~~Teachers or instructional assistants under the guidance of teachers must administer developmentally appropriate assessments reflecting the whole child to participating students.~~] Beginning with the 2016-2017 school year, all students in kindergarten must be administered the New Mexico kindergarten entry assessment provided by the department. Kindergarten entry assessment data must be reported through the department's data collection reporting system no later than October 1 of each school year.

B. [~~Teachers or instructional assistants under the guidance of teachers must administer pretests by September 30 and posttests by April 30 of each school year to assess student performance.~~] All students in kindergarten must be administered a department-approved screening assessment at least three times per school year to determine if students are making adequate progress toward grade level reading proficiency by the end of the school year. Screening assessment data must be reported to the department's data collection and reporting system within the first 30 instructional days of the school year. Any student identified with a reading deficiency based on the screening assessment measure must receive more frequent progress monitoring to determine if the student is on target to meet grade level expectations by the end of the school year.

C. Public schools districts having both half-day and full-day state-funded kindergarten programs will assess performance of all kindergarten students.

[~~D. Public school districts must submit student test data to the public education department by May 30 of each school year.~~]

[6.30.5.12 NMAC - N, 11-14-2000; A, 11-13-2009; A, 06-13-2014]

6.30.5.14 [~~PROGRAM APPROVAL~~

~~A. School districts seeking initial approval of full-day kindergarten for a new school shall request public education department approval using the organization of grade levels and establishing/closing school waiver request form described in Subsection F of 6.29.1.9 NMAC.~~

~~B. The public education department will review all such requests for initial approval through the procedures set forth in Subsection F of 6.29.1.9 NMAC.~~]

[RESERVED]

[6.30.5.14 NMAC - N, 11-14-2000; A, 11-13-2009; Repealed, 06-13-2014]

6.30.5.15 [~~END OF YEAR EVALUATION~~

~~A. Schools must provide verification to the state department of education that the kindergarten/literacy readiness program has:~~

~~(1) served the children identified as most in need; and~~

~~(2) implemented a literacy-based full-day kindergarten based on the program elements described above in Subsection A of 6.30.5.11.~~

~~B. Upon development and implementation of a statewide full-day kindergarten test data system, the public education department shall compile student test data submitted by public school districts and make an annual report to the state board of education, legislative education study committee, and the legislature.~~]

[RESERVED]

[6.30.5.15 NMAC - N, 11-14-2000; A, 11-13-2009; Repealed, 06-13-2014]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.30.9 NMAC, Sections 6, 7, 8, 9, 10 and 11, effective June 13, 2014.

6.30.9.6 OBJECTIVE: This rule seeks to implement a state funded pre-kindergarten program through the public education department and addresses collaboration with the children, youth and families department, program requirements, pre-kindergarten eligibility, requests for [~~proposals and contracts for services~~] applications, and administration of funds.
[6.30.9.6 NMAC - N, 1/31/2007; A, 6/13/2014]

6.30.9.7 DEFINITIONS:

A. "Community" means an area defined by school district boundaries, tribal boundaries or joint boundaries of a school district and tribe or any combination of school districts and tribes.

B. "CYFD" means the children, youth and families department.

C. "Department" means the public education department or PED.

D. [~~"Early childhood development specialist" means the adult responsible for working directly with four-year-old children in implementing pre-kindergarten services.~~] "Early childhood licensed teacher" means the adult responsible for working directly with four-year-old children in implementing pre-kindergarten services and holding valid licensure issued by the PED in one or more of the following:

(1) licensure in early childhood education from birth through grade 3

(2) licensure in early child hood education from birth through pre-K;

(3) early childhood education pre-K through grade 3.

E. "Eligible provider" means a person licensed by the children, youth and families department that provides early childhood developmental readiness services or preschool special education, or is a public school, tribal program or head start program.

F. "Pre-kindergarten or pre-k" mean a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1.

G. "Pre-k program" means a voluntary program for the provision of pre-k services throughout the state that addresses the total developmental needs of preschool children, including physical, cognitive, social and emotional needs, and shall include health care, nutrition, safety and multicultural sensitivity.

H. [~~"Request for proposal or RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals pursuant to the Procurement Code (see 13.1.1 through 13.1.199 NMSA 1978).~~] "Request for application or RFA" means all documents, including those attached or incorporated by reference, used for soliciting applications for pre-k programs.

I. "Tribe" means an Indian nation, tribe or pueblo located in New Mexico.
[6.30.9.7 NMAC - N, 1/31/2007; A, 6/13/2014]

6.30.9.8 COLLABORATION WITH CYFD: The PED shall collaborate with the CYFD in the development and implementation of a voluntary program for the provision of pre-kindergarten services throughout the state. Such collaboration shall include but not be limited to:

A. development and issuance of the [~~RFP~~] RFA;

B. training and technical assistance provided to pre-k program [~~supervisors~~] administrators and program staff;

C. collection of program data that is not identifiable to an individual student;

D. reporting to the governor and legislative committees regarding implementation and progress;

E. contacting the CYFD prior to recommending any changes to the Pre-Kindergarten Act or this rule.
[6.30.9.8 NMAC - N, 1/31/2007; A, 6/13/2014]

6.30.9.9 REQUIREMENTS: The CYFD and PED shall cooperate in the development and implementation of a voluntary program for the provision of pre-k services throughout the state. The pre-k program shall address the total developmental needs of preschool children, including physical, cognitive, social and emotional needs, and shall include health care, nutrition, safety and multicultural sensitivity. In order to implement the pre-k program, the PED shall:

A. award program funds [~~through an RFP process~~] to public school districts and schools, including charter schools;

B. provide technical assistance to providers to ensure effectiveness;

C. ensure that funds shall not be used for any religious, sectarian or denominational purposes, instruction or material;

D. ensure communities being served are meeting eligibility requirements based on the funding criteria of the Pre-Kindergarten Act;

E. monitor programs for compliance with the pre-k law, rule and [~~contract~~] agreement to include scheduled and unscheduled visits and any necessary corrective actions; and

F. determine public school requirements for [~~licensure or teaching endorsements for pre-k program early childhood development specialists and staff~~] teacher and educational assistant licensure for pre-k programs.
[6.30.9.9 NMAC - N, 1/31/2007; A, 6/13/2014]

6.30.9.10 PRE-KINDERGARTEN ELIGIBILITY: Children who turn four years old before September 1 and are not age eligible for kindergarten are eligible to participate in pre-k programs. Pre-kindergarten services may be provided by public schools on a per-child reimbursement rate in communities with public elementary schools that are designated as Title I schools.
[6.30.9.10 NMAC - N, 1/31/2007; A, 6/13/2014]

6.30.9.11 REQUESTS FOR [~~PROPOSALS AND CONTRACTS~~] APPLICATIONS AND AGREEMENTS FOR PRE-K SERVICES: The PED shall:

A. issue [~~an RFP~~] a RFA for pre-k services to serve eligible four-year-old children through public school programs and charter schools;

B. ensure that the proposal contains a detailed description of the services that are to be provided, including:

(1) how those services shall meet pre-k program standards;

(2) the number of four-year-old children that shall be served;

(3) a description of the facilities along with site and floor plans;

(4) additional revenue sources and funding amounts available for the pre-k program;

(5) a description of the qualifications and experience of the early childhood [~~development specialists~~] licensed teacher for each site;

(6) the plan for communicating with and involving parents in the program;

(7) how program services meet the continuum of services to children; and

(8) any other relevant information requested by the department.

C. for funding purposes, ensure that at least 66% of the children served live within the attendance zone of a Title I elementary school.
[6.30.9.11 NMAC - N, 1/31/2007; A, 6/13/2014]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.10.4 NMAC, Sections 2, 5, 8, 11 and part name, effective 08-01-2014. The state of New Mexico, in order to be consistent with National and State Adopted Electrical Codes, has changed the name of the 2011 New Mexico Electrical Code.

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 10 ELECTRICAL CODES
PART 4 [~~2011~~] 2014 NEW MEXICO ELECTRICAL CODE

14.10.4.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after [~~November 1, 2011~~] July 1, 2014, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.
[14.10.4.2 NMAC - Rp, 14.10.4.2 NMAC, 6-28-13; A, 8-01-14]

14.10.4.5 EFFECTIVE DATE: [~~June 28, 2013~~] August 1, 2014, unless a later date is cited at the end of a section.
[14.10.4.5 NMAC - Rp, 14.10.4.5 NMAC, 6-28-13; A, 8-01-14]

14.10.4.8 ADOPTION OF THE [~~2011~~] 2014 NATIONAL ELECTRICAL CODE:

A. This rule adopts by reference the [~~2011~~] 2014 national electrical code (NEC), as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2011 national electrical code.

C. This rule is to be applied in conjunction with 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code.
[14.10.4.8 NMAC - Rp, 14.10.3.8 NMAC, 6-28-13; A, 8-01-14]

14.10.4.11 CHAPTER 1 General.

A. Article 100 - Definitions. See this article of the NEC.

B. Article 110 - Requirements for electrical installations. See this article of the NEC except as provided below.

(1) Section 110.2 Approval. See this section of the NEC and add the following:

(a) product listing and labeling - electrical wiring, equipment or material approval shall be based on listing and labeling by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration;

(b) field evaluation - electrical wiring, equipment or material that is not listed and labeled, but for which a (UL) safety standard exists may be approved upon certification by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration or by a field evaluation body accredited by the international accreditation service, inc.;

(c) engineer certification - electrical wiring, equipment or material for which a (UL) safety standard does not exist may be approved upon certification by an electrical engineer licensed to practice in New Mexico; such a certification will not be valid unless based on a verification of the manufacturer's safety and performance test data for the product.

(d) engineer certification - electrical equipment assemblies that contain only nationally recognized testing laboratories (NRTL) labeled components that are not NRTL listed as an assembly may be approved upon certification by an electrical engineer licensed to practice in New Mexico; such a certification will not be valid unless based on a verification of the UL standard if applicable, NEC 110.3 and the manufacturer's safety and performance test data for the product.

(2) Section 110.21. Marking. See this section of the NEC and add: all equipment used on circuits over 300 volts between conductors shall have a warning sign either on or adjacent to the equipment. Warning signs shall be made in accordance with ANSI Z535 environmental and safety signs. The language shall read:

(a) for voltages over 300 volts but less than 600 volts: "480 VOLTS". (Label dimensions shall be 1" x 4"); and

(b) for voltages over 600 volts and there are exposed parts: "DANGER - HIGH VOLTAGE - KEEP OUT".

(3) Section 110.26 Spaces about electrical equipment.

(a) 110.26 (A) Working space. See this section of the NEC and add the following exception: Disconnects that do not provide over-current, overload, short circuit, or ground fault protection are not required to maintain the dimensions of 110.26(A)(1), (A)(2) and (A)(3) where adequate space is not readily available and the disconnect is permanently labeled "INADEQUATE WORKING SPACE-DO NOT WORK ON WHILE ENERGIZED". The label shall be readily visible on the exterior of the disconnect.

(b) 110.26 (A) (3) Height of working space. See this section of the NEC and add: Exception No. 3: In underground water well pump enclosures, service equipment or panel boards that do not exceed 200 amperes, operating at 250 volts or less and only feeding equipment associated with the water well enclosure, shall be permitted in spaces where the headroom is less than six and one half feet (6 1/2 ft.) but greater than five feet (5 ft.) provided the enclosure is supplied with a removable lid, that when removed would allow a minimum of six and one half feet (6 1/2 ft.) headroom.

C. Article 210. Branch circuits. See this article of the NEC except as provided below.

(1) Section 210.11 Branch circuits required.

(a) 210.11 (A) Number of branch circuits. See this section of the NEC and add: In dwelling units, branch circuits for 125-volt, 15- and 20- ampere general purpose lighting and receptacles outlets shall be limited to a maximum of ten (10) lighting and/or receptacle outlets per branch circuit. Single and duplex receptacle outlets are considered to be one receptacle outlet. Exception: Branch circuits serving only lighting loads may be calculated per article 220 of the national electrical code.

(b) 210.11 (C) Dwelling units. See this section of the NEC except as provided below.

(i) (1) Small appliance branch circuits. See this section of the NEC and add: not more than four (4) 20 ampere 125 volt receptacle outlets shall be connected to these circuits. Single and duplex receptacle outlets are considered to be one receptacle outlet. Exception: small appliance circuits that supply only dining area receptacles may serve not more than six (6) receptacle outlets.

(ii) (2) Laundry branch circuits. Delete the text of this section of the NEC and substitute: in addition to the number of branch circuits required by other parts of this section, at least one additional 20-ampere branch circuit shall be provided to supply the laundry receptacle outlet. Such circuits shall have no other outlets.

(2) Section 210.19 Conductors - minimum ampacity and size. See this section of the NEC and add the following to subsection (A) Branch circuits not more than 600 volts: (1) General: add: conductors for branch circuits shall be sized to prevent excessive voltage drop. (2) General purpose branch circuits with more than one receptacle. Conductors of general purpose branch circuits supplying more than one receptacle outlet for cord-and-plug connected portable loads shall have an ampacity of not less than the rating of the

branch circuit and shall be not less than 12 AWG.

(3) Section 210.52 Dwelling unit receptacle outlets.

(a) 210.52 (A) General provisions. (2) Wall space. See this section of the NEC and add: exception: free-standing cabinets designed to be used as an eating or drinking bar where stools or chairs are pulled up to a counter top which extends at least one (1) foot from the front of the cabinet, shall not be considered as wall space.

(b) 210.52 (G) Basement, garages and accessory buildings. See this section of the NEC and add: receptacle outlets must be installed a minimum of eighteen (18) inches above finished floor, in attached or detached garages.

(4) Section 210.70 Lighting outlets required.

(a) 210.70 (A) (2) Dwelling units - additional locations. See this section of the NEC and add a new subsection as follows: (d) on single family dwellings at least one wall switch, located within five (5) feet from each entrance or exit or automatic lighting control such as a motion detector shall be installed to control exterior illumination.

(b) 210.70 (A) (3) Dwelling units - storage or equipment spaces. See this section of the NEC and add: at least one (1) switched lighting outlet shall be installed in all accessible attics and crawl spaces adjacent to the usual point of entry.

(c) 210.70 (C) Other than dwelling units. See this section of the NEC and add: at least one (1) switched lighting outlet shall be installed in all accessible attics and crawl spaces adjacent to the usual point of entry.

D. Article 215. Feeders. Section 215.1. Scope. See this section of the NEC and add: approved wiring methods for feeders: nonmetallic-sheathed cable types NM, NMC and NMS (Article 334) , and service entrance cable type SER (Article 338), shall be permitted to be used for feeders in dwelling units providing that the cables shall not pass through or under any other dwelling unit(s). Underground feeder and branch circuit cable type UF cable (Article 340) shall be permitted to be used underground for any occupancy, and indoors only in accordance with nonmetallic-sheathed cable (Article 334) providing that the cable shall not pass through or under any other dwelling unit(s).

E. Article 225. Outside branch circuits and feeders. See this article of the NEC except as follows.

(1) Section 225.19 Clearance from buildings for conductors of not over 600 volts nominal-above roofs. (A) Above roofs. See this section of the NEC but delete exception no. 2 in its entirety.

(2) Section 225.32 Location. See this section of the NEC except as follows.

(a) Add the following provision: the disconnecting means shall be installed at a readily accessible location. Where the disconnecting means is located outside the building or structure served, the disconnecting means enclosure shall be installed within ten (10) feet from the building or structure and visible, or on the exterior wall of the building or structure served. Where the disconnecting means is installed inside the building or structure served, the disconnecting means enclosure shall be located within forty eight (48) inches from where the feeder conductor raceway enters the building or structure.

(b) Delete the text of exception no. 1 and substitute: for industrial installations under single management, where documented safe switching procedures are established and maintained for disconnection, the disconnecting means shall be permitted to be located elsewhere on the premises.

F. Article 230. Services. See this article of the NEC except as provided below.

(1) Section 230.24 Clearances. (A) Above roofs. Delete exception no. 2 [~~in its entirety~~] and exception no. 5 in their entirety.

(2) Section 230.28. Service masts as supports. See this section of the NEC and add: where a service mast is used for the support of service drop conductors, it shall be a minimum two inch (2") rigid metal conduit, intermediate metal conduit or comply with local utility requirements.

(3) Section 230.31 Size and rating. (A) General. See this section of the NEC and add: where the underground service lateral is customer owned, the service lateral conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on the service lateral conductors shall not exceed five percent (5%). For the purpose of this calculation, the ampacity shall be based on the calculated demand load of the building or structure served. Customer owned includes all non-utility owned or operated service lateral conductors.

(4) Section 230.43. Wiring methods for 600 volts, nominal, or less. See this section of the NEC but delete subsection (1) open wiring on insulators, and subsection (6), Electrical nonmetallic tubing (ENT).

(5) Section 230.54 Overhead service locations. See this section of the NEC and add a new section as follows: (H) overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6" x 6") pressure-treated timber or equivalent round poles (minimum 6"diameter crown) installed to a depth not less than four (4) feet below finish grade.

(6) Section 230.70 Service equipment - disconnecting means.

(a) 230.70 General. (A) Location. See this section of the NEC and add: the disconnecting means for each occupant of a multiple occupancy building shall be grouped at a common location.

(b) 230.70 General. (A) Location. (1) Readily accessible location. Delete the text of this section of the NEC and substitute: (1) service disconnects located outside the building or structure. Where the service disconnect is located outside of the building or structure it shall be located in a readily accessible location within 48 inches of the metering equipment. Remote service disconnects that are located not more than 10 feet from the building or structure shall be considered to be located on the building or structure. Exception: Where metering equipment is installed at the utility transformer, the disconnecting means on the outside of the building shall be installed within 48 inches from where the service conductors emerge from the earth. (2) Service disconnects located inside the building or structure. Where the service disconnect is located inside of a building or structure it shall be located in a readily accessible location within 48 inches from the metering equipment or the service equipment enclosure shall be installed within 48 inches of where the service conductors penetrate the building or structure.

(7) Section 230.72 Grouping of service disconnects. (A) General. See this section of the NEC and add: all building or structure disconnects of each service shall be grouped at one location and shall be separated by the least practical distance, not to exceed an overall distance of twenty (20) feet.

G. Article 250 - Grounding and bonding. See this article of the NEC except as provided below.

(1) Section 250.50 Grounding electrode system. See this section of the NEC and add: On new construction, a concrete encased electrode shall be considered available and installed in compliance with NEC 250.52(A) (3). If a concrete encased electrode is not present, then at least 20 feet of 2 AWG bare copper in direct contact with the earth at a depth below the earth's surface of not less than thirty (30) inches shall be installed in a continuous trench that is at least twenty (20) feet in length, augmented with a minimum of two (2), eight (8) foot grounds rods one at each end of the 2 AWG conductor.

(2) Section 250.52 (A) Grounding electrodes. (5) Rod and pipe electrodes. See this section of the NEC but delete subsection (a) in its entirety.

[~~(3) Section 250.52 Grounding electrodes. (B) (1) Not permitted for use as grounding electrodes.~~ Delete the text of this section of the NEC and substitute: Gas piping shall not be used as a grounding conductor or electrode. This does not preclude the bonding of metallic piping to a grounding system.]

[~~(4) Section 250.53 Grounding electrode system installation. (C) Bonding jumper.~~ See this section of the NEC and add: Grounding electrode bonding jumpers shall be protected from physical damage. When a bonding jumper conductor is buried to provide physical protection, a minimum cover of 24 inches shall be provided in accordance with NEC Table 300.5 column 1 all locations not specified below.]

[~~(5) Section 250.56 Resistance of rod, pipe and plate electrodes.~~ Delete the text of this section of the NEC and substitute: a single electrode consisting of a rod or plate shall be augmented by one additional electrode of any of the types specified by 250.52 (A) (2) through (A) (7). Where multiple rod or plate electrodes are installed to meet the requirements of this section, they shall be not less than six (6) feet apart. Exception: A single electrode consisting of a rod or plate may be used on temporary construction services rated 200 amperes or less.]

(3) Section 250.53 (A) (2) Exception # 2. See this section of the NEC and add: A single grounding electrode consisting of a rod or plate may be utilized on temporary construction services rated 200 amperes or less.

[~~(6)~~] **(4) Section 250.66 Size of alternating-current grounding electrode conductor. (B) Connections to concrete-encased electrodes.** See this section of the NEC and add: the grounding electrode conductor shall not be smaller than 4 AWG copper.

[~~(7)~~] **(5) Section 250.104. Bonding of piping systems and exposed structural steel. (B) Other metal piping.** See this section of the NEC and add: CSST gas piping systems shall be bonded to the electrical service grounding electrode system at the point where the gas service enters the building. The bonding jumper shall not be smaller than (6) AWG copper wire.

[~~(8)~~] **(6) Section 250.106. Lightning protection systems.** See this section of the NEC and add: Where a lightning protection system is installed, the bonding of the gas piping system shall be in accordance with NFPA 780, standard for installation of lightning protection systems.

[~~(9)~~] **(7) Section 250.118. Types of equipment grounding conductors.** See this section of the NEC and add the following new subsection: (15) an equipment grounding conductor shall be installed in all branch circuit and feeder raceways on or above a roof. The equipment grounding conductor shall be sized in accordance with table 250.122.

H. Article 300. Wiring methods. See this article of the NEC except as provided below.

(1) Section 300.11 Securing and supporting. See this section of the NEC except as provided below.

(a) 300.11(A) Secured in place. See this section of the NEC and add: independent support wires shall be limited to support of flexible wiring methods from the last means of support or junction box for connections within an accessible ceiling to luminaire(s) or equipment served.

(b) 300.11 (A) (1). Fire rated assemblies. Delete the text of this section of the NEC and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets that have been tested as part of a fire-rated assembly.

(c) 300.11 (A) (2). Non-fire rated assemblies. Delete the text of the exception and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets where installed in accordance with the ceiling system manufacturer's instructions.

(2) Section 300.14. Length of free conductors at outlets, junctions, and switch points. Delete the text of this section of the NEC and substitute: at least six (6) inches of free conductor, measured from the point in the box where it emerges from its raceway or cable sheath, shall be left at each outlet, junction, and switch point for splices or the connection of luminaire (fixtures) or devices. Where the opening of an outlet, junction, or switch point is less than eight (8) inches in any dimension, each conductor shall be long enough to extend at least six (6) inches outside of the opening.

I. Article 310. Conductors for general wiring. See this article of the NEC and add the following new subsection 310.10 (J) **Conductor material**. The use of aluminum current carrying conductors shall be of the AA-8000 series or equivalent and shall be limited to size 8 AWG or larger. Exception: the equipment-grounding conductor shall be limited to size 10 AWG or larger if in a listed cable assembly.

[~~**J. Article 314. Outlet, device, pull, and junction boxes; conduit bodies; fittings; and handhole enclosures.**~~ ~~See this article of the NEC except delete the exception from subsection 314.27(A) (1) wall outlets- boxes at luminaire (lighting fixture) outlets.~~]

[~~**K.**~~] **J. Article 334. Nonmetallic-sheathed cable: Types NM, NMC and NMS.**

(1) Section 334.10 Uses permitted. See this section of the NEC but delete subsection (4) and (5) in its entirety.

(2) Section 334.12 Uses not permitted. (A)Types NM, NMC, and NMS. See this section of the NEC and add the following subsection: (11) type NM, NMC, or NMS shall not be installed in buildings, or structures such as stores, professional offices, motels, hotels, and other occupancies classified as R-1, R-4, commercial or industrial.

[~~**L.**~~] **K. Article 340. Underground feeder and branch circuit cable: type UF.** See this article of the NEC except as provided below.

(1) Section 340.10 Installation - uses permitted. See this section of the NEC and add the following new subsections:

(a) (8) type UF cable shall be permitted to be imbedded in adobe construction;

(b) (9) type UF cable, or an approved electrical raceway shall be installed on straw bale residential construction.

(2) Section 340.12 Installation - uses not permitted. See this section of the NEC and add the following new subsection: (12) Type UF cable shall not be installed in buildings or structures such as stores, professional offices, motels, hotels, or other occupancies classified as commercial or industrial.

[~~**M.**~~] **L. Article 352 Rigid polyvinyle chloride conduit : Type PVC.** See this article of the NEC and add the following to section 352.10 uses permitted. (F) Exposed: PVC conduit, type schedule 40 shall not be used where the raceway is exposed and under eight (8) feet from finished floor or grade.

[~~**N.**~~] **M. Article 358 Electrical metallic tubing: Type EMT.** See this article of the NEC and add the following section to 358.12 uses not permitted: (7) electrical metallic tubing shall not be permitted to be installed underground or in concrete slabs or walls which are in contact with the earth.

[~~**O.**~~] **N. Article 394 Concealed knob and tube wiring.** See this article of the NEC and add the following to section 394.12 uses not permitted: concealed knob and tube wiring shall not be permitted to be installed except by special written permission from the electrical bureau.

[~~**P.**~~] **O. Article 422. Appliances.** See this article of the NEC and add the following to section 422.19. evaporative cooling units: where an evaporative cooler is installed, a listed raceway shall be installed during rough-in from the control point to the evaporative cooler location. The raceway shall contain

an equipment-grounding conductor from the control point outlet box to the junction box at the unit. The equipment grounding conductor shall be sized in accordance with table 250.122.

[~~Q.~~] P. Article 550. Mobile homes, manufactured homes and mobile home parks. See this article of the NEC except as provided below.

(1) Section 550.32 Service equipment. **(A) Mobile home service equipment.** Delete the text of this section of the NEC and substitute the following: the mobile home service equipment shall be located adjacent to the mobile home and not mounted in or on the mobile home. The service equipment shall be located in sight from and not more than one hundred (100) feet from the exterior wall of the mobile home it serves. The service equipment shall be permitted to be located elsewhere on the premises, provided that a disconnecting means marked "suitable for use as service equipment" is located in sight from and not more than thirty (30) feet from the exterior wall of the mobile home it serves. Grounding at the disconnecting means shall be in accordance with 250.32.

(2) Section 550.32 Service equipment. See this section of the NEC and add the following new subsections.

(a) (H) Required receptacle. A 125 volt 15 or 20 amp receptacle outlet shall be installed with ground fault circuit interruption protection at each remote mobile home or manufactured home service equipment, or the local external disconnecting means permitted in 550.32 (A).

(b) (I) Overhead services. Overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6" x 6") pressure-treated timber or equivalent round poles (minimum 6"diameter crown) installed to a depth not less than four (4) feet below finish grade.

[~~R.~~] Q. Article 800. Communications circuits. See this article of the NEC and add the following to Section 800.156: Any exterior wall penetration shall be installed in a listed raceway.

[14.10.4.11 NMAC - Rp, 14.10.4.11 NMAC, 6-28-13; A, 8-01-14]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.10.5 NMAC, Sections 5, 8, 9 and part name, effective 08-01-2014. The state of New Mexico, in order to be consistent with National and State Adopted Electrical Codes, has changed the name of the 2007 New Mexico Electrical Safety Code.

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 10 ELECTRICAL CODES
PART 5 [~~2007~~] 2012 NEW MEXICO ELECTRICAL SAFETY CODE

14.10.5.5 EFFECTIVE DATE: [~~July 1, 2008~~] August 1, 2014, unless a later date is cited at the end of a section.

[14.10.5.5 NMAC - Rp, 14.10.5.5 NMAC, 07-01-08; A, 08-01-14]

14.10.5.8 ADOPTION OF THE [~~2007~~] 2012 NATIONAL ELECTRICAL SAFETY CODE:

A. This rule adopts by reference the [~~2007~~] 2012 national electrical safety code, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the [~~2007~~] 2012 national electrical safety code.

[14.10.5.8 NMAC - Rp, 14.10.5.8 NMAC, 07-01-08; A, 08-01-14]

14.10.5.9 SECTION 1. INTRODUCTION TO THE NATIONAL ELECTRICAL SAFETY CODE:

A. [~~011.~~] 010. Purpose. See this section of the NESC and add the following new [~~subsection~~] subsections:

E. Electrical customer-owned distribution systems are subject to the NMESC. Customer-owned distribution systems include all (non-utility owned or operated) overhead or underground primary or secondary voltage electrical power line construction, installation, alteration, repairs, or maintenance. F. Any conflict between the adopted NESC and the adopted NEC, the NEC will prevail.

B. 013. Application Delete this section.

C. 014. Waiver Delete this section.

[~~B.~~] D. 016. Effective date. Delete this section of the NESC.

E. 017. Units of Measure Delete this section.

F. 214 A. 4. Delete this subsection.

G. 313 A. 4. Delete this subsection.

H. Part 4. Delete this section.

[14.10.5.9 NMAC - Rp, 14.10.5.9 NMAC, 07-01-08; A, 08-01-14]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
BOARD OF PHARMACY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 19 PHARMACISTS
PART 36 COMPOUNDED STERILE PREPARATIONS

16.19.36.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy.

[16.19.36.1 NMAC - N, 06-28-14]

16.19.36.2 SCOPE: All facilities as defined in Paragraph (1), (2), (5) and (7) of Subsection B of 61-11-14 NMSA 1978, and all persons or entities that own or operate, or are employed by a facility for the purpose of providing pharmaceutical compounded sterile preparations or services.

[16.19.36.2 NMAC - N, 06-28-14]

16.19.36.3 STATUTORY AUTHORITY: Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board of pharmacy to provide for the licensing of all places where dangerous drugs are stored, dispensed, distributed or administered and for the inspection of their facilities and activities. Paragraph (7) of Subsection A of 61-11-6 NMSA 1978 authorizes the board to enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs and their standards of strength and purity.

[16.19.36.3 NMAC - N, 06-28-14]

16.19.36.4 DURATION: Permanent.

[16.19.36.4 NMAC - N, 06-28-14]

16.19.36.5 EFFECTIVE DATE: June 28, 2014, unless a different date is cited at the end of a section.

[16.19.36.5 NMAC - N, 06-28-14]

16.19.36.6 OBJECTIVE: The objective of Part 36 of Chapter 19 is to establish standards to ensure that the citizens of New Mexico receive properly

compounded contaminant-free sterile preparations.
[16.19.36.6 NMAC - N, 6-28-14]

16.19.36.7 DEFINITIONS:

A. "Air changes per hour" (ACPH) means the number of times a volume of air equivalent to the room passes through the room each hour.

B. "Ante-area" means an ISO Class 8 or better area where personnel hand hygiene and garbing procedures, staging of components, order entry, CSP labeling, and other high-particulate generating activities are performed. It is also a transition area that:

(1) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

(2) reduces the need for the heating, ventilating, and air-conditioning (HVAC) control system to respond to large disturbances.

C. "Aseptic technique" means proper manipulation of preparations to maintain sterility.

D. "Beyond-use date" (BUD) means the date, or as appropriate, date and time, after which a compounded preparation is not to be used and is determined from the date and time the preparation is compounded.

E. "Biological safety cabinet" (BSC) means a ventilated cabinet that provides ISO Class 5 environment for CSP's, provides personnel, preparation, and environmental protection having an open front with inward airflow for personnel protection, downward high-efficiency particulate air (HEPA)-filtered laminar airflow for preparation protection, and HEPA-filtered exhausted air for environmental protection.

F. "Buffer area" means an area where the primary engineering control (PEC) is physically located. Activities that occur in this area include the staging of components and supplies used when compounding CSP's.

G. "Certification" means independent third party documentation declaring that the specific requirements of USP/NF <797> *(USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)* have been met.

H. "Cleanroom" means a room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

I. "Closed system vial-transfer device" means a vial-transfer system that allows no venting or exposure of substances to the environment.

J. "Compounded sterile preparations" (CSP's) include, but are not limited, to the following dosage forms which must be sterile when administered to patients:

(1) parenteral preparations;

(2) aqueous bronchial and nasal inhalations;

(3) baths and soaks for live organs and tissues;

(4) injections (e.g. colloidal dispersions, emulsions, solutions, suspensions);

(5) irrigations for wounds and body cavities;

(6) ophthalmic drops and ointments; and

(7) tissue implants.

K. "Compounding aseptic containment isolator" (CACI) means an enclosed ISO Class 5 environment workspace for compounding of hazardous sterile preparations, provides personnel protection with negative pressure and appropriate ventilation and provides preparation protection by isolation from the environment and high-efficiency particulate air (HEPA)-filtered laminar airflow. Air exchange with the surrounding environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

L. "Compounding aseptic isolator" (CAI) means an enclosed ISO Class 5 environments for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment should not occur unless the air has first passed through a microbial retentive filter (HEPA minimum).

M. "Critical area" means an ISO Class 5 environment.

N. "Critical site" means a location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

O. "Direct compounding area" (DCA) means a critical area within the ISO Class 5 primary engineering control (PEC) where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

P. "Disinfectant" means an agent that frees from infection and destroys disease-causing pathogens or other harmful microorganisms, but may not kill bacterial and fungal spores. It refers to substances applied to inanimate agents, usually a chemical agent, but sometimes a physical one.

Q. "Hazardous drugs" means drugs classified as hazardous if studies in animals or humans indicate exposures to them have a potential for causing cancer, development or reproductive toxicity or harm to organs. (Reference current NIOSH publications).

R. "Home care" means health care provided in the patient's home (not a hospital or skilled nursing facility) by either licensed health professionals or trained caregivers. May include hospice care.

S. "Immediate use" means administration begins not later than one hour following the start of the compounding procedure. For those events in which delay in preparation would subject patient to additional risk and meeting USP/NF <797> (*Immediate-Use CSP Provision*) criteria.

T. "ISO 5" means air containing no more than 100 particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (3520 particles per cubic meter).

U. "ISO 7" means air containing no more than 10,000 particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (352,000 particles per cubic meter).

V. "ISO 8" means air containing no more than 100,000 particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (3,520,000 particles per cubic meter).

W. "Laminar airflow" means a non-turbulent, non-mixing streamline flow of air in parallel layers.

X. "Laminar airflow workbench" (LAFW) means a ventilated cabinet for compounding of sterile preparations. Provides preparation protection with high-efficiency particulate air (HEPA) filtered laminar airflow, ISO Class 5. Airflow may be horizontal (back to front) or vertical (top to bottom) in direction.

Y. "Media-fill test" means a test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as

soybean-casein digest medium is substituted for the actual drug product to simulate admixture compounding. The issues to consider in the development of a media-fill test are media-fill procedures, media selection, fill volume, incubation, time, and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

Z. "Multiple-dose container" means a multiple-unit container for articles or preparations intended for parenteral administration only and usually containing antimicrobial preservatives. Once opened or entered, a multiple dose container with antimicrobial preservative has a BUD of 28 days unless otherwise specified by the manufacturer.

AA. "Negative pressure room" means a room that is at a lower pressure than the adjacent spaces and therefore, the net flow of air is *into* the room.

BB. "Parenteral product" means any preparation administered by injection through one or more layers of skin tissue.

CC. "Personal protective equipment" (PPE) means items such as gloves, gowns, respirators, goggles, face shields, and others that protect individual workers from hazardous physical or chemical exposures.

DD. "Pharmacy bulk packages" means a container of a sterile preparation for parenteral use that contains many single doses. Contents are intended for use in a pharmacy admixture program and are restricted to use in a suitable ISO Class 5 environment.

EE. "Plan of care" means an individualized care plan for each patient receiving parenteral products in a home setting to include the following:

(1) description of actual or potential drug therapy problems and their proposed solutions;

(2) a description of desired outcomes of drug therapy provided;

(3) a proposal for patient education and counseling; and

(4) a plan specifying proactive objective and subjective monitoring (e.g. vital signs, laboratory test, physical findings, patient response, toxicity, adverse reactions, and noncompliance) and the frequency with which monitoring is to occur.

FF. "Positive pressure room" means a room that is at a higher pressure than the adjacent spaces and, therefore, the net airflow is *out* of the room.

GG. "Preparation" means a CSP that is a sterile drug or nutrient compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber; the article may or may not contain sterile products.

HH. "Primary engineering control" (PEC) means a device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding CSP's. Such devices include, but may not be limited to, laminar airflow workbenches (LAFW's), biological safety cabinets (BSC's), compounding aseptic isolators (CAI's), and compounding aseptic containment isolators (CACI's).

II. "Process validation" means documented evidence providing a high degree of assurance that a specific process will consistently produce a preparation meeting its predetermined specifications and quality attributes.

JJ. "Product" means a commercially manufactured drug or nutrient that has been evaluated for safety and efficacy by the FDA. Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

KK. "Quality assurance" means a program for the systematic monitoring and evaluation of the various aspects of a service or facility to ensure that standards of quality are being met.

LL. "Quality control" means a system for verifying and maintaining a desired level of quality in a preparations or process, as by planning, continued inspection, and corrective action as required.

MM. "Secondary engineering control" means the ante area and buffer area or cleanroom in which primary engineering controls are placed.

NN. "Segregated compounding area" means a designated space, either a demarcated area or room, that is restricted to preparing low-risk level CSP's with 12-hour or less BUD. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of CSP's and shall be void of activities and materials that are extraneous to sterile compounding.

OO. "Single-dose container" means a single-dose, or a single-unit, container for articles or preparations intended for parenteral administration only. It is intended for a single use. Examples of single-dose containers include prefilled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

PP. "Standard operating procedure" (SOP) means a written protocol detailing the required standards for performance of tasks and operations within a facility.

QQ. "Sterile" means free from bacteria or other living microorganisms.

RR. "Sterilization by filtration" means passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

SS. "Sterilizing grade membranes" means membranes that are documented to retain 100% of a culture of 10^7 microorganisms of a strain of *Brevundimonas (Pseudomonas) diminuta* per square centimeter of membrane surface under a pressure of not less than 30 psi. Such filter membranes are nominally at 0.22 μm or 0.2 μm porosity, depending on the manufacturer's practice.

TT. "Terminal sterilization" means the application of a lethal process (e.g., steam under pressure or autoclaving) to sealed containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10^{-6}, or a probability of less than one in one million of a non-sterile unit.

UU. "Unidirectional flow" means airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

VV. "USP" means United States pharmacopeia.

WW. "USP/NF standards" means United States pharmacopeia/national formulary *USP General Chapters <797> Pharmaceutical Compounding- Sterile Preparations*.

[16.19.36.7 NMAC - N, 06-28-14]

16.19.36.8 PHARMACIST IN CHARGE:

A. All facilities compounding sterile preparations must designate a pharmacist in charge of operations who is licensed as a pharmacist in the state of residence of the facility.

B. The pharmacist-in-charge is responsible for:

(1) the development, implementation and continuing review and maintenance of written policies, procedures and SOP's which comply with USP/NF standards;

(2) providing a pharmacist who is available for 24 hour seven-day-a-week services;

(3) establishing a system to ensure that the CSP's prepared by compounding personnel are administered by licensed personnel or properly trained and instructed patients;

(4) establishing a system to ensure that CSP's prepared by compounding personnel are prepared in compliance with USP/NF <797> *(USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)*standards;

(5) ensuring facility personnel comply with written policies, procedures,

and SOP's; and

(6) developing an appropriate and individualized plan of care in collaboration with patient or caregiver and other healthcare providers for each patient receiving parenteral preparations in a home setting.

[16.19.36.8 NMAC - N, 06-28-14]

16.19.36.9 FACILITIES:

A. The room or area in which compounded sterile preparations (CSP's) are prepared:

(1) must be physically designed and environmentally controlled to meet standards of compliance as required by USP/NF <797> *(USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)*;

(2) must be periodically monitored, evaluated, tested, and certified by environmental sampling testing as required by USP/NF <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)* with documentation retained for three years;

(3) must have a minimum of 100 square feet dedicated to compounding sterile preparations;

(a) the minimum size of a retail pharmacy must be 240 square feet; a retail pharmacy with preparation of sterile products capabilities must have 340 square feet with 100 square feet exclusive to compounding sterile preparations;

(b) the stand alone CSP facility must have a minimum of 240 square feet with 100 square feet exclusive to compounding sterile preparations; and

(4) must be clean, lighted, and at an average of 80-150 foot candles; and

(5) must minimize particle generating activities.

B. Addition of a compounding sterile preparations area in existing pharmacies will require submission of plans for remodeling to the board office for approval and inspection prior to licensure.

C. A new CSP facility must comply with 16.19.6.8 NMAC through 16.19.6.11 NMAC of the regulations.

[16.19.36.9 NMAC - N, 06-28-14]

16.19.36.10 EQUIPMENT: Each facility compounding sterile preparations shall have sufficient equipment for the safe and appropriate storage, compounding, packaging, labeling, dispensing and preparation of compounded sterile preparations drugs and parenteral preparations appropriate to the scope of pharmaceutical services provided and as specified in USP/NF <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)*.

A. All equipment shall be cleaned, maintained, monitored, calibrated, tested, and certified as appropriate to insure proper function and operation with documentation retained for three years.

B. Primary engineering controls used to provide an aseptic environment shall be tested in the course of normal operation by an independent qualified contractor and certified as meeting the requirements presented in USP/NF <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)* at least every six months and when relocated, certification records will be maintained for three years.

C. A library of current references (hard copy or electronic) shall be available including:

(1) *USP/NF* or *USP on Compounding: A Guide for the Compounding Practitioner*;

(2) New Mexico pharmacy laws, rules and regulations;

(3) specialty references (stability and incompatibility references, sterilization and preservation references, pediatric dosing, and drug monograph references) as appropriate for the scope of services provided.

D. Automated compounding devices shall:

(1) have accuracy verified on a routine basis at least every 30 days per manufacturer's specifications;

(2) be observed every 30 days by the operator during the mixing process to ensure the device is working properly;

(3) have data entry verified by a pharmacist prior to compounding or have accurate final documentation of compounded preparations to allow for verification of ingredients by a pharmacist prior to dispensing; and

(4) have accuracy of delivery of the end product verified according to written policies and procedures.

[16.19.36.10 NMAC - N, 06-28-14]

16.19.36.11 DOCUMENTATION REQUIRED:

A. Written policies, procedures and SOPs consistent with USP/NF <797> *(General Chapter <797> Pharmaceutical Compounding-Sterile Preparations) s*tandards as well as those required below, must be established, implemented, followed by facility personnel, and available for inspection and review by authorized agents of the board of pharmacy.

B. Written policies and procedures must be submitted to the state board of pharmacy prior to the issuance of any license. These records must include but are not limited to:

(1) cleaning, disinfection, evaluation, validation, testing, certification, and maintenance of the sterile compounding area;

(2) personnel qualifications, training, assessment and performance validation;

(3) operation, maintenance, validation, testing, and certification of facility and equipment;

(4) SOP's for compounding, storing, handling, and dispensing of all components used and all compounded sterile preparations;

(5) SOP's for proper disposal of physical, chemical, and infectious waste;

(6) quality control guidelines and standards;

(7) quality assurance guidelines and standards;

(8) SOP's for determination of stability, incompatibilities, and drug interactions;

(9) error prevention and incident reporting policies and procedure as per 16.19.25 NMAC.

[16.19.36.11 NMAC - N, 06-28-14]

16.19.36.12 RECORD KEEPING AND PATIENT PROFILE: The compounded sterile preparations facility is required to maintain patient's records which include but are not limited to the following.

A. Prescription records or provider orders including the original prescription or original provider order, refill authorization, alterations in the original prescription or original provider order, and interruptions in therapy due to hospitalization.

B. Patient's history including pertinent information regarding allergy or adverse drug reactions experienced by the patient.

C. Patients receiving parenteral preparations in a home setting are contacted at a frequency appropriate to the complexity of the patient's health problems and drug therapy as documented on patient specific plan of care and with each new prescription, change in therapy or condition.

D. Documentation that the patient receiving parenteral preparations in a home setting or the agent has received a written copy of the plan of care and training in the safe administration of the medication.

[16.19.36.12 NMAC - N, 06-28-14]

16.19.36.13 REQUIREMENTS FOR TRAINING: All personnel, including pharmacists, pharmacists who supervise compounding personnel, pharmacists interns and pharmacy technicians , shall have completed didactic and experiential training with competency evaluation through demonstration and testing (written or practical) as required by

USP/NF <797> *(USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)*and as outlined by the pharmacist-in-charge and described in the site policy and procedures or training manual, prior to compounding sterile preparations.

A. Instructional topics shall include:

(1) aseptic technique;

(2) critical area contamination factors;

(3) environmental monitoring;

(4) facilities;

(5) equipment and supplies;

(6) sterile pharmaceutical calculations and terminology;

(7) sterile pharmaceutical compounding documentation;

(8) quality assurance procedures;

(9) proper gowning and gloving technique;

(10) the handling of cytotoxic and hazardous drugs; and

(11) general conduct in the controlled area.

B. Training shall be obtained through the following:

(1) completion of a site-specific, structured on-the-job didactic and experiential training program (not transferable to another practice site); or

(2) completion of a board approved course; or

(3) certification by university of New Mexico college of pharmacy.

C. Experiential training shall include those areas of training as outlined in USP <797> *(USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)* with appropriate observational assessment and testing of performance as outlined in USP <797> *(USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)*including glove fingertip and media fill tests.

D. All personnel, including pharmacists compounding sterile chemotherapy drugs, pharmacists supervising compounding personnel, pharmacy interns compounding sterile chemotherapy, and pharmacy technicians compounding sterile chemotherapy drugs, shall have completed a board approved course in chemotherapy drug preparation as well as training in compounding sterile preparations as listed in H1 above, prior to compounding sterile chemotherapy preparations.

E. Frequency of training and assessment shall be conducted as required by USP <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations)* to assure continuing competency and include:

(1) initial training before compounding sterile preparations;

(2) annual refresher training and assessment in didactic topics;

(3) annual testing of glove fingertip and media fill for low and medium risk compounding;

(4) six-month testing of glove fingertip and media fill testing for high risk compounding.

F. Documentation of training: Written documentation of initial and in-service training, the results of written or practical testing, and process validation of compounding, personnel shall be retained for three years and
contain the following information:

(1) name of person receiving the training or completing the testing or process validation;

(2) date(s) of the training, testing, or process validation;

(3) general description of the topics covered in the training or testing or of the process validated;

(4) name of person supervising the training, testing, or process validation;

(5) signature of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

[16.19.36.13 NMAC - N, 06-28-14]

16.19.36.14 PATIENT OR CAREGIVER TRAINING FOR USE OF COMPOUNDED STERILE PREPARATIONS IN A HOME SETTING:

A. The pharmacist shall maintain documentation that the patient has received training consistent with Subsection F of 16.19.4.16 NMAC.

B. The facility shall provide a 24-hour toll free telephone number for use by patients of the pharmacy.

C. There shall be a documented, ongoing quality assurance program that monitors patient care and pharmaceutical care outcomes, including the following:

(1) routine performance of prospective drug use review and patient monitoring functions by a pharmacist;

(2) patient monitoring plans that include written outcome measures and systems for routine patient assessment;

(3) documentation of patient training.

[16.19.36.14 NMAC - N, 6-28-14]

HISTORY OF 16.19.36 NMAC: [RESERVED]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF PHARMACY

This is an amendment to 16.19.6 NMAC, Section 11, effective 06-28-2014.

16.19.6.11 MINIMUM EQUIPMENT AND ACCESSORY STANDARDS:

[~~**A.** The pharmacy shall have the necessary equipment for the safe and appropriate storage, compounding, packaging, labeling, dispensing and preparations of drugs and parenteral products appropriate to the scope of pharmaceutical services provided. The following items shall be in the pharmacy:~~

~~(1) an updated reference source, appropriate to each practice site, either electronic or paper version;~~

~~(2) one copy of the most recently published New Mexico pharmacy laws, rules and regulations and available revisions, either electronic or paper version.~~

~~**B. PARENTERAL PHARMACEUTICALS:**~~

~~(1) Purpose: To ensure that the citizens of New Mexico receive routine safe and competent delivery of parenteral products and nutritional support throughout the state. To establish guidelines for licensure and inspection of such facilities by the state board of pharmacy.~~

~~(2) Definitions~~

~~(a) "Parenteral products pharmacy" is a retail pharmacy which prepares and distributes prescriptions for sterile products intended for parenteral administration to patients either at home or in or out of an institution licensed by the state.~~

~~(b) "Parenteral product" means any preparation administered by injection through one or more layers of skin tissue.~~

~~(c) "Sterile" means a preparation that has undergone a valid sterilization process and is devoid of all living microorganisms, packaged in such a way to ensure the retention of this characteristic.~~

~~(d) "Preparation" means a sterile product which has been subjected to manipulation by a pharmacist under aseptic conditions to render the product suitable for administration.~~

~~(e) "Aseptic conditions" means a cabinet or facility capable of obtaining ISO class 5 clean air as defined by the federal standards 209E and which is certified by a testing agency at least every six months.~~

~~(f) "Aseptic technique" means proper manipulation of articles within a ISO class 5 clean air room or station to maintain sterility.~~

~~(g) "Disinfectant" means a~~

chemical compound used to kill and or control microbial growth within a ISO class 5 area or its surroundings and is approved for such use by the environmental protection agency.

(h) "Antimicrobial soap" means soap containing an active ingredient that is active both in vitro and vivo against skin microorganisms.

(i) "Surgical hand scrub" means an antimicrobial containing preparation which significantly decreases the number of microorganisms on intact skin.

(j) "SOP" means standard operating procedures. These are written standards for performance for tasks and operations within a facility.

(k) "Quality control" means procedures performed on preparations to assess their sterility and/or freedom from other contamination.

(l) "Quality assurance" means the procedures involved to maintain standards of goods and services.

(m) "ISO class 5 environment" means having less than 100 particles 0.5 microns or larger per cubic foot.

(n) "ISO class 8 environment" means having less than 100,000 particles 0.5 microns or larger per cubic foot.

(o) "Critical area" means any area in the controlled area where products or containers are exposed to the environment.

(p) "Process validation" means documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(q) "Positive pressure controlled area" means the clean room is to have a positive pressure differential relative to the adjacent pharmacy.

(r) "Barrier isolator" is an enclosed containment device which provides a controlled ISO class 5 environment. The device has four components; the stainless steel shell, HEPA filtration of entering and exiting air flows, glove ports for people interaction and an air lock for moving products into and out of the controlled environment.

(s) "Plan of care" means an individualized care plan for each patient receiving parenteral products in a home setting to include the following:

(i) a description of actual or potential drug therapy problems and their proposed solutions;

(ii) a description of desired outcomes of drug therapy provided;

(iii) a proposal for patient education and counseling; and

(iv) a plan specifying proactive objective and subjective monitoring (e.g. vital signs, laboratory test, physical findings, patient response, toxicity, adverse reactions, and non compliance) and the frequency with which monitoring is to occur.

(t) USP/NF standards means USP/NF Chapter 797 titled "pharmacy compounding - sterile products".

(u) "Cytotoxic drugs" shall be defined in the most current American hospital formulary service (AHFS).

(3) Pharmacist-in-charge: In order to obtain a license, all parenteral product pharmacies must designate a pharmacist in charge of operations who is:

(a) licensed to practice pharmacy in the state of New Mexico;

(b) responsible for the development, implementation and continuing review of written SOP's consistent with USP/NF standards which are used by the operation in their daily operation;

(c) pharmacist on staff who is available for twenty-four hour seven-day-a-week services;

(d) responsible for establishing a system to assure that the products prepared by the establishment are administered by licensed personnel or properly trained and instructed patients;

(e) responsible for developing an appropriate and individualized plan of care in collaboration with patient or caregiver and other healthcare providers for each patient receiving parenteral products in a home setting.

(4) Physical requirements:

(a) The parenteral products pharmacy must have sufficient floor space to assure that the products are properly prepared and stored to prevent contamination or deterioration prior to administration to the patient and meet the following:

(i) be separated physically from other pharmacy activities and enclosed on all sides except for doors and/or windows for the passage of materials;

(ii) the minimum size of a retail pharmacy must be 240 square feet; a retail pharmacy with preparation of sterile products capabilities must have 340 square feet; the stand alone parenteral product pharmacy must have a minimum of 240 square feet;

(iii) addition of a parenteral area in existing pharmacies will require submission of plans for remodeling to the board office for approval and inspection prior to licensure;

(iv) a new parenteral pharmacy must comply with Sections 8, 9, 10 and 11 of the regulations.

(b) Equipment and materials. The parenteral products pharmacy has sufficient equipment and physical facilities to safely compound and store such products and includes the following:

(i) either a ISO class 5 clean air work station or a room which meets ISO class 5 conditions;

(ii) refrigeration capacity for proper storage of prepared parenterals at 2C to 8C after preparation and until prescriptions are received by the patient or their agent;

(iii) if bulk reconstitution of antibiotics is performed the facility has a freezer capable of freezing and storing the product at -20C for periods not to exceed the manufacturer's recommendations;

(c) References. Parenteral products pharmacies maintain in their library at least one current edition reference book from each category listed below in addition to other required references:

(i) drug monograph reference, i.e., USP-DI, AHFS: drug information service, martindale's extra pharmacopoeia, or other suitable reference;

(ii) stability and incompatibility reference; i.e., trissell's handbook of parenteral medications, king/cutter IV incompatibilities, or other suitable reference;

(iii) reference on pharmaceutical technology and compounding; i.e., remington's pharmaceutical sciences, block's disinfection sterilization and preservation, or other suitable reference;

(iv) periodicals, i.e., American journal of hospital pharmacy, ASHP's clinical pharmacy, American journal of parenteral and enteral nutrition, or other suitable periodical.

(5) Documentation requirements for parenteral product pharmacies: Written policies and procedures must be available for inspection and review by authorized agents of the board of pharmacy. Written policies and procedures must be submitted to the state board of pharmacy prior to the issuance of any license. These records must include but are not limited to:

(a) cleaning, disinfection, evaluation and maintenance of the preparation area;

(b) regular recertification of the clean air unit or units by independent testing agencies;

(c) surveillance of parenteral solutions for microbiological contamination;

(d) surveillance of parenteral solutions for particulate contamination;

(e) personnel qualifications, training and performance guidelines;

(f) facility and equipment guidelines and standards;

(g) SOP's for dispensing all solutions and medications;

(h) SOP's for disposal of physical,

chemical and infectious waste;

(i) quality control guidelines and standards;

(j) quality assurance guidelines and standards;

(k) SOP's for determination of stability, incompatibilities or drug interactions.

(6) Record keeping and patient profile: The parenteral products pharmacy is required to maintain complete records of each patient's medications which include but are not limited to the following:

(a) prescription records including the original Rx, refill authorization, alterations in the original Rx, and interruptions in therapy due to hospitalization;

(b) patient's history including pertinent information regarding allergy or adverse drug reactions experienced by the patients;

(c) patients receiving parenteral products in a home setting are contacted at a frequency appropriate to the complexity of the patient's health problems and drug therapy as documented on patient specific plan of care and with each new prescription, change in therapy or condition;

(d) documentation that the patient receiving parenteral products in a home setting or their agent has received a written copy of their plan of care and training in the safe administration of their medication.

C. STERILE PHARMACEUTICAL PREPARATION:

(1) All compounded sterile products for human use shall be prepared in an appropriate aseptic environment which meets USP <797> standards. Devices used to provide an aseptic environment including laminar air flow workbenches, biological safety cabinets, compounding aseptic isolators and compounding aseptic containment isolators will:

(a) be tested in the course of normal operation by an independent qualified contractor and certified as meeting the requirements presented in USP <797> at least every 6 months and when relocated, certification records will be maintained for 3 years;

(b) have pre-filters which are inspected periodically and inspection/ replacement date documented according to written policy; and

(c) have a positive pressure controlled area that is certified as at least a ISO class 8 which is functionally separate from other areas of the pharmacy and which minimizes the opportunity for particulate and microbial contamination; this area shall:

(i) have a controlled aseptic environment or contain a device which maintains an aseptic environment;

(ii) be clean, lighted, and at an average of 80-150 foot candles;

(iii) be a minimum of 100 sq. ft to support sterile compounding activities;

(iv) be used only for the compounding of sterile pharmaceuticals using appropriate aseptic technique including gowning and gloving;

(v) be designed to avoid outside traffic and airflow;

(vi) be ventilated in a manner which does not interfere with aseptic environment control conditions;

(vii) have non-porous, washable floor coverings, hard cleanable walls and ceilings (which may include acoustical ceiling tiles coated with an acrylic paint) to enable regular disinfection; (contain only compounding medication and supplies and not be used for bulk storage;

(d) store medications and supplies on shelves above the floor;

(e) develop and implement a disposal process for packaging materials, used supplies, containers, syringes, and needles; this process shall be performed to enhance sanitation and avoid accumulation in the controlled area;

(f) prohibit particle generating activities in the controlled area:

(i) removal of medications or supplies from cardboard boxes shall not be done in the controlled area;

(ii) cardboard boxes or other packaging/shipping material which generate an unacceptable amount of particles shall not be permitted; the removal of immediate packaging designed to retain sterility or stability will be allowed;

(g) cytotoxic drugs shall:

(i) be prepared in a vertical flow biological safety cabinet, micro-biological isolation chamber or equivalent containment device;

(ii) be prepared in a cabinet thoroughly cleaned prior to use for preparation of other products; said cleaning will be documented;

(iii) be prepared in a cabinet located in a controlled area as described in 11.C.(1).(c);

(iv) be disposed of according to written policies and procedures maintained at the facility;

(h) maintain a library of specialty references appropriate for the scope of services provided; reference material may be hard copy or computerized.

(2) Requirements for training.

(a) All pharmacists prior to compounding sterile pharmaceuticals, or supervising pharmacy personnel compounding sterile pharmaceuticals, all shall have completed didactic, experiential training and competency evaluation through demonstration and testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedures or training manual. Such training shall be evidenced by completion of a recognized course in a board approved accredited college of pharmacy or course which shall include instruction and hands-on experience in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) facilities;

(v) equipment and supplies;

(vi) sterile pharmaceutical calculations and terminology;

(vii) sterile pharmaceutical compounding documentation;

(viii) quality assurance procedures;

(ix) proper gowning and gloving technique;

(x) the handling of cytotoxic and hazardous drugs; and

(xi) general conduct in the controlled area.

(b) All pharmacist interns prior to compounding sterile pharmaceuticals shall have completed instruction and experience in the areas listed in Paragraph 2. Such training will be obtained through the:

(i) completion of a structured on-the-job didactic and experiential training program at this pharmacy (not transferable to another pharmacy); or

(ii) completion of a board approved course;

(iii) certification by university of New Mexico college of pharmacy.

(c) All pharmacy technicians who compound sterile pharmaceuticals shall be a certified pharmacy technician, and complete instruction and experience in the areas listed in Paragraph 2. Such training will be obtained through the:

(i) completion of a structured on-the-job didactic and experiential training program at this pharmacy (not transferable to another pharmacy) which provides instruction and experience in the areas listed in Paragraph 2; or

(ii) completion of a board approved course which provides instructions and experience in the areas listed in Paragraph 2.

(d) All pharmacists compounding sterile chemotherapy drugs or supervising pharmacy interns or technicians compounding sterile chemotherapy drugs shall have completed a board approved course in chemotherapy drug preparation.

All pharmacy interns and technicians must complete this training prior to preparing sterile chemotherapy drug products.

(c) Documentation of training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(i) name of person receiving the training or completing the testing or process validation;

(ii) date(s) of the training, testing, or process validation;

(iii) general description of the topics covered in the training or testing or of the process validated;

(iv) name of person supervising the training, testing, or process validation;

(v) signature of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

(f) No product intended for patient uses shall be compounded by an individual until the process validation test indicates that the individual can competently perform aseptic procedures.

(g) On an annual basis the pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. A written record of such training will be maintained for 3 years.

(3) Patient or caregiver training for home sterile products.

(a) The pharmacist shall maintain documentation that the patient has received training consistent with regulation 16.19.4.17.5 NMAC.

(b) The facility shall provide a 24-hour toll free telephone number for use by patients of the pharmacy.

(c) There shall be a documented, ongoing quality assurance program that monitors patient care and pharmaceutical care outcomes, including the following:

(i) routine performance of prospective drug use review and patient monitoring functions by a pharmacist;

(ii) patient monitoring plans that include written outcome measures and systems for routine patient assessment;

(iii) documentation of patient training; and

(4) Quality assurance/ compounding and preparation of sterile pharmaceuticals.

(a) There shall be a documented, ongoing performance improvement control program that monitors personnel performance, equipment, and facilities:

(i) all aspects of sterile product preparation, storage, and distribution, including details such as the choice of cleaning materials and disinfectants and monitoring of equipment accuracy shall be addressed in policy and procedures;

(ii) if bulk compounding of parenteral solutions is performed using non-sterile chemicals, appropriate end product testing must be documented prior to the release of the product from quarantine; the test must include appropriate tests for particulate matter and pyrogens;

(iii) there shall be documentation of quality assurance audits at regular, planned intervals, including infection control and sterile technique audits; a plan for corrective action of problems identified by quality assurance audits shall be developed which includes procedures for documentation of identified problems and action taken; a periodic evaluation as stated in the policy and procedures of the effectiveness of the quality assurance activities shall be completed and documented;

(iv) the label of each sterile compounded product shall contain: patient name; if batch filling, lot or control number; solution, ingredient names, amounts; expiration date and time, when applicable; directions for use (only if the patient is the end user; not in a hospital setting), including infusion rates, specific times scheduled when appropriate; name or initials of person preparing the product and, if prepared by supportive personnel, the name or identifying initials and the name or initials of the pharmacist that completed the final check; when appropriate, ancillary instructions such as storage instructions or cautionary systems, including cytotoxic warning labels and containment bags; 8 device instructions when needed.

(b) There shall be a mechanism for tracking and retrieving products which have been recalled.

(c) Automated compounding devices shall:

(i) have accuracy verified on a routine basis at least every thirty days per manufacturer's specifications;

(ii) be observed every thirty days by the operator during the mixing process to ensure the device is working properly;

(iii) have data entry verified by a pharmacist prior to compounding; and

(iv) have accuracy of delivery of the end product verified according to written policies and procedures.

(d) If batch preparation of sterile products is being performed, a worksheet (log) must be maintained for each batch. This worksheet shall consist of formula, components, compounding directions or procedures, a sample label and evaluation and testing requirements, if applicable, and shall be used to document the following:

(i) all solutions and ingredients and their corresponding amounts, concentrations and volumes;

(ii) component manufacturer and lot number;

(iii) lot or control number assigned to batch;

(iv) date of preparation;

(v) expiration date of batch prepared products;

(vi) identity of personnel in preparation and pharmacist responsible for final check;

(vii) comparison of actual yield to anticipated yield, when appropriate.

(5) Application of regulation: Pharmacies licensed by the board prior to adoption of this regulation shall comply with the controlled area standards defined in section 11.C.(1).(c). by December 31, 2002. When these pharmacies change ownership, remodel the pharmacy, or relocate the pharmacy after the effective date of this regulation, Section 11(2) A.3. shall apply. All other portions of this regulation apply on the effective date.]

The pharmacy shall have the necessary equipment for the safe and appropriate storage, compounding, packaging, labeling, dispensing and preparations of drugs and parenteral products appropriate to the scope of pharmaceutical services provided. The following items shall be in the pharmacy; an updated reference source, appropriate to each practice site, either electronic or paper version; and one copy of the most recently published New Mexico pharmacy laws, rules and regulations and available revisions, either electronic or paper version.

[16.19.6.11 NMAC - Rp, 16 NMAC 19.6.11, 03-30-02; A, 01-15-2005; A, 01-15-08; A, 05-14-10; A, 01-20-13; A, 06-28-14]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC, Sections 65, 66 and 67, effective 06-28-2014.

16.19.20.65 SCHEDULE I:

A. NMSA 1978 Section 30-31-6 Schedule I shall consist of the

following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIATES**, unless specifically exempt or unless listed in another schedule, any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(1) Acetylmethadol
(2) Allylprodine
(3) Alphacetylmethadol
(4) Alphameprodine
(5) Alphamethadol
(6) Alpha-methyl fentanyl
(7) Benzethidine
(8) Betacetylmethadol
(9) Betameprodine
(10) Betamethadol
(11) Betaprodine
(12) Clonitazene
(13) Dextromoramide
(14) Diampromide
(15) Diethylthiambutene
(16) Dimethylthiambutene
(17) Difenoxin
(18) Dimenoxadol
(19) Dimepheptanol
(20) Dimethylthiambutene
(21) Dioxaphetyl Butyrate
(22) Dipipanone
(23) Ethylmethylthiambutene
(24) Etonitazene
(25) Etoxeridine
(26) Furethidine
(27) Hydroxypethidine
(28) Ketobemidone
(29) Levomoramide
(30) Levophenacylmorphan
(31) Morpheridine
(32) Noracymethadol
(33) Norlevorphanol
(34) Normethadone
(35) Norpipanone
(36) Phenadoxone
(37) Phenampromide
(38) Phenomorphan
(39) Phenoperidine
(40) Piritramide
(41) Proheptazine
(42) Properidine
(43) Propiram
(44) Racemoramide
(45) Tilidine
(46) Trimeperidine

B. OPIUM DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.

(1) Acetorphine
(2) Acetyl dihydrocodeine
(3) Benzyl morphine
(4) Codeine methylbromide
(5) Codeine-N-Oxide
(6) Cyprenorphine
(7) Desomorphine
(8) Dehydro morphine
(9) Etorphine
(10) Heroin
(11) Hydromorphinol
(12) Methyldesorphine
(13) Methyldihydromorphine
(14) Morphine methylbromide
(15) Morphine methylsulfonate
(16) Morphine-N-Oxide
(17) Myrophine
(18) Nicocodeine
(19) Nicomorphine
(20) Normorphine
(21) Pholcodine
(22) Thebacon
(23) Drotebanol
(24) Beta-Hydroxy-3-Methylfentanyl
(25) 3-Methylthiofentanyl
(26) Acetyl-Alpha-Methyl fentanyl
(27) Alpha-Methylthiofentanyl
(28) Beta-hydroxfentanyl
(29) Para-Fluoro fentanyl
(30) Thiofentanyl

C. HALLUCINOGENIC SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical position, and geometric isomers).

(1) 3,4 -methylenedioxy amphetamine
(2) 5 - methoxy - 3,4-methylenedioxy amphetamine
(3) 3,4,5 -trimethoxy amphetamine
(4) Bufotenine
(5) Diethyltryptamine; DET
(6) Dimethyltryptamine; DMT
(7) 4-methyl-2,5-dimethoxy-amphetamine; DOM or STP
(8) Lysergic acid diethylamide
(9) Lysergic acid diethylamide
(10) Marijuana
(11) Mescaline
(12) Peyote
(13) N-ethyl-3-piperidyl benzilate
(14) N-methyl-3-piperidyl benzilate
(15) Psilocybin
(16) Psilocyn
(17) Tetrahydrocannabinols
(18) Parahexyl (synthetic analog of delta9tetrahydrocannabinol (THC) an active ingredient of cannabis)
(19) Hashish
(20) 2, 5 -dimethoxyamphetamine; 2, 5-DMA
(21) 4-bromo-2, 5-dimethoxy-amphetamine; 2,5-DMA
(22) 4-methoxyamphetamine; PMA
(23) Ethylamine N-ethyl-1-phenylcyclohexylamine (PCE)
(24) Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine
(25) Thiophene (analog of phencyclidine) TCP or TPCP
(26) Alpha-ethyltryptamine
(27) 2, 5-dimethoxy-4-ethylamphet-amine
(28) Ibogaine
(29) 2,.5 dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7)
(30) Alpha-methyltryptamine (AMT)
(31) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)
(32) 2-(4-bromo-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe)
(33) 2-(4-chloro-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe)
(34) 2-(4-iodo-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)
[~~**(32)**~~] **(35)** Synthetic cannabinoids: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture of preparation which contains any quantity of the following synthetic cannabinoids which demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity:

(a) CP 55,244 ((hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl)phenyl] 1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol)
(b) CP 55,940 (5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]-5-(2-methyloctan-2-yl)phenol)
(c) JWH-081 (1-pentyl-3-[1-(4-methoxynaphthoy)]indole)
(d) JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole)
(e) JWH-133 3-(1,1-dimethylbutyl)-6a,7,10,10a-tetrahydro -6,6,9-trimethyl-6H dibenzo[b,d] pyran
(f) JWH 203 1-pentyl-3-(2-chlorophenylacetyl)indole)
(g) JWH 210 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone
(h) AM-694 (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole)
(i) AM-1221 (1-(N-methylpiperdin-2-yl)methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole

(j) AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole)

(k) RCS-4 or SR-19 (1-pentyl-3-[(4-methoxy)-benzoyl]indole)

(l) RCS-8 or SR-18 (1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)

(m) JWH-210 (1-pentyl-3-(4-ethylnaphthoyl)indole)

(n) WIN-49,098 (Pravadoline) (4-methoxyphenyl)-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]methanone

(o) WIN-55,212-2 (2,3-dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo-1,4-benzooxazin6- yl)-1-naphthalenylmethanone)

(p) Any of the following synthetic cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation.

(i) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398 and AM-2201.

(ii) Naphthylmethylindoles: Any compound containing a1Hindol- 3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-175, JWH-184, and JWH-199.

(iii) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-307.

(iv) Naphthylmethylindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-176.

(v) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8.

(vi) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5- position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol (CP 47,497 C8 homologue), CP 47,497 and CP 55,490.

(vii) Benzoylindoles: Any compound containing a 3-(benzoyl) [5] OTS-3833.4 indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4- morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241.

(q) UR-144 1-(pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone

(r) XLR11 1-(5-fluoro-pentyl)-1H-indol-3-yl(2,2,3,3-tetramethylcyclopropyl)methanone

(s) AKB48 N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide

[~~**(33)**~~]**(36)** Substances determined by the board to have the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of 30-31-23C NMSA 1978. Substances include but are not limited to:

(a) salvia divinorum

(b) salvinorin A (methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2*H*-benzo[f] isochromene-7-carboxylate)

[~~**(34)**~~] **(37)** 4-methyl-ethylcathinone (4-MEC)

[~~**(35)**~~] **(38)** 4-ethyl-methcathinone (4-EMC)

[~~**(36)**~~] **(39)** 2-ethylamino-1-phenyl-propan-1-one (ethcathinone)

[~~**(37)**~~] **(40)** 3',4'-methylenedioxyethcathinone (ethylone)

[~~**(38)**~~] **(41)** beta-keto-N-methyl-3,4-benzodioxyolybutanamine (bk-MBDB, butylone)

[~~**(39)**~~] **(42)** naphthylpyrovalerone (NRG-1, naphyrone)

[~~**(40)**~~] **(43)** N,N-dimethylcathinone (metamfepramone)

[~~**(41)**~~] **(44)** alpha-pyrrolidinopropiophenone (alpha-PPP)

[~~**(42)**~~] **(45)** alpha-pyrrolidinobutiophenone (**α-PBP**)

[~~**(43)**~~] **(46)** 4'-methoxy-alpha-pyrrolidinopropiophenone (MOPPP)

[~~**(44)**~~] **(47)** 4'-methyl-α-pyrrolidinopropiophenone (MPPP)

[~~**(45)**~~] **(48)** 3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP)

[~~**(46)**~~] **(49)** 3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone (MDPBP)

[~~**(47)**~~] **(50)** 4'-methyl-α-pyrrolidinobutiophenone (MPBP)

[~~**(48)**~~] **(51)** alpha-pyrrolidinovalerophenone (alpha-PVP)

[~~**(49)**~~] **(52)** 5,6-methylenedioxy-2-aminoindane (MDAI)

[~~**(50)**~~] **(53)** alpha-methylamino-butyrophenone (buphedrone)

[~~**(51)**~~] **(54)** beta-keto-ethylbenzodioxolylbutanamine (eutylone)

[~~**(52)**~~] **(55)** beta-keto-ethylbenzodioxolylpentanamine [~~(pentylone)~~]

(56) beta-keto-methylbenzodioxolylpentanamine (pentylone)

D. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone

(2) Methaqualone

(3) Benzodiazepines

(a) bromazepam

(b) camazepam

(c) cloxazolam

(d) delorazepam

(e) ethylloflazepate

(f) fludiazepam

(g) flunitrazepam

(h) haloxazolam
(i) ketazolam
(j) loprazolam
(k) lormetazepam
(l) medazepam
(m) nimetazepam
(n) nitrazepam
(o) nordiazepam
(p) oxazolam
(q) pinazepam
(r) tetrazepam

(4) Gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB.

(5) Gamma butyrolactone and any chemical compound that is metabolically converted to GHB.

(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB.

E. STIMULANTS: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers, and salts of isomers.

(1) Fenethylline
(2) N-ethylamphetamine
(3) cis-4-methylaminorex
(4) N, N-dimethylamphetamine
(5) N-benzylpiperazine (BZP, 1-benzylpiperazine)

F. Any material, compound, mixture of preparation which contains any quantity of the following substances.

(1) 3-Methylfentanyl(N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its' optical and geometric isomers, salts and salts of isomers.

(2) 3, 4-methylenedioxymethamphetamine (MDMA), its' optical, positional and geometric isomers, salts and salts of isomers.

(3) 1-methyl-4-phenyl-4-proprionoxypiperidine (MPPP), its' optical isomers, salts, and salts of isomers.

(4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its' optical isomers, salts and salts of isomers.

(5) Cathinone.

(6) Methcathinone.

[16.19.20.65 NMAC - Rp 16 NMAC 19.20.28, 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10; A, 11-27-11; A, 06-15-12; A, 08-31-12; A, 12-19-13; A, 06-28-14]

16.19.20.66 SCHEDULE II:

A. Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Substance, vegetable origin or chemical synthesis. Unless specifically exempt or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(1) Opium and opiate, and any salts, compound, derivative, or preparation of opium or opiate excluding naloxone, dextrorphan, nalbuphine, naltrexone and apomorphine but including the following:

(a) raw opium
(b) opium extracts
(c) opium fluid extracts
(d) powdered opium
(e) granulated opium
(f) tincture of opium
(g) codeine
(h) ethylmorphine
(i) etorphine hydrochloride
(j) hydrocodone
(k) hydromorphone
(l) metopon
(m) morphine
(n) oxycodone
(o) oxymorphone
(p) thebaine
(q) alfentanil
(r) oripavine

(2) Any salt, compound derivative, or preparation thereof, which is chemically equivalent or identical with any of the substances referred to in 16.19.20.66.A.(1) NMAC, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include de-cocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

B. OPIATES: Unless specifically excepted or unless in another schedule any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation except dextrose and levopropoxyphene.

(1) Alphaprodine
(2) Anileridine
(3) Bezitramide
(4) Diphenoxylate
(5) Dihydrocodeine
(6) Dextropropoxyphene (bulk) non-dosage form
(7) Fentanyl
(8) Isomethadone
(9) Levomethorphan
(10) Levorphanol
(11) Metazocine
(12) Methadone
(13) Methadone-Intermediate
(14) Monamide-Intermediate
(15) Pethidine
(16) Pethidine-Intermediate A
(17) Pethidine-Intermediate B
(18) Pethidine-Intermediate C
(19) Phenazocine
(20) Piminodine
(21) Racemethorphan
(22) Racemorphan
(23) Sufentanil
(24) Carfentanil
(25) Levo-alphacetylmethadol (LAAM)
(26) Tapentadol

C. STIMULANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system. **(See 16.19.21 NMAC- Drug Precursors)**

(1) Amphetamine, its' salts, optical isomers and salts of its' optical isomers.

(2) Methamphetamine, its' salts, isomers and salts of isomers.

(3) Phenmetrazine and its' salts.
(4) Methylphenidate
(5) Lisdexamfetamine

D. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule any material, compound mixture or preparation which contains any quantity of the substance having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers is possible within the specific chemical designation.

(1) Amobarbital
(2) Secobarbital
(3) Pentobarbital
(4) Phencyclidine
[~~**(5)** Dronabinol (synthetic) - in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. food and drug administration~~]
[~~**(6)**~~] **(5)** Glutethimide
[~~**(7)**~~] **(6)** 1-phenylcyclohexylamine
[~~**(8)**~~] **(7)** 1-piperidinocyclohexanecarbonitrile

E. HALLUCINOGENIC SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical

designation (for purpose of this paragraph only, the term "isomers" includes the optical position, and geometric isomers): Nabilone

F. MISCELLANEOUS:

(1) Dihydroetorphine

(2) Bulk dextropropoxyphene

(3) Remifentanil

[16.19.20.66 NMAC - Rp 16 NMAC 19.20.28(1), 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10; A, 06-28-14]

16.19.20.67 SCHEDULE III: Shall consist of drugs and other substances, by whatever official name, common or usual name designated listed in this section.

A. STIMULANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system.

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant, amphetamine, phenmetrazine or methamphetamine previously exempt, for which the exemption was revoked by FDA Regulation Title 21, Part 308.13, and any other drug of the quantitative composition shown in that regulation for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine.

(3) Phendimetrazine.

(4) Chlorphentermine.

(5) Clortermine.

B. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system.

(1) Any compound, mixture or preparation containing:

(a) amobarbital;

(b) secobarbital;

(c) pentobarbital;

(d) butalbital; or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(a) amobarbital;

(b) secobarbital;

(c) pentobarbital; or any salt of any of these drugs approved by the FDA for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid.

(4) Chlorhexadol

(5) Lysergic Acid

(6) Lysergic Acid Amide

(7) Methyprylon

(8) Sulfondiethylmethane

(9) Sulfonethylmethane

(10) Sulfonmethane

(11) Tiletamine/zolazepam (Telazol)

(12) Ketamine Hydrochloride

(13) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug and Cosmetic Act.

(14) Embutramide

(15) Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. food and drug administration.

(16) Perampanel

C. Nalorphine (a narcotic drug).

D. Buprenorphine.

E. NARCOTIC DRUGS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of the following narcotic drugs, or any salts thereof.

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage units, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

F. ANABOLIC STEROIDS: The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances listed in this section:

(1) boldenone

(2) chloro testosterone

(3) clostebol

(4) dehydrochlormethyltestosterone

(5) dihydrotestosterone

(6) drostanolone

(7) ethylestrenol

(8) fluoxymesterone

(9) formebolone

(10) mestanolone

(11) mesterolone

(12) methandienone

(13) methandranone

(14) methandriol

(15) methandrostenolone

(16) methenolone

(17) methyltrienolone

(18) methyltestosterone

(19) mibolerone

(20) nandrolone

(21) norbolethone

(22) norethandrolone

(23) oxandrolone

(24) oxymesterone

(25) oxymetholone

(26) stanolone

(27) stanozolol

(28) testolactone

(29) testosterone

(30) trenbolone; and

(31) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

G. Exempt anabolic steroids: Compounds, mixtures, or preparations that contain an anabolic steroid that have been exempted by the board from Subsection E of 16.19.20.67 NMAC, schedule III to the same extent that the substance has been exempted from the application of the Federal Controlled Substance Act, if the substance is listed as an exempt anabolic steroid product under 21 C.F.R. Section 1308.34 and its subsequent amendments.

[16.19.20.67 NMAC - Rp 16 NMAC 19.20.28(2), 07-15-02; A, 02-15-03; A, 06-30-05; A, 01-31-07; A, 01-15-08; A, 05-14-10; A, 06-28-14]

NEW MEXICO WATER QUALITY CONTROL COMMISSION

This is an amendment to 20.6.2 NMAC, Sections 7, 3105, 5002 and 5101, effective August 1, 2014.

20.6.2.7 DEFINITIONS: Terms defined in the Water Quality Act, but not defined in this part, will have the meaning given in the act. As used in this part:

A. "abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be rehabilitated for its intended purpose or other purposes including monitoring and observation;

B. "abate" or "abatement" means the investigation, containment, removal or other mitigation of water pollution;

C. "abatement plan" means a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution, and includes Stage 1, Stage 2, or Stage 1 and 2 of the abatement plan, as approved by the secretary;

D. "adjacent properties" means properties that are contiguous to the discharge site or property that would be contiguous to the discharge site but for being separated by a public or private right of way, including roads and highways.

E. "background" means, for purposes of ground-water abatement plans only and for no other purposes in this part or any other regulations including but not limited to surface-water standards, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants which the responsible person establishes are occurring from a source other than the responsible person's facility; this definition shall not prevent the secretary from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law;

F. "casing" means pipe or tubing of appropriate material, diameter and weight used to support the sides of a well hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent fluid from entering or leaving the well other than to or from the injection zone;

G. "cementing" means the operation whereby a cementing slurry is pumped into a drilled hole and/or forced behind the casing;

H. "cesspool" means a **"drywell"** that receives untreated domestic liquid waste containing human excreta, and which sometimes has an open bottom and/or perforated sides; a large capacity cesspool means a cesspool that receives [~~greater than 2,000 gallons per day of untreated domestic~~] liquid waste greater than that regulated by 20.7.3 NMAC;

I. "collapse" means the structural failure of overlying materials caused by removal of underlying materials;

J. "commission" means:

(1) the New Mexico water quality control commission or

(2) the department, when used in connection with any administrative and enforcement activity;

K. "confining zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement from an injection zone;

L. "conventional mining" means the production of minerals from an open pit or underground excavation; underground excavations include mine shafts, workings and air vents, but does not include excavations primarily caused by in situ extraction activities;

M. "daily composite sample" means a sample collected over any twenty-four hour period at intervals not to exceed one hour and obtained by combining equal volumes of the effluent collected, or means a sample collected in accordance with federal permit conditions where a permit has been issued under the national pollutant discharge elimination system or for those facilities which include a waste stabilization pond in the treatment process where the retention time is greater than twenty (20) days, means a sample obtained by compositing equal volumes of at least two grab samples collected within a period of not more than twenty-four (24) hours;

N. "department", "agency", or **"division"** means the New Mexico environment department or a constituent agency designated by the commission;

O. "discharge permit" means a discharge plan approved by the department;

P. "discharge permit modification" means a change to the requirements of a discharge permit that result from a change in the location of the discharge, a significant increase in the quantity of the discharge, a significant change in the quality of the discharge; or as required by the secretary;

Q. "discharge permit renewal" means the re-issuance of a discharge permit for the same, previously permitted discharge;

R. "discharge plan" means a description of any operational, monitoring , contingency, and closure requirements and conditions for any discharge of effluent or leachate which may move directly or indirectly into ground water;

S. "discharge site" means the entire site where the discharge and associated activities will take place;

T. "disposal" means to abandon, deposit, inter or otherwise discard a fluid as a final action after its use has been achieved;

U. "domestic liquid waste" means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

V. "domestic liquid waste treatment unit" means a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including but not limited to aerobic treatment units and septic tanks;

W. "drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids;

X. "experimental technology" means a technology which has not been proven feasible under the conditions in which it is being tested;

Y. "fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;

Z. "ground water" means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply;

AA. "hazard to public health" exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant affecting human health is present in the water; in determining whether a discharge would cause a hazard to public health to exist, the secretary shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of discharge to the time and place of withdrawal for use as human drinking

water;

BB. "improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface;

CC. "injection" means the subsurface emplacement of fluids through a well;

DD. "injection zone" means a geological formation, group of formations, or part of a formation receiving fluids through a well;

EE. "motor vehicle waste disposal well" means a well which receives or has received fluids from vehicular repair or maintenance activities;

FF. "non-aqueous phase liquid" means an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material;

GG. "operational area" means a geographic area defined in a project discharge permit where a group of wells or well fields in close proximity comprise a single class III well operation;

HH. "owner of record" means an owner of property according to the property records of the tax assessor in the county in which the discharge site is located at the time the application was deemed administratively complete;

II. "packer" means a device lowered into a well to produce a fluid-tight seal within the casing;

JJ. "person" means an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

KK. "petitioner" means a person seeking a variance from a regulation of the commission pursuant to Section 74-6-4(G) NMSA 1978;

LL. "plugging" means the act or process of stopping the flow of water, oil or gas into or out of a geological formation, group of formations or part of a formation through a borehole or well penetrating these geologic units;

MM. "project discharge permit" means a discharge permit which describes the operation of similar class III wells or well fields within one or more individual operational areas;

NN. "refuse" includes food, swill, carrion, slops and all substances from the preparation, cooking and consumption of food and from the handling, storage and sale of food products, the carcasses of animals, junked parts of automobiles and other machinery, paper, paper cartons, tree branches, yard trimmings, discarded furniture, cans, oil, ashes, bottles, and all unwholesome material;

OO. "responsible person" means a person who is required to submit an abatement plan or who submits an abatement plan pursuant to this part;

PP. "secretary" or **"director"** means the secretary of the New Mexico department of environment or the director of a constituent agency designated by the commission;

QQ. "sewer system" means pipelines, conduits, pumping stations, force mains, or other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

RR. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

SS. "significant modification of Stage 2 of the abatement plan" means a change in the abatement technology used excluding design and operational parameters, or re-location of 25 percent or more of the compliance sampling stations, for any single medium, as designated pursuant to Paragraph (4) of Subsection E of 20.6.2.4106 NMAC;

TT. "subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other mechanisms intended to distribute fluids below the surface of the ground;

UU. "subsurface water" means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation;

VV. "TDS" means total dissolved solids as determined by the "calculation method" (sum of constituents), by the "residue on evaporation method at 180 degrees" of the "*U.S. geological survey techniques of water resource investigations*," or by conductivity, as the secretary may determine;

WW. "toxic pollutant" means a water contaminant or combination of water contaminants in concentration(s) which, upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains, will unreasonably threaten to injure human health, or the health of animals or plants which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring; in order to be considered a toxic pollutant a contaminant must be one or a combination of the potential toxic pollutants listed below and be at a concentration shown by scientific information currently available to the public to have potential for causing one or more of the effects listed above; any water contaminant or combination of the water contaminants in the list below creating a lifetime risk of more than one cancer per 100,000 exposed persons is a toxic pollutant:

(1) acrolein
(2) acrylonitrile
(3) aldrin
(4) benzene
(5) benzidine
(6) carbon tetrachloride
(7) chlordane
(8) chlorinated benzenes
(a) monochlorobenzene
(b) hexachlorobenzene
(c) pentachlorobenzene
(9) 1,2,4,5-tetrachlorobenzene
(10) chlorinated ethanes
(a) 1,2-dichloroethane
(b) hexachloroethane
(c) 1,1,2,2-tetrachloroethane
(d) 1,1,1-trichloroethane
(e) 1,1,2-trichloroethane
(11) chlorinated phenols
(a) 2,4-dichlorophenol
(b) 2,4,5-trichlorophenol
(c) 2,4,6-trichlorophenol
(12) chloroalkyl ethers
(a) bis (2-chloroethyl) ether
(b) bis (2-chloroisopropyl) ether
(c) bis (chloromethyl) ether
(13) chloroform
(14) DDT
(15) dichlorobenzene
(16) dichlorobenzidine
(17) 1,1-dichloroethylene
(18) dichloropropenes
(19) dieldrin
(20) diphenylhydrazine
(21) endosulfan
(22) endrin
(23) ethylbenzene
(24) halomethanes
(a) bromodichloromethane
(b) bromomethane
(c) chloromethane
(d) dichlorodifluoromethane
(e) dichloromethane
(f) tribromomethane
(g) trichlorofluoromethane
(25) heptachlor
(26) hexachlorobutadiene
(27) hexachlorocyclohexane (HCH)
(a) alpha-HCH
(b) beta-HCH
(c) gamma-HCH

(d) technical HCH
(28) hexachlorocyclopentadiene
(29) high explosives (HE)
(a) 2,4-dinitrotoluene (2,4,DNT)
(b) 2,6-dinitrotoluene (2,6,DNT)
(c) octrahydro-1,3,5,7-tetranitro-1,3,5,7 tetrazocine (HMX)
(d) hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)
(e) 2,4,6-trinitrotoluene (TNT)
(30) isophorone
(31) methyl tertiary butyl ether
(32) nitrobenzene
(33) nitrophenols
(a) 2,4-dinitro-o-cresol
(b) dinitrophenols
(34) nitrosamines
(a) N-nitrosodiethylamine
(b) N-nitrosodimethylamine
(c) N-nitrosodibutylamine
(d) N-nitrosodiphenylamine
(e) N-nitrosopyrrolidine
(35) pentachlorophenol
(36) perchlorate
(37) phenol
(38) phthalate esters
(a) dibutyl phthalate
(b) di-2-ethylhexyl phthalate
(c) diethyl phthalate
(d) dimethyl phthalate
(39) polychlorinated biphenyls (PCB‘s)
(40) polynuclear aromatic hydrocarbons (PAH)
(a) anthracene
(b) 3,4-benzofluoranthene
(c) benzo (k) fluoranthene
(d) fluoranthene
(e) fluorene
(f) phenanthrene
(g) pyrene
(41) tetrachloroethylene
(42) toluene
(43) toxaphene
(44) trichloroethylene
(45) vinyl chloride
(46) xylenes
(a) o-xylene
(b) m-xylene
(c) p-xylene
(47) 1,1-dichloroethane
(48) ethylene dibromide (EDB)
(49) cis-1,2-dichloroethylene
(50) trans-1,2-dichloroethylene
(51) naphthalene
(52) 1-methylnaphthalene
(53) 2-methylnaphthalene
(54) benzo-a-pyrene

XX. “vadose zone” means earth material below the land surface and above ground water, or in between bodies of ground water;

YY. “wastes” means sewage, industrial wastes, or any other liquid, gaseous or solid substance which will pollute any waters of the state;

ZZ. “water” means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

AAA. “water contaminant” means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water; “water contaminant” does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954;

BBB. “watercourse” means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and beds with visible evidence of the occasional flow of water;

CCC. “water pollution” means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

DDD. “well” means: (1) A bored, drilled, or driven shaft; (2) A dug hole whose depth is greater than the largest surface dimension; (3) An improved sinkhole; or (4) A subsurface fluid distribution system;

EEE. “well stimulation” means a process used to clean the well, enlarge channels, and increase pore space in the interval to be injected, thus making it possible for fluids to move more readily into the injection zone; well stimulation includes, but is not limited to, (1) surging, (2) jetting, (3) blasting, (4) acidizing, (5) hydraulic fracturing.

[1-4-68, 4-20-68, 11-27-70, 9-3-72, 4-11-74, 8-13-76, 2-18-77, 6-26-80, 7-2-81, 1-29-82, 9-20-82, 11-17-84, 3-3-86, 8-17-91, 8-19-93, 12-1-95; 20.6.2.7 NMAC - Rn, 20 NMAC 6.2.I.1101, 1-15-01; A, 1-15-01; A, 12-1-01; A, 9-15-02; A, 9-26-04; A, 7-16-06; A, 8-1-14]

20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT REQUIREMENT: Sections 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to the following:

A. Effluent or leachate which conforms to all the listed numerical standards of Section 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l or less, and does not contain any toxic pollutant. To determine conformance, samples may be taken by the agency before the effluent or leachate is discharged so that it may move directly or indirectly into ground water; provided that if the discharge is by seepage through non-natural or altered natural materials, the agency may take samples of the solution before or after seepage. If for any reason the agency does not have access to obtain the appropriate samples, this exemption shall not apply;

B. Effluent which is [~~discharged from a sewerage system used only for disposal of household and other domestic waste which is designed to receive and which receives 2,000 gallons or less of liquid waste per day~~] regulated pursuant to 20.7.3 NMAC, “Liquid Waste Disposal and Treatment” regulations;

C. Water used for irrigated agriculture, for watering of lawns, trees, gardens or shrubs, or for irrigation for a period not to exceed five years for the revegetation of any disturbed land area, unless that water is received directly from any sewerage system;

D. Discharges resulting from the transport or storage of water diverted, provided that the water diverted has not had added to it after the point of diversion any effluent received from a sewerage system, that the source of the water diverted was not mine workings, and that the secretary has not determined that a hazard to public health may result;

E. Effluent which is discharged to a watercourse which is naturally perennial; discharges to dry arroyos and ephemeral streams are not exempt from the discharge permit requirement, except as otherwise provided in this section;

F. Those constituents which are subject to effective and enforceable effluent limitations in a National Pollutant Discharge Elimination System (NPDES) permit, where discharge onto or below the surface of the ground so that water contaminants may move directly or indirectly into ground water occurs downstream from the outfall where NPDES effluent limitations are imposed, unless the secretary determines that a hazard to public health may result. For purposes of this subsection, monitoring requirements alone do not constitute effluent limitations;

G. Discharges resulting from flood control systems;

H. Leachate which results from the direct natural infiltration of precipitation through disturbed materials, unless the secretary determines that a hazard to public health may result;

I. Leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

J. Leachate from materials disposed of in accordance with the Solid Waste Management Regulations (20 NMAC 9.1) adopted by the New Mexico Environmental Improvement Board;

K. Natural ground water

seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining process; this exemption does not apply to solution mining;

L. Effluent or leachate discharges resulting from activities regulated by a mining plan approved and permit issued by the New Mexico Coal Surface Mining Commission, provided that this exemption shall not be construed as limiting the application of appropriate ground water protection requirements by the New Mexico Coal Surface Mining Commission;

M. Effluent or leachate discharges which are regulated by the Oil Conservation Commission and the regulation of which by the Water Quality Control Commission would interfere with the exclusive authority granted under Section 70-2-12 NMSA 1978, or under other laws, to the Oil Conservation Commission.

[2-18-77, 6-26-80, 7-2-81, 12-24-87, 12-1-95; 20.6.2.3105 NMAC - Rn, 20 NMAC 6.2.III.3105, 1-15-01; A, 12-1-01; A, 8-1-14]

20.6.2.5002 UNDERGROUND INJECTION CONTROL WELL CLASSIFICATIONS:

A. Underground injection control wells include the following.

(1) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(2) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(3) Any subsurface distribution system, cesspool or other well which is used for the injection of wastes.

B. Underground injection control wells are classified as follows:

(1) Class I wells inject fluids beneath the lowermost formation that contains 10,000 milligrams per liter or less TDS. Class I hazardous or radioactive waste injection wells inject fluids containing any hazardous or radioactive waste as defined in 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes. Class I non-hazardous waste injection wells inject non-hazardous and non-radioactive fluids, and they inject naturally-occurring radioactive material (NORM) as provided by Section 20.3.1.1407 NMAC.

(2) Class II wells inject fluids associated with oil and gas recovery.

(3) Class III wells inject fluids for extraction of minerals or other natural resources, including sulfur, uranium, metals, salts or potash by in situ extraction. This classification includes only in situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(4) Class IV wells inject fluids containing any radioactive or hazardous waste as defined in 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes, above or into a formation that contains 10,000 mg/l or less TDS.

(5) Class V wells inject a variety of fluids and are those wells not included in Class I, II, III or IV. Types of Class V wells include, but are not limited to, the following:

(a) Domestic liquid waste injection wells

(i) domestic liquid waste disposal wells used to inject liquid waste volumes greater than [~~2,000 gallons per day of treated domestic liquid waste~~] that regulated by 20.7.3 NMAC through subsurface fluid distribution systems or vertical wells;

(ii) septic system wells used to emplace liquid waste volumes greater than [~~2,000 gallons per day of domestic liquid waste~~] that regulated by 20.7.3 NMAC into the subsurface, which are comprised of a septic tank and subsurface fluid distribution system;

(iii) large capacity cesspools used to inject liquid waste volumes greater than [~~2,000 gallons per day of domestic liquid waste~~] that regulated by 20.7.3 NMAC, including drywells that sometimes have an open bottom and/or perforated sides.

(b) Industrial waste injection wells

(i) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling;

(ii) dry wells used for the injection of wastes into a subsurface formation;

(iii) geothermal energy injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electrical power;

(iv) stormwater drainage wells used to inject storm runoff from the surface into the subsurface;

(v) motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities;

(vi) car wash waste disposal wells used to inject fluids from motor vehicle washing activities.

(c) Mining injection wells

(i) stopes leaching wells used for solution mining of conventional mines;

(ii) brine injection wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;

(iii) backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether water injected is a radioactive waste or not;

(iv) injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

(d) Ground water management injection wells

(i) ground water remediation injection wells used to inject contaminated ground water that has been treated to ground water quality standards;

(ii) in situ ground water remediation wells used to inject a fluid that facilitates vadose zone or ground water remediation.

(iii) recharge wells used to replenish the water in an aquifer, including use to reclaim or improve the quality of existing ground water;

(iv) barrier wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality;

(v) subsidence control wells (not used for purposes of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(vi) wells used in experimental technologies.

(e) Agricultural injection wells - drainage wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality.

[20.6.2.5002 NMAC - N, 12-1-01; A, 8-1-14]

20.6.2.5101 DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. Class I non-hazardous waste injection wells and Class III wells must meet the requirements of Sections 20.6.2.5000 through 20.6.2.5299 NMAC in addition to other applicable requirements of the commission regulations. The secretary may also require that some Class IV and Class V wells comply with the requirements for Class I non-hazardous waste injection wells in Sections 20.6.2.5000 through 20.6.2.5299 NMAC if the secretary determines that the additional requirements are necessary to prevent the movement of water contaminants from a specified

injection zone into ground water having 10,000 mg/l or less TDS. No Class I non-hazardous waste injection well or Class III well may be approved which allows for movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of Subsection C of Section 20.6.2.5101 NMAC.

B. Operation of a Class I non-hazardous waste injection well or Class III well must be pursuant to a discharge permit meeting the requirements of Sections 20.6.2.3000 through 20.6.2.3999 NMAC and Sections 20.6.2.5000 through 20.6.2.5299 NMAC.

C. Discharge permits for Class I non-hazardous waste injection wells, or Class III wells affecting ground water of 10,000 mg/l or less TDS submitted for secretary approval shall:

(1) Receive an aquifer designation if required in Section 20.6.2.5103 NMAC prior to discharge permit issuance; or

(2) For Class III wells only, address the methods or techniques to be used to restore ground water so that upon final termination of operations including restoration efforts, ground water at any place of withdrawal for present or reasonably foreseeable future use will not contain either concentrations in excess of the standards of Section 20.6.2.3103 NMAC or any toxic pollutant. Issuance of a discharge permit or project discharge permit for Class III wells that provides for restoration of ground water in accordance with the requirements of this Subsection shall substitute for the aquifer designation provisions of Section 20.6.2.5103 NMAC. The approval shall constitute a temporary aquifer designation for a mineral bearing or producing aquifer, or portion thereof, to allow injection as provided for in the discharge permit. Such temporary designation shall expire upon final termination of operations including restoration efforts.

D. The exemptions from the discharge permit requirement listed in Section 20.6.2.3105 NMAC do not apply to underground injection control wells except as provided below:

(1) Wells regulated by the Oil Conservation Division under the exclusive authority granted under Section 70-2-12 NMSA 1978 or under other Sections of the "Oil and Gas Act";

(2) Wells regulated by the oil conservation division under the "Geothermal Resources Act";

(3) Wells regulated by the New Mexico coal surface mining bureau under the "Surface Mining Act";

(4) Wells for the disposal of effluent from systems which [~~receive less than 2,000 gallons per day of domestic sewage effluent and~~] are regulated under the "Liquid Waste Disposal and Treatment" regulations (20 NMAC 7.3) [20.7.3 NMAC] adopted by the environmental improvement board under the "Environmental Improvement Act".

E. Project permits for Class III wells.

(1) The secretary may consider a project discharge permit for Class III wells, if the wells are:

(a) Within the same well field, facility site or similar unit,

(b) Within the same aquifer and ore deposit,

(c) Of similar construction,

(d) Of the same purpose, and

(e) Operated by a single owner or operator.

(2) A project discharge permit does not allow the discharger to commence injection in any individual operational area until the secretary approves an application for injection in that operational area (operational area approval).

(3) A project discharge permit shall:

(a) Specify the approximate locations and number of wells for which operational area approvals are or will be sought with approximate time frames for operation and restoration (if restoration is required) of each area; and

(b) Provide the information required under the following Sections of this Part, except for such additional site-specific information as needed to evaluate applications for individual operational area approvals: Subsection C of Section 20.6.2.3106, Sections 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and Subsection B of Section 20.6.2.5210 NMAC.

(4) Applications for individual operational area approval shall include the following:

(a) Site-specific information demonstrating that the requirements of this Part are met, and

(b) Information required under Sections 20.6.2.5202 through 20.6.2.5210 NMAC and not previously provided pursuant to Subparagraph (b) of Paragraph (3) of Subsection E of this Section.

(5) Applications for project discharge permits and for operational area approval shall be processed in accordance with the same procedures provided for discharge permits under Sections 20.6.2.3000 through 20.6.2.3114 NMAC, allowing for public notice on the project discharge permit and on each application for operational area approval pursuant to Section 20.6.2.3108 NMAC with opportunity for public hearing prior to approval or disapproval.

(6) The discharger shall comply with additional requirements that may be imposed by the secretary pursuant to this Part on wells in each new operational area.

F. If the holder of a discharge permit for a Class I non-hazardous waste injection well, or Class III well submits an application for discharge permit renewal at least 120 days before discharge permit expiration, and the discharger is in compliance with his discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

G. Discharge Permit Signatory Requirements: No discharge permit for a Class I non-hazardous waste injection well or Class III well may be issued unless:

(1) The application for a discharge permit has been signed as follows:

(a) For a corporation: by a principal executive officer of at least the level of vice-president, or a representative who performs similar policy-making functions for the corporation who has authority to sign for the corporation; or

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer who has authority to sign for the agency, or a ranking elected official; and

(2) The signature is directly preceded by the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

H. Transfer of Class I non-hazardous waste injection well and Class III well Discharge Permits.

(1) The transfer provisions of Section 20.6.2.3111 NMAC do not apply to a discharge permit for a Class I non-hazardous waste injection well or Class III well.

(2) A Class I non-hazardous waste injection well or Class III well discharge permit may be transferred if:

(a) The secretary receives written notice 30 days prior to the transfer date; and

(b) The secretary does not object prior to the proposed transfer date. The secretary may require modification of the discharge permit as a condition of transfer, and may require demonstration of adequate financial responsibility.

(3) The written notice required by Subparagraph (b) of Paragraph (2) of Subsection I above shall:

(a) Have been signed by the discharger and the succeeding discharger, including an acknowledgement that the succeeding discharger shall be responsible for compliance with the discharge permit upon taking possession of the facility; and

(b) Set a specific date for transfer of discharge permit responsibility, coverage and liability; and

(c) Include information relating to the succeeding discharger's financial responsibility required by Paragraph (17) of Subsection B of Section 20.6.2.5210 NMAC.

I. Modification or Termination of a Discharge Permit for a Class I non-hazardous waste injection well or Class III well: If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicate that this Part are being or may be violated, the secretary may require modification or, if it is determined by the secretary that the modification may not be adequate, may terminate a discharge permit for a Class I non-hazardous waste injection Well, or Class III well or well field, that was approved pursuant to the requirements of this under Sections 20.6.2.5000 through 20.6.2.5299 NMAC for the following causes:

(1) Noncompliance by the discharger with any condition of the discharge permit; or

(2) The discharger's failure in the discharge permit application or during the discharge permit review process to disclose fully all relevant facts, or the discharger's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity may cause a hazard to public health or undue risk to property and can only be regulated to acceptable levels by discharge permit modification or termination.

[9-20-82, 12-1-95, 11-15-96; 20.6.2.5101 NMAC - Rn, 20 NMAC 6.2.V.5101, 1-15-01; A, 12-1-01; A, 9-15-02; A, 8-1-14]

End of Adopted Rules Section

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