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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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New Mexico Register

Volume XXVIII, Issue 18

September 26, 2017

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF HEARING TO CONSIDER AMENDING 20.11.41 NMAC, *CONSTRUCTION PERMITS TO ADDRESS CONDITIONAL APPROVAL BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY*

On November 8, 2017, at 5:30 p.m., the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM 87102. The hearing will address a petition for regulatory change from the City of Albuquerque, Environmental Health Department (“EHD”), proposing to: amend 20.11.41 NMAC, *Construction Permits*; and submit these regulations to the U.S. Environmental Protection Agency (“EPA”) as a proposed revision to the New Mexico State Implementation Plan under the federal Clean Air Act. Following the hearing, the Air Board at its regular monthly meeting the same evening is expected to consider adopting the regulatory change and related submittal to EPA proposed in the EHD petition.

The agenda for the November 8, 2017 regular monthly meeting of the Air Board will be viewable at least 72 hours in advance of the meeting at <http://www.cabq.gov/airquality/air-quality-control-board/events>.

The reasons for EHD’s proposed rulemaking are stated in its petition to the Air Board, AQC Board Petition No. 2017-2, available at <http://www.cabq.gov/airquality/air-quality-control-board>, at the link entitled “Library of current Rulemaking Petitions and all related documents.” EPA is requiring amendments to 20.11.41 NMAC in accordance with its conditional

approval of a proposed SIP revision for 20.11.41 NMAC, submitted to EPA in 2013. EPA’s conditional approval is described in the Federal Register, 82 Fed. Reg. 29,421 (June 29, 2017), available at www.federalregister.gov.

EHD’s proposed changes to local regulations would:

- 1) address EPA conditional approval by amending 20.11.41.28 NMAC to eliminate allowable emission increases, along with associated public notice requirements, for technical permit revisions;
- 2) address EPA conditional approval by correcting a typographical error in the provisions for accelerated permit review at 20.11.41.32 NMAC; and
- 3) make certain other minor changes, not required by EPA, that would allow EHD to provide public notice of construction permit applications by web publication; increase the public notice for public information hearings from 10 days to 30 days; eliminate air dispersion modeling for technical permit revisions along with the elimination of allowable emissions increases noted above.

The record of this rulemaking for AQC Board Petition No. 2017-2, including a Public Review Draft of the proposed regulatory changes, may be reviewed during regular business hours at the Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, NM 87102. Copies of the Public Review Draft may be obtained by contacting Andrew Daffern, Air Quality Control Board Liaison, at (505) 768-2601 or adaffern@cabq.gov. The rulemaking record for AQC Board Petition No. 2017-2 is also available on the web site of EHD, Air Quality Program, at <http://www.cabq.gov/airquality/air-quality-control-board>, at the link entitled “Library of current Rulemaking Petitions and all related documents.”

The hearing on the proposed regulatory changes will be conducted in accordance with NMSA 1978 § 74-2-6; City of Albuquerque Joint Air Quality Control Board Ordinance, ROA § 9-5-1-6, *Adoption of Regulations, Notice and Hearing*; Bernalillo County Ordinance, Section 30-35, *Adoption of Regulations, Notice and Hearings*; and 20.11.82 NMAC, *Rulemaking Procedures—Air Quality Control Board*.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Interested persons may present technical or non-technical testimony.

Persons wishing to present technical testimony must file with the hearing clerk a written notice of intent (NOI) to do so no later than 15 days before the hearing, by 5:00 p.m. on Tuesday, October 24, 2017. The contact information for the hearing clerk is: Andrew Daffern, Air Quality Control Board Liaison, Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, New Mexico 87102. Andrew Daffern may be reached by phone at (505) 768-2601 or by email at adaffern@cabq.gov.

As required by 20.11.82.20 NMAC, the NOI shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) include the text of any

recommended modifications to the proposed regulatory change;

(5) list and attach an original and 15 copies of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and

(6) be served on the petitioner, if the document is an NOI filed by any person other than the petitioner.

An NOI must also follow the filing and service requirements of 20.11.82.16 NMAC.

As provided by 20.11.82.22 NMAC, any member of the general public may present non-technical testimony at the hearing. No prior notification is required to present non-technical testimony. Any member of the public may also offer exhibits in connection with non-technical testimony, as long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file the written statement prior to the hearing, or submit it at the hearing. Written statements submitted prior to the hearing may be directed to the hearing clerk, Andrew Daffern, at the above contact information.

NOTICE TO PERSONS WITH DISABILITIES OR SPECIAL NEEDS: If you have a disability or require special assistance to participate in this meeting, including interpretation, please contact the Albuquerque-Bernalillo County Air Quality Control Board Liaison as soon as possible before the meeting date at 505-768-2601. Those in need of hearing assistance may call 711.

The City of Albuquerque does not discriminate on the bases of race, color, national origin, sex, age or disability. If you believe you have been discriminated against, you may submit a complaint at www.cabq.gov/humanrights/filing-a-complaint. You may also contact Gabe Campos at ODHR@cabq.gov or 505-768-4589.

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF HEARING TO CONSIDER ADOPTING A NEW REGULATION, 20.11.39 NMAC, *PERMIT WAIVERS AND AIR QUALITY NOTIFICATIONS FOR CERTAIN SOURCE CATEGORIES,* AND AMEND 20.11.41 NMAC, *CONSTRUCTION PERMITS*

On November 8, 2017, at 5:30 p.m., the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM 87102. The hearing will address a petition for regulatory change from the City of Albuquerque, Environmental Health Department (“EHD”), proposing to: adopt a new regulation, 20.11.39 NMAC, *Permit Waivers and Air Quality Notifications for Certain Source Categories*; make related amendments to 20.11.41 NMAC, *Construction Permits*; and submit these regulations to the U.S. Environmental Protection Agency (“EPA”) as a proposed revision to the New Mexico State Implementation Plan under the federal Clean Air Act. Following the hearing, the Air Board at its regular monthly meeting the same evening is expected to consider adopting the regulatory changes and related submittal to EPA proposed in the EHD petition.

The agenda for the November 8, 2017 regular monthly meeting of the Air Board will be viewable at least 72 hours in advance of the meeting at <http://www.cabq.gov/airquality/air-quality-control-board/events>.

The reasons for EHD’s proposed rulemaking are stated in its petition to the Air Board, AQCB Petition No. 2017-3, available at <http://www.cabq.gov/airquality/air-quality-control-board>, at the link entitled “Library of

current Rulemaking Petitions and all related documents.”

EHD’s proposed changes to local regulations would:

1) adopt 20.11.39 NMAC, waiving permit requirements for specified gasoline distributing facilities and emergency stationary reciprocating internal combustion engines (“ES-RICE”), replacing permitting with a new administrative process (Air Quality Notifications) to authorize construction or modification of sources, continuing to require compliance with relevant air quality control requirements, and providing for enforcement and collection of fees from owners and operators of regulated sources; and

2) amend 20.11.41 NMAC to waive permit requirements for qualified gasoline distribution facilities and ES-RICE and subject these qualified sources to the alternative authorization process in 20.11.39 NMAC.

The record of this rulemaking for AQCB Petition No. 2017-3, including Public Review Drafts of the proposed regulatory changes, may be reviewed during regular business hours at the Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, NM 87102. Copies of the Public Review Drafts may be obtained by contacting Andrew Daffern, Air Quality Control Board Liaison, at (505) 768-2601 or adaffern@cabq.gov. The rulemaking record for AQCB Petition No. 2017-3 is also available on the web site of EHD, Air Quality Program, at: <http://www.cabq.gov/airquality/air-quality-control-board>, at the link entitled “Library of current Rulemaking Petitions and all related documents.”

The hearing on the proposed regulatory changes will be conducted in accordance with NMSA 1978 § 74-2-6; City of Albuquerque Joint Air Quality Control Board Ordinance, ROA § 9-5-1-6, *Adoption of Regulations, Notice and Hearing*;

Bernalillo County Ordinance, Section 30-35, *Adoption of Regulations, Notice and Hearings*; and 20.11.82 NMAC, *Rulemaking Procedures—Air Quality Control Board*.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Interested persons may present technical or non-technical testimony.

Persons wishing to present technical testimony must file with the hearing clerk a written notice of intent (NOI) to do so no later than 15 days before the hearing, by 5:00 p.m. on Tuesday, October 24, 2017. The contact information for the hearing clerk is: Andrew Daffern, Air Quality Control Board Liaison, Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, New Mexico 87102. Andrew Daffern may be reached by phone at (505) 768-2601 or by email at adaffern@cabq.gov.

As required by 20.11.82.20 NMAC, the NOI shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) include the text of any recommended modifications to the proposed regulatory change;
- (5) list and attach an original and 15 copies of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and

(6) be served on the petitioner, if the document is an NOI filed by any person other than the petitioner.

An NOI must also follow the filing and service requirements of 20.11.82.16 NMAC.

As provided by 20.11.82.22 NMAC, any member of the general public may present non-technical testimony at the hearing. No prior notification is required to present non-technical testimony. Any member of the public may also offer exhibits in connection with non-technical testimony, as long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file the written statement prior to the hearing, or submit it at the hearing. Written statements submitted prior to the hearing may be directed to the hearing clerk, Andrew Daffern, at the above contact information.

NOTICE TO PERSONS WITH DISABILITIES OR SPECIAL NEEDS: If you have a disability or require special assistance to participate in this meeting, including interpretation, please contact the Albuquerque-Bernalillo County Air Quality Control Board Liaison as soon as possible before the meeting date at 505-768-2601. Those in need of hearing assistance may call 711.

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COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The New Mexico Commission of

Public Records (CPR) has scheduled a regular meeting and rule hearing for Tuesday, November 14, 2017, at 10:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Georgette Chavez at 476-7926 by October 31, 2017, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NOTICE OF RULEMAKING

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

Repeal

- 1.24.20 NMAC Emergency Rules (CPR Rule)
- 1.13.12 NMAC Designation of Records Management Personnel (CPR Rule)
- 1.13.30 NMAC Disposition of Public Records and Non-Records (Joint CPR & SRA Rule)

Replacement

- 1.13.12 NMAC Designation of Records Management Personnel (CPR Rule)
- 1.13.30 NMAC Disposition of Public Records and Non-Records (Joint CPR & SRA Rule)

Amend

- 1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule)
- 1.13.5 NMAC New Mexico Historical Records Grant Program Guidelines (CPR Rule)
- 1.13.10 NMAC Records Storage and Access (SRA Only)

SYNOPSIS:

The proposed repeal of 1.24.20 NMAC is to acknowledge that the rule for emergency rule filing has been supplanted by the statutory

changes made to the State Rules Act due to passage of HB 58 in the 2017 regular legislative session.

The proposed repeal and replacement of 1.13.12 NMAC is to add designation language for records custodians, clarify the training requirements for designated personnel, and to renumber the part.

The proposed repeal and replacement of 1.13.30 NMAC consists of the following modifications: Section 2 is being amended to widen the scope of the rule; Section 10 is being amended to only transfer closed records to the state archives; Section 11 is being amended to add a designee of the state records administrator to inspect records for on-site records, add the requirement of a certificate of destruction, and add the qualification of a document destruction vendor; Section 12 is being amended to add a designee of the state records administrator to inspect records at the record centers; standardizing the dimensions of boxes brought in the destruction, and establish a fee for the services of document destruction for boxes delivered to the record centers; Section 13 is being amended to place the responsibility of monitoring legal holds on the custodial agencies and to assess a fee per box during the annual destruction; Section 14 is being amended to require a standardized form and to correct a NMAC reference; and Section 16 is being amended to remove a unnecessary statutory reference and grammatical corrections.

The proposed amendment of 1.21.2 NMAC consist of the follow modifications: Section 336, Case Files - Loans, and Section 337, Educational Financial Aid, are being amended to remove grant administration from the subcategory; grant files were moved to the Administration - general management category in November of 2016; and Section 644 is being added to allow for the classification of dismissed attorney legal case files to match the classification provided for the courts (section 616).

The proposed amendments to 1.13.5 NMAC consist of the following: Section 8 is being amended to clarify eligibility requirements for historical records grants; Section 9 is being amended to clarify the conditions for custody of historically significant records; and Section 10 is being amended to limit the types of projects that could be funded.

The proposed amendment of 1.13.10 NMAC is to add the rejection of storage boxes that are less than three quarters full, or that have glossy exteriors, from being accepted for storage at the record centers, and to add a reference to the fee schedule for the storage of microfilm.

At the hearing the CPR and Administrator will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5 p.m. on October 31, 2017.

If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments.

Persons offering written comments at the hearing must have eight (8) copies for the Commission and Administrator to review. Oral comments will also be accepted at the rule hearing, subject to time limitations.

The Commission may vote on the proposed rules during the meeting on November 14, 2017. The State Records Administrator may take action on those rules at the close of the public rulemaking hearing. A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the Commission's website (www.nmcpr.state.nm.us) or by contacting Melissa Salazar at Melissa.Salazar@state.nm.us.

state.nm.us, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505 or 476-7911.

A copy of the agenda for the combined meeting and rule hearing is also available on the Commission website and at the office of the State Records Administrator located in the Santa Fe State Records Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM. The agenda is subject to change up to 72 hours prior to the meeting.

Legal authority for this rulemaking can be found in the Public Records Act, Section 14-3-1, et seq. and in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of certain rules of the Emergency Medical Systems (EMS) Bureau of the Epidemiology and Response Division. These rule changes are proposed pursuant to Sections 24-10B-4 and Subparagraph (e) of 9-7-6 NMSA 1978.

The public hearing will be held on October 26, 2017 at 9:00 a.m. in the Harold Runnels Building auditorium, located at 1190 St. Francis Drive in Santa Fe, New Mexico. The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the following rule parts.

7.27.2 NMAC (“Licensing of Emergency Medical Services Personnel”). The proposed revisions to this rule part include: additional provisions regarding EMS training standards; provisions concerning downgrading of licensure; additional requirements regarding reciprocity and seasonal licensure;

modifications to renewal standards; and provisions regarding the effect of revocation.

7.27.6 NMAC (“Emergency Medical Services Advance Directives”). The proposed revisions to this rule part include: provisions regarding the New Mexico Medical Orders for Scope of Treatment (MOST) form, an advanced directive form issued by the EMS Bureau; and clarification regarding who may execute an EMS “do not resuscitate” (DNR) order or MOST form.

7.27.8 NMAC (“Cardiac Arrest Targeted Response Program”). The proposed revisions to this rule part include: removal of requirement that AED Programs be overseen by a physician medical director; and clarification of who may prescribe an automated external defibrillator (AED) to a patient without functioning in an approved AED program.

7.27.11 NMAC (“Supplemental Licensing Provisions”). The proposed revisions to this rule part include: modifications to the allowed medications and skills in the scopes of practice for emergency medical technicians (EMTs); a statement that the Department may limit or expand scopes of practice for EMTs in the event of an emergency; the addition of the Santa Fe Community College as an approved emergency medical services training program; and a statement that the EMS caregiver with the highest level of licensure during a call is the most responsible for the care the patient will receive and is generally designated as the team leader.

7.27.13 NMAC (“Certification of Stroke Centers”). The proposed revisions include: a statement that stroke centers may be accredited by the Joint Commission

on Accreditation or any other nationally recognized accrediting body; and a statement that the EMS Bureau will work in coordination with all local and regional emergency medical services authorities statewide on the development of pre-hospitalization protocols related to the assessment, treatment and transport of stroke patients by licensed emergency medical services providers.

The foregoing are summaries of the proposed rules. The proposed rules include various additional substantive and technical revisions not identified here. Free copies of the full text of the proposed rules may be obtained online from the Department of Health’s website at <https://nmhealth.org/about/erd/emsb/>.

Copies of the proposed rules may also be obtained from, and written comments may be submitted to:

Charles Schroeder, EMS Program Manager
Department of Health, EMS Bureau
1301 Siler Rd., Bldg. F
Santa Fe, NM 87507
(505) 476-8246
E-mail: Charles.Schroeder@state.nm.us

Any interested member of the public may attend the hearing and offer public comment on the proposed rule changes during the hearing. Written public comment may also be submitted prior to the date of the hearing to the contact person and mailing address above.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Charles Schroeder at the above address or telephone number. The Department requests at least ten (10) days’ advance notice for special accommodations requests.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

Notice of Public Hearing

The Human Services Department (Department) has filed an emergency rule in order to implement the Department of Health and Human Services (HHS) updates to the Federal Poverty Level (FPL) income guidelines for the Medical Assistance Program (MAP) Categories of eligibility to be effective September 14, 2017, as required by (HHS). The FPL is used in determining monthly income standards for MAP categories of eligibility and these FPL guidelines are contained in 8.200.520 NMAC and 8.291.430 NMAC. The Department is holding a public hearing on October 26, 2017 to receive testimony on the emergency rules of 8.200.520 NMAC and 8.291.430 NMAC and to receive written, recorded, or electronic comments.

Summary of Changes:

Sections 11 of 8.200.520 NMAC Medicaid Eligibility Income Standards will be amended to reflect current FPL mandates.

Section 10 of 8.291.430 NMAC Medicaid Eligibility Affordable Care will be amended to reflect current FPL mandates.

A current recipient or new applicant’s eligibility for a MAP category of eligibility may be affected based on updated income limits.

NM Stat Section 9-8-6 NMSA 1978 (2016) authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

The register for these emergency amendments to these rules will be available September 14, 2017 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/>

[registers.aspx](http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx) or at <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-6252.

A public hearing to receive testimony on these rules will be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, 87505 on Thursday, October 26, 2017 from 10 a.m. to 11 a.m., Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. MDT, October 26, 2017.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-6252. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

PROFESSIONAL ENGINEERS, AND PROFESSIONAL SURVEYORS, BOARD OF LICENSURE FOR

NOTICE OF PUBLIC RULE HEARING AND REGULAR MEETING

The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors has scheduled a rule hearing and a regular meeting for Friday, November 3, 2017, at 9:00 am at the New Mexico Department of Transportation, District 3, 7500 Pan American, Albuquerque, NM, 87199, in the Auditorium Room. The NMBLPEPS Public Rule Hearing will begin at 9:00 a.m. and the Regular Board Meeting will convene following the rule hearing.

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) 476-4565 or (505) 476-4656 at least two weeks prior to the meeting or as soon as possible.

NOTICE OF PUBLIC RULE HEARING

The NMBLPEPS may consider the following items of rulemaking at the meeting:

Amend/Repeal/Replace:

- 16.39.1.12 Duties of the Board, Officers of the Board, and the Executive Director
- 16.39.1.17 Status of Licensure
- 16.39.2.7 Definitions
- 16.39.2.8 Continuing Professional Development - Requirements
- 16.39.3.7 Definitions
- 16.39.3.8 Engineering Disciplines
- 16.39.3.9 Application – Engineering Intern and Professional Engineer

- 16.39.3.10 Examinations – Engineering Intern and Professional Engineer
- 16.39.3.11 Practice of Engineering
- 16.39.3.12 Seal of Licensee
- 16.39.3.13 Endorsements
- 16.39.4.6 Objective
- 16.39.5.7 Definitions
- 16.39.5.8 Application – Surveyor Intern and Professional Surveyor
- 16.39.5.9 Examinations – Surveyor Intern and Professional Surveyor
- 16.39.5.10 Practice of Surveying
- 16.39.5.11 Seal of Licensee
- 16.39.7.9 Violations
- 16.39.8.9 Rules of Professional Conduct

SYNOPSIS:

The proposed amendment of 16.39.1.12 NMAC is to amend Section 10 to prevent un-licensed individuals offering services in the State of New Mexico. This amendment is authorized by a new section of the New Mexico Engineering and Surveying Practice Act, Subsection D of Section 61-23-21 NMSA 1978.

The proposed amendment of 16.39.1.17 NMAC consists of the following modifications: Section A (4) is being amended to ensure an applicant submits a request for “retired status” prior to the expiration of the license; Section D (3) is being amended to remove the language requiring an application fee for the request of “inactive status”. The statutory authorizations include the sections of the New Mexico Engineering and Surveying Practice Act, Sections 61-23-17 and 61-23-20 NMSA 1978.

The proposed amendment of 16.39.2.7 NMAC is to clarify the definitions of “continuing education unit (CEU)”, “course/activity”, and “ethics/business-related course or activity”. This amendment is authorized by the New Mexico Engineering and Surveying Practice

Act, Sections 61-23-24.1 and 61-23-27.12 NMSA 1978. This brings national mobility within the National requirements.

The proposed amendment of 16.39.2.8 NMAC consists of the following modifications: Section B is being amended for grammatical corrections; Section D is being amended to add “/business-related” to ethics as amended in 16.39.2.7 NMAC, and remove the following language “A maximum of ten (10) PDH units may be earned in self-directed study.”, permitting licensees to earn PDHs through webinars and other online resources; Section D is also being amended to clarify the PDH qualifying activities; Section E is being amended to clarify the conversion of other units of credit to PDH units. These amendments are authorized by the New Mexico Engineering and Surveying Practice Act, Sections 61-23-24.1 and 61-23-27.12 NMSA 1978.

The proposed amendment of 16.39.3.7 NMAC is being amended to add the definition “engineering accreditation commission”, and reorder the existing definitions. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection C of Section 61-23-10 NMSA 1978.

The proposed amendment of 16.39.3.8 NMAC consists of the following modifications: Section D (3) is being amended to clarify the requirement of how many engineering disciplines an applicant for endorsement may initially apply for; Section G is being amended to remove the establishment of specialty sub-disciplines, the specialty sub-discipline of on-site wastewater engineering is no longer identified as a need by the New Mexico Environment Department. These amendments are authorized by the New Mexico Engineering and Surveying Practice Act, Subsection C of Section 61-23-10 and 61-23-19 NMSA 1978.

The proposed amendment of

16.39.3.9 NMAC consists of the following modifications: Sections E and G are being amended to comply with the statutory changes to the New Mexico Engineering and Surveying Practice Act due to passage of HB 188 in the 2017 regular legislative session; and to correct a NMAC reference; Section I is being amended to decrease the number of years an application is valid from the date of approval; Section J is being amended to clarify the requirement for applicants with foreign credentials; Section K is being amended to allow for experience earned while working for a United States corporation in a foreign country; and clarify experience working under the direction of an engineer, must be a professional engineer. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection C of Sections 61-23-10 and 61-23-14.1 NMSA 1978.

The proposed amendment of 16.39.3.10 NMAC is to amend Section C to add the requirement for an examinee applicant to wait 12 months before re-taking the principles and practice of engineering exam, after three unsuccessful attempts; waiting 12 months will help the applicant prepare for the exam; amend the application validity language to conform with proposed change to Subsection I of 16.39.3.9 NMAC. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection B of Section 61-23-10 NMSA 1978.

The proposed amendment of 16.39.3.11 NMAC consists of the following modifications: Sections A, B, and D are being amended to comply with the statutory changes to the New Mexico Engineering and Surveying Practice Act due to passage of HB 188 in the 2017 regular legislative session; for grammatical corrections; and to acknowledge the statutory changes made to the State Corporations Act due to passage of HB 287, Chapter 66, in the 2015 regular legislative session; Section

E is being added to comply with the statutory changes to the New Mexico Engineering and Surveying Practice Act due to passage of HB 188 in the 2017 regular legislative session.

The proposed amendment of 16.39.3.12 NMAC consists of the following modifications: Section C is being amended to provide the opportunity for a new seal design; Section E is being amended to correct a NMSA reference; Section G is being amended to clarify the use of multiple seals on a project. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Section 61-23-19 NMSA 1978.

The proposed amendment of 16.39.3.13 NMAC is to amend Section A to acknowledge the statutory changes to the New Mexico Engineering and Surveying Practice Act due to passage of HB 188 in the 2017 regular legislative session; and as amended in 16.39.3.9 NMAC. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection C of Sections 61-23-10 and 61-23-14.1 NMSA 1978.

The proposed amendment of 16.39.4.6 NMAC is to correct a NMAC reference. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection B of Section 61-23-10 NMSA 1978.

The proposed amendment of 16.39.5.7 NMAC consists of the following modifications: Section B is being amended to add the definition of “augment”, to correct language to ensure consistency with 16.39.5.12 NMAC; Section C is being amended to add the definition of “authoritative location”, to clarify the statutory change to the New Mexico Engineering and Surveying Practice Act due to passage of HB 188 in the 2017 regular legislative session, Paragraph (6) of Subsection P of 61-23-3 NMSA 1978; Section D is being amended to remove the language “at least”; Section E is

being amended to add “is augmented by” and remove “contains” from the definition of “Board-approved related science degree”; to relocate “remote sensing” in the description, and to correct grammar; Section F is being amended to add the definition of “Four (4)-year”, as it relates to a minimum course of academic study; Section G is being amended to add the definition of “Geomatics”. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection D of Section 61-23-10 NMSA 1978.

The proposed amendment of 16.39.5.8 NMAC consists of the following modifications: Section D is being amended to correct a NMAC reference; to remove “four (4) years” and replace with “the required” and “required”; Section I is being amended to decrease the number of years an application is valid from the date of approval; Section K is being amended to allow for experience earned while working for a United States corporation in a foreign country; Section L is being added to clarify education eligibility requirements of applicants who graduated from related science programs and from foreign educational programs. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection D of Section 61-23-10 NMSA 1978.

The proposed amendment of 16.39.5.9 NMAC is to amend Section C to add the requirement for an examinee applicant to wait 12 months before re-taking the principles and practice of surveying exam, after three unsuccessful attempts; waiting 12 months will help the applicant prepare for the exam; amend the application validity language to conform with proposed change to Subsection I of 16.39.5.8 NMAC. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection D of Section 61-23-10 NMSA 1978.

The proposed amendment of

16.39.5.10 NMAC consists of the following modifications: Sections A, B, and D are being amended to comply with the statutory changes to the New Mexico Engineering and Surveying Practice Act due to passage of HB 188 in the 2017 regular legislative session; for grammatical corrections; and to acknowledge the statutory changes made to the State Corporations Act due to passage of HB 287, Chapter 66, in the 2015 regular legislative session; Section E is being added to comply with the statutory changes to the New Mexico Engineering and Surveying Practice Act due to passage of HB 188 in the 2017 regular legislative session; Section F is being added to identify the inclusions and exclusions to the practice of surveying. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection D of Section 61-23-10 NMSA 1978.

The proposed amendment of 16.39.5.11 NMAC consists of the following modifications: Section C is being amended to provide the opportunity for a new seal design; Section F is being amended to clarify the use of multiple seals on a project; Section H is being added to provide guidance of “metadata” in lieu of an electronic seal of digital data for surveying. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Section 61-23-27.8. NMSA 1978.

The proposed amendment of 16.39.7.9 NMAC is to amend Section A to comply with the statutory changes to the New Mexico Engineering and Surveying Practice Act due to passage of HB 188 in the 2017 regular legislative session; add “an employee of and” for clarification. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection B of Section 61-23-10 NMSA 1978.

The proposed amendment of 16.39.8.9 NMAC is to amend Section

D to remove “as fiduciaries and shall” from the requirement; remove “organization” and replace with “business entity” to comply with the statutory changes to the New Mexico Engineering and Surveying Practice Act due to passage of HB 188 in the 2017 regular legislative session. This amendment is authorized by the New Mexico Engineering and Surveying Practice Act, Subsection B of Section 61-23-10 NMSA 1978.

At the hearing the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors will take oral and written comments related to the rulemaking actions.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at board.licensurepeps@state.nm.us. Written comments must be received no later than 5 p.m. on October 20, 2017. If submitting written comments by e-mail, please indicate in the subject line the number of each rule(s) for which you are providing comments. Individuals presenting written comments at the hearing must provide fifteen (15) copies to review. Oral comments will also be accepted at the rule hearing, subject to time limitations.

The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors may vote on the proposed rules during the meeting on November 3, 2017. The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors may take action on those rules at the close of the public rulemaking hearing. A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors’ website (www.sblpes.state.nm.us) or by contacting Angelica Urioste at AngelicaM.Urioste@state.nm.us, PO Box 25101, Santa Fe, NM 87504 or 505-476-4565 or 505-476-4656.

A copy of the agenda for both the rule hearing and the board meeting will be available on the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors' website and at the office located in the Toney Anaya Building, 3rd floor, at 2550 Cerrillos Rd., Santa Fe, NM.

Legal authority for this rulemaking can be found in the New Mexico Engineering and Surveying Practice Act, Section 61-23-10, et seq. NMSA 1978.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Regulation Commission (NMPRC or Commission) gives notice of its proposed adoption of amendment to Rule 17.7.3 NMAC pertaining to Integrated Resource Planning ("IRP") regulated by the Commission pursuant to the Efficient Use of Energy Act (EUEA), NMSA § 62-17-1 *et seq.*, **Summary of the full text of the proposed rule and short explanation of purpose:** The amendment would delete Subsection B of Section 17.7.3.12 NMAC pertaining to the use of the IRPs by utilities in subsequent resource acquisition proceedings in order to comply with § 62-17-10 of the EUEA. Copies of the Order Initiating Proposed Rulemaking containing the full text of the proposed rule, as well as 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. 17-00198-UT 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 October 18, 2017, and written Response Comments not later than November 1, 2017. Comments shall refer to Case No. 17-00198-UT. At the conclusion of the public hearing, the commission may permit or request additional filed written comments, due no later than the date of record closure.

A public hearing will be held on November 15, 2017, beginning at 2:00 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 **receive oral comments**. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, **any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission's discretion**. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

The record of this case will close fourteen (14) days after the public hearing held on November 15, 2017 (date of record closure is November 29, 2017).

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Ms. Kathleen Segura 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, §8-8-4(B)(10); the Efficient Use of Energy Act (EUEA), NMSA § 62-17-1 *et seq.*

REGULATION AND LICENSING DEPARTMENT

SPEECH, LANGUAGE, PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

LEGAL NOTICE

The New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board ("Board") will hold a rule hearing on Friday, October 27, 2017, at 10:00 A.M. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the New Mexico Commission for the Deaf and Hard of Hearing, 505 Marquette Avenue NW, Suite 1550, Albuquerque NM 87102.

The purpose of the rule hearing is to consider proposed amendments to include (1) revisions to what constitutes unprofessional conduct, (2) license fee updates, (3) modification of procedures and requirements for licensing, (4) updates and clarification of rule language, and (5) correction of grammatical errors. The amendments are intended to update procedures, clarify definitions and provide uniformity in the application of the rules to the following rules: 16.26.4 NMAC - Renewal of Licenses; 16.26.5NMAC - Continuing Education; 16.26.6 NMAC - Fees; 16.26.7 NMAC - Grounds for Disciplinary Action; 16.26.8 NMAC - Procedures for Disciplinary Action; 16.26.10 NMAC - Emergency Licensure; 16.26.11 NMAC -

Licensure for Military Service Members, Spouses and Veterans.

To obtain and review copies of the proposed changes you may go to the Board's website: http://www.rld.state.nm.us/boards/Speech_Language_Pathology_Audiology_and_Hearing_Aid_Dispensing_Practices_Rules_and_Laws.aspx, or contact the Boards and Commissions Division at 505.476.4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Nicole Perez, Board Administrator via electronic mail at Speech.Hearing@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Friday, October 20, 2017. Persons wishing to present their comments at the rule hearing will need to provide 15 copies of any written comment or proposed language change for distribution to the Board members and staff.

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, please contact: Nicole Perez, Board Administrator 505.476.4622.

Summary of Proposed Changes

Statutory Authority: Sections 61-14B-11 and 61-14(B)-19 NMSA 1978

16.26.4.8 NMAC, Subsection B, Paragraph (1) and Subsection I, Change requirements under renewal of licenses **16.26.4 NMAC**, replacing "mailing" address to "electronic mail" address.

16.26.4.8 NMAC, Subsection C, Paragraph (1) replaces "mail" with "send" and adding the word "email."

16.26.4.8 NMAC, Subsection F, removes the requirement that "individuals renewing during the grace period may not practice with the expired license"

16.26.4.9 NMAC, Subsection A, adds the language for the 12 month clinical

fellowship expiration moving it from the introductory paragraph to this subsection.

16.26.4.9 NMAC, Subsection C, adds clarifying language for "expiration of the license"

16.26.4.10 NMAC, Subsection D, adds clarifying language for "expiration of the license"

16.26.4.10 NMAC, Subsection E, changes the number of times a temporary license may be renewed for a temporary paraprofessional license as an apprentice in speech-language from five times to four times.

16.26.5.9 NMAC, Subsection A, and Subsection C, add minor clarifying language and cleans up grammatical language.

16.26.5.9 NMAC, Subsection C, adds clarifying language of "each" and "field" and deletes "actively practicing".

16.26.8.12 NMAC, Subsection B, adds clarifying language as a new section to include "Notice of Contemplated Action: The board may issue a notice of contemplated action (NCA) when appropriate".

16.26.10.8 NMAC, Subsection A, adds an additional requirement that the applicant must submit an affidavit that states that the applicant was personally or professionally affected by the disaster when applying for an emergency license.

16.26.10.8 NMAC, adds minor clarifying language and cleans up grammatical language.

16.26.10.9(A)(1) NMAC, deletes "under sections 16.26.3.9, 16.26.3.10 and 16.26.3.11 NMAC."

Statutory Authority NMSA 1978, sections 61-14B-11 and 61-14B-20

16.26.6.9 NMAC, Subsection A, reduces the initial fee from \$300.00 to \$175.00 and deletes "includes hearing aid practical and written exam".

16.26.6.9 NMAC, Subsection D, increases renewal fee from \$170.00 to \$200.00.

16.26.6.9 NMAC, Subsection F, deletes the word "written".

16.26.6.9 NMAC, Subsection L, increases renewal fee from \$150.00 to \$400.00.

Statutory Authority NMSA 1978, sections 61-14B-11 and 61-14B-21

16.26.7.8 NMAC, Subsection A, Paragraph (2), adds "violating a provision of the speech-Language Pathology, Audiology and hearing Aid Dispensing Practices Act including practicing without a license."

16.26.7.8 NMAC, Subsection A, Paragraph (3), adds that proof of conviction by showing of a certified copy of the record of conviction as conclusive evidence of conviction.

16.26.7.8 NMAC, Subsection A, Paragraph (3)(a), adds a felony conviction to what constitutes unprofessional conduct

16.26.7.8 NMAC, Subsection A, Paragraph (3)(c) adds violating the Controlled Substances Act to what constitutes unprofessional conduct.

16.26.7.8 NMAC, Subsection A, Paragraph (4), adds attempting to practice under a revoked, suspended or denied license from another jurisdiction to what constitutes unprofessional conduct.

16.26.7.8 NMAC, Subsection A, Paragraph (6), adds fraud or deceit in procuring or attempting to procure a license to what constitutes unprofessional conduct.

16.26.7.8 NMAC, Subsection A, Paragraph (7), adds selling or fitting the first hearing aid of a child under sixteen years of age who has not been examined and cleared for the hearing aid by an otolaryngologist or a dispensing audiologist who has earned certification by a national professional association to what constitutes unprofessional conduct.

16.26.7.8 NMAC, Subsection A, Paragraph (8), adds selling or fitting a hearing aid on a person who has not been tested, except for replacement aids to what constitutes unprofessional conduct.

16.26.7.8 NMAC, Subsection A, Paragraph (9), adds suing untruthful or misleading advertising to what constitutes unprofessional conduct.

16.26.7.8 NMAC, Subsection A, Paragraph (10), adds misrepresenting the licensee or applicant's status as being a medical doctor to what constitutes unprofessional conduct.

16.26.7.8 NMAC, Subsection A,

Paragraph (11), adds becoming addicted to a habit-forming drug or other substance to such a degree as to render the licensee or applicant unfit to practice to what constitutes unprofessional conduct.

16.26.7.8 NMAC, Subsection A, Paragraph (12), adds willfully or negligently practices beyond the scope of the Act to what constitutes professional conduct.

16.26.7.8 NMAC, Subsection A, Paragraph (5), Subsection B, Paragraph (2), Subsection C, Subsection D Paragraph (3), adds minor clarifying language and cleans up grammatical language.

16.26.8.9 NMAC, **16.26.8.10 NMAC**, Subsection A, Subsection B, Subsection C, Subsection D, Subsection E, Subsection F, Subsection G, replaces “standard of practice” to “disciplinary” throughout.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (Superintendent), New Mexico Office of Superintendent of Insurance (OSI), pursuant to the statutory mandate of Subsection A of Section 59A-30-8 NMSA 1978 (2009), will hold a public rulemaking hearing on November 6, 2017. The hearing will begin at 9:00 a.m. and will be held at the State Capitol Building, 3rd Floor Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501. The purpose of the rulemaking hearing is to take public comment regarding the following proposed title insurance rulemaking actions:

Subsection G of 13.14.3.11 NMAC, “Premium Division with Agents – Other Fees and Expenses”

Summary of Text. These proposed amendments clarify that charges associated with search and examination of additional chains of title and titles of unusual complexity are not subject to the agent/

underwriter split.

Purpose of Proposed Rule. The intention of the split rules is that the agent is entitled to retain 100% of the charges associated with the cost of performing certain unusual or more time-consuming search and examination work. This additional work is not part of the all-inclusive basic premium rate.

Subsection B of 13.14.5.8 NMAC, “Issuance Upon Request and Receipt of Bona Fide Order”

Summary of Text. This proposed amendment deletes the reference to NM form 6.1 Plain Language Commitment.

Purpose of Proposed Rule. As set forth below as justifications for changes to 13.14.18.13 NMAC, with the adoption of the new commitment form, the American Land Title Association (“ALTA”) has combined the basic commitment and the plain language commitment forms, and ALTA has decertified the plain language commitment form. With the promulgation in New Mexico of the new ALTA commitment form, NM form 6.1 Plain Language Commitment should be decertified for use in New Mexico and the reference to this form in this rule should be deleted.

Subsection B of 13.14.5.8 NMAC “Issuance Upon Request and Receipt of Bona Fide Order”

Summary of Text. This proposed amendment removes language referencing that a bona fide order does not include an order for the purpose of foreclosure or other litigation.

Purpose of Proposed Rule. This makes Subsection B of 13.14.5.8 NMAC consistent with Paragraph (7) of Subsection C of 13.14.1.8. In 2015, the definition of “bona fide order” in Subsection C of 13.14.1.8 NMAC was amended. Among other things, the amendments added the following Subparagraph 8 to Subsection C of 13.14.1.8 NMAC: “(a) title order from an owner, lender, lender’s representative or attorney for the purpose of determining the status of title indicating an intention to file

for judicial foreclosure on an existing mortgage or deed of trust, quiet title suit or other litigation in the future, but where the customer has no present intention to purchase a title insurance policy, is not a ‘bona fide order for title insurance’. A title order while a judicial foreclosure, quiet title suit or other litigation is pending shall be considered a ‘bona fide order for title insurance’ under the circumstances.” Thus, the amendment included commitments issued for the purposes of foreclosure or other litigation to be included within the definition of bona fide order. However, Subsection B of 13.14.5.8 NMAC was not amended at that time, and this cleanup change makes both rules consistent with each other.

13.14.6.11 NMAC “Standard Exceptions”

Summary of Text. This proposed amendment changes the reference from standard exception 8 to standard exception 7.

Purpose of Proposed Rule. This is a clean-up amendment and makes this provision consistent with 13.14.5.9 NMAC. In 2015, 13.14.5.9 NMAC was amended to renumber the standard exceptions. As renumbered, standard exception 8 is the exception in a commitment for matters appearing of record after the search and examination upon which the commitment is issued. Standard exception 8 is not intended to be a policy exception. When 13.14.5.9 NMAC and 13.14.6.11 NMAC were amended in 2015, the reference in 13.14.6.11 NMAC to standard exception 8 was inadvertently not changed to standard exception 7. This proposed amendment corrects that inadvertent error and makes these two sections consistent with each other.

13.14.7.22 NMAC “Limited Pre-Foreclosure Title Insurance Policy”

Summary of Text. These proposed amendments change the name of the NM form 41 and NM form 42 to match the corresponding ALTA policy form names.

Purpose of Proposed Rule. This is a clean-up amendment that amends

this rule to correctly reference the name of the Limited Pre-Foreclosure Title Insurance Policy (NM form 41) and its down date endorsement (NM form 42). In 2015, this new policy form and endorsement were adopted to replace the former Foreclosure Guarantee Policy, but this rule was not amended to refer to the new forms' names.

13.14.7.27 NMAC “Residential Limited Coverage Mortgage Modification Policy”

Summary of Text. The current rule is unclear as to what is the proper amount of insurance for this type of policy. The proposed amendment confirms that the appropriate amount of policy is the principal loan balance at the time this policy is issued. The new language further clarifies that this policy should not be used to increase the prior existing loan policy amount. Purpose of Proposed Rule. This confirms that the amount of the policy will be the amount of the outstanding principal balance of the loan on the date of the policy. There were questions concerning whether the amount of the policy is the amount of the prior loan policy or the new principal balance as stated in the modification agreement. This rule confirms that it should be the outstanding principal balance. The proposed amendment also provides that additional advances cannot be included in the amount of policy; in such cases a mortgage modification with additional amount of insurance endorsement (NM form 80.2) is more appropriate.

13.14.8.13 NMAC “Insuring Around Endorsement”

Summary of Text. This proposed amendment adds language providing for underwriter discretion with respect to issuance of the insuring around endorsement.

Purpose of Proposed Rule. This would allow more underwriter discretion on affirmative coverage. Under the current rule, there are only very limited circumstances under which a policy may insure around certain unreleased liens. The current

rule fails to account for situations where the risk of insuring around an unreleased lien may be minimal or otherwise acceptable to the insurer, such as cases involving very old mortgages securing loans which have matured by their terms and where the applicable limitations period has expired. The proposed amendment would also allow for deleting such items as an exception. Underwriters understand how to evaluate risk and this proposed amendment would allow for more insuring around unreleased liens consistent with customers' requests for such coverage.

13.14.8.15 NMAC “Truth in Lending Endorsement”

Summary of Text. This proposed amendment decertifies NM form 48 Truth in Lending Endorsement.

Purpose of Proposed Rule. Effective August 1, 2016, ALTA decertified its Truth in Lending Endorsement. This endorsement lies outside most of the realm of title insurance, which primarily insures against loss or damage resulting from defects in title or other issues related to the insured land. This endorsement went to the nature of the loan secured by the insured mortgage or deed of trust and went far beyond traditional notions of title insurance. In addition, ALTA saw diminishing demand for this endorsement and in New Mexico this endorsement has been issued very infrequently.

Subsection C of 13.14.8.16 NMAC “Restrictions, Encroachments and Minerals

Summary of Text. This proposed amendment adds language providing for underwriter discretion with respect to issuance of minerals coverage in any of the New Mexico versions of the ALTA 9 “comprehensive” endorsements.

Purpose of Proposed Rule. This would allow more underwriter discretion on when to provide minerals coverage under any one of the NM “comprehensive” endorsements, NM form 50, 50.1, 56, 56.1, 57, and 57.1. Under the

current rule, minerals coverage may be given where minerals have been severed, only if there are waivers of surface rights by the holders of the severed mineral interests. The current rule fails to account for situations where the risk of providing minerals coverage may be minimal or otherwise acceptable to the insurer, such as cases involving properties within municipal limits where minerals extraction would be prohibited. This change would allow discretion in evaluating the actual risk associated with providing minerals coverage. Underwriters understand how to evaluate risk and this proposed amendment would allow for more minerals coverage consistent with customers' requests for such coverage.

13.14.8.20 NMAC “Contiguity of Parcels Endorsements”

Summary of Text. This proposed amendment changes the names of the NM form 54 and NM form 66 contiguity endorsements.

Purpose of Proposed Rule. This corrects typographical errors in the name of the NM forms 54 and 66 to match the name of the promulgated ALTA forms.

13.14.8.27 NMAC “Zoning . . . Endorsements”

Summary of Text. This proposed amendment changes the names of the NM form 65, 65.1 and 65.2 zoning endorsements.

Purpose of Proposed Rule. This corrects a typographical error in the name of NM forms 65, 65.1 and 65.2 to match the name of the corresponding promulgated ALTA forms.

13.14.8.41 NMAC “Partial Coverage Endorsement”

Summary of Text. This proposed amendment adopts a new regulation for issuance of NM form 26.

Purpose of Proposed Rule. This provides regulatory authority for issuance of the NM form 26, which is a promulgated form on the Office of Superintendent of Insurance (“OSI”) website, but which does not have an

authorizing regulation.

13.14.9.10 NMAC “Premium Rates Inclusive”

Summary of Text. This proposed amendment limits premium rates to policy premium rates (including endorsements).

Purpose of Proposed Rule. This clarifies that the all-inclusive nature of the title premiums is limited to issuance of policy-related products.

13.14.9.16 NMAC “Additional Charges”

Summary of Text. This proposed amendment adds the word “platted” as a qualifier to the term “additional chain of title” and removes the word “unplatted” as a qualifier to the term “unusual complexity.”

Purpose of Proposed Rule. The purpose of the rule is to bring these additional search charges into line with the actual work performed by agents in various scenarios. The proposed amendment clarifies that, although the policy premium is all inclusive, additional search charges may be imposed for additional chains of title only on platted parcels. In addition, the proposed amendment removes the unplatted parcel restriction from the regulation because unusual complexity can exist with both platted and unplatted parcels.

Subsection A of 13.14.9.19 NMAC “Non-Policy Rates”

Summary of Text. The text adds “for each version of” a commitment when setting forth the premium amount and adds text that the agent will not be permitted to charge for an updated or revised commitment if caused by agent’s error.

Purpose of Proposed Rule. This clarifies that the charge shall be made every time a commitment is issued, even if it is a revision of a commitment previously issued, thereby encouraging thoughtful commitment revision requests. However, the charge may not be made if the version of the commitment is issued to correct an error made by the issuing agent.

Subsection C of 13.14.9.19 NMAC “Non-Policy Rates”

Summary of Text. The text deletes the words “including all revisions thereto” and adds text that the agent will not be permitted to charge for an updated or revised pro forma if caused by agent’s error.

Purpose of Proposed Rule. This authorizes a charge for each pro forma issued, even if it is a revision of a pro forma previously issued, thereby encouraging thoughtful pro forma revision requests. However, the charge may not be made if the version of the pro forma is issued to correct an error made by the issuing agent.

13.14.9.30 NMAC “Simultaneous Issue Owner’s and Mortgagee Policies”

Summary of Text. This proposed amendment changes the price of the simultaneous issue loan policy from \$30 to \$100.

Purpose of Proposed Rule. This reflects the additional cost associated with issuing a loan policy, including the cost of review and compliance with differing requirements from different lenders and the costs of reviewing and coordinating the issuance of policies. This charge has not increased since the title insurance rules were first adopted in 1986. See Supplemental Direct Testimony of Brett Beckett Submitted on Behalf of New Mexico Land Title Association September 1, 2017 (“Beckett Testimony”), p. 4, line 2, through p. 5, line 15.

13.14.9.39 NMAC “Substitution Rate on Loans to Take Up, Renew, Extend or Satisfy and Existing Insured Loan”

Summary of Text. The amendment substitutes a reference to Section 59A-30.6.1 NMSA 1978 and includes the discounts from that statute. It also defines “same borrower” as having the same meaning of “insured” in an owner’s policy. Finally, it makes the definitional and premium provisions for “same property” consistent with the term as used in the reissue rate regulations for owner’s policies.

Purpose of Proposed Rule. This

clarifies the application of the substitution rate. The current regulation includes provisions that are similar but not identical to the statutory language in Section 59A-30-6.1 NMSA 1978. Defining the term “same borrower” to have the same meaning as the definition of “insured” in the owner’s policy will permit the substitution rate to apply in other appropriate scenarios; for example, a mortgage after conveyance of the property to a wholly-owned corporation would be a “refinance” as defined by Section 59A-30-6.1 NMSA 1978. The proposed amendment will make the definition of “same property” and the calculation of the premium consistent with the concepts and provisions of 13.14.9.35 NMAC for reissue rates on owner’s, leasehold or contract purchaser’s policies.

13.14.9.42 NMAC “Residential Limited Coverage Mortgage Modification Policy”

Summary of Text. The proposed amendment increases the premium for the NM form 90 from \$125 to \$175.

Purpose of Proposed Rule. The regulations require that a search and examination be completed in order to issue a policy; the all-inclusive nature of the title policy premiums necessitates that the premium reflect the work required for issuance of the policy. There is substantial work that goes into the issuance of this policy and the current charge does not accurately capture the cost. See Beckett Testimony, p. 13, line 18, through p. 14, line 10.

13.14.10.9 NMAC “Mechanics’ Lien Coverage in Owner’s Policy (Period Not Expired)”

Summary of Text. This proposed amendment increases the charge for mechanic’s lien coverage from \$25 to \$100.

Purpose of Proposed Rule. Almost all lenders and many owners request mechanic’s lien coverage on their policies. There is higher risk with mechanic’s lien coverage, and mechanic’s lien claims have been a source of substantial claims across the country. Mechanic’s lien coverage

poses hidden risks that are difficult to identify through the closing process and the current charge is insufficient in relation to the risk assumed. See Beckett Testimony, p. 9, line 17, through p. 10, line 11.

13.14.10.10 NMAC “Survey Coverage”

Summary of Text. This proposed amendment adds a \$50.00 charge for issuance of survey coverage on a loan policy.

Purpose of Proposed Rule. Almost all lenders obtain survey coverage on their policies and this is a coverage for which no charge is made.

Issuance of survey coverage entails additional work by the title agent and even the underwriter, and the lack of any charge for this coverage means that the agent is not covering its costs associated with issuing this coverage, particularly since few owners get survey coverage in their policies (for which there is a charge). See Beckett Testimony, p. 4, line 1, through p. 5, line 15. Not having a charge for this coverage is inconsistent with the rules requiring title companies to charge for all things of value.

13.14.10.11 NMAC “Additional Advances under Open End Mortgages”

Summary of Text. The text adds a provision for the premium for an additional advance to include, in addition to the additional policy premium, the premium difference for issuance of percentage-rate-based endorsements or otherwise based on the policy amount.

Purpose of Proposed Rule. This corrects the inconsistency in the calculation of the additional premium for additional advances. When a policy amount is increased, additional premium for the increased policy coverage is charged accordingly. Many such policies have existing endorsements whose charge is a percentage of the policy premium or otherwise based on the policy amount, but the current rule does not provide for capturing the premium charge associated with the additional amount of coverage provided by those

endorsements when the underlying policy amount is increased. The endorsement premiums should reflect the pro rata additional premium to cover the additional risk associated with the increased policy amount.

13.14.10.14 NMAC “Condominium Endorsement”

Summary of Text. The text corrects the name of the endorsement to add “all assessments” and corrects the number of the form from NM form 30 to NM form 12.

Purpose of Rule. This corrects the error in the regulation.

13.14.10.24 NMAC “Condominium Endorsement to Owner’s Policy”

Summary of Text. The text corrects the name of the endorsement to remove “to owner’s policy” and to add “unpaid assessments.”

Purpose of Rule. This corrects the error in the regulation.

13.14.10.31 NMAC “Truth in Lending Endorsement”

Summary of Text. This proposed amendment deletes the premium for NM form 48.

Purpose of Proposed Rule. Since NM form 48 is proposed to be decertified, the corresponding premium regulation should be repealed.

13.14.10.32 NMAC “Down Date Endorsement to Residential Limited Coverage Junior Loan Policy”

Summary of Text. This proposed amendment adds language to the name of NM form 46.

Purpose of Proposed Rule. This corrects a typographical error in the name of NM form 46 to match the name of the promulgated ALTA form.

13.14.10.39 NMAC “Contiguity of Parcels Endorsements”

Summary of Text. This proposed amendment adds language to the names of NM forms 54 and 66.

Purpose of Proposed Rule. This corrects a typographical error in the name of NM forms 54 and 66 to match the name of the promulgated ALTA forms.

13.14.10.47 NMAC “Zoning, Unimproved Land Endorsement” and

13.14.10.48 NMAC “Zoning . . . Endorsement”

Summary of Text. The proposed amendment changes the form reference from “(NM form 64)” placed after the endorsement name to “NM form 64” placed before the endorsement name.

Purpose of Proposed Rule. These make the form references consistent with form references elsewhere in the regulations.

13.14.10.61 NMAC “Mortgage Modification Endorsements”

Summary of Text. These proposed amendments increase the price of the NM form 80, 80.1 and 80.2 from \$65 to \$125 and increase the combined minimum charge for the NM form 80.2 from \$90 to \$175. The text also adds a provision for the NM form 80.2 premium for the additional amount of insurance to include, in addition to the additional policy premium, the premium difference for issuance of percentage-rate-based endorsements or otherwise based on the policy amount.

Purpose of Proposed Rule. Issuance of these endorsements entails search and examination work, including review and analysis of the modification documents. Issuance of these endorsements usually involves more than usual communication with the lender and with underwriting counsel. See Beckett Testimony, p. 11, line 20, through p. 12, line 12. Part of this proposed amendment also makes the calculation of the NM form 80.2 additional premium for additional advances on mortgage modifications consistent with the additional advance endorsement premium calculation by including the additional pro rata premium for percentage-rate-based endorsements issued or otherwise based on the policy amount.

13.14.10.64 NMAC “Partial Coverage Endorsement”

Summary of Text. This proposed amendment adds a \$25 premium for

issuance of NM form 26.

Purpose of Proposed Rule. This adds a premium regulation for NM form 26, which is a promulgated form but which has not had a promulgating regulation or premium regulation. The \$25 charge is consistent with the premium charge for a wide range of similar types of endorsements in the rules and there is no reason to charge any different amount.

13.14.18.11 NMAC “Additional Affirmative Coverages”

Summary of Text. The text deletes the qualification of loan policies as “construction and permanent” because there is now a single promulgated form for all loan policies. The text further removes the distinction between identified violations of restrictions and no violations of restrictions, and does not require identification of restriction violations in the exception to the loan policy. Purpose of Proposed Rule. The proposed amendment will permit affirmative coverage on loan policies against forfeiture or reversion without a requirement to identify as exceptions any violations of the restrictions.

13.14.17.12 NMAC “Form 3 – Transaction Report”

Summary of Text. The proposed amendments to Form 3 remove references to forms proposed to be decertified and otherwise adjust rate codes in accordance with the amendments proposed herein. Purpose of Proposed Rule. This makes the reporting form consistent with the affected changes proposed herein.

13.14.18.13 NMAC “Approved Forms”

Proposing amendments to the text of 13.14.18.13 NMAC and proposing the promulgation of four new forms. Part 1 below describes the proposed rule amendments and Part 2 below describes the proposed forms and form amendment.

Part 1

Summary of Text. This proposed amendment to the narrative portion

of the rule provides that the forms reproduced on the OSI website represent the official promulgated forms which control over anything contrary in the rules. Upon receipt by OSI of a request for an update to a promulgated form, a process is described, requiring notice, objection period, order, and request for hearing and hearing, if necessary. The amendment further provides that any changes to the forms will be in accordance with Section 14-4-1 et seq., NMSA 1978, or as otherwise required by law.

Purpose of Proposed Rule. This provides a method for promulgation of updates to currently promulgated forms that permits forms to be updated whenever appropriate, without the necessity to wait for the biennial rules, rates and forms hearing. To facilitate the efficacy of this process, the rule further provides that the forms on the OSI forms website are the promulgated forms, regardless of any inconsistency with the forms table or otherwise in the rules, and for this reason deletes the forms table from this rule.

Part 2

Summary of Text. The NMLTA proposes the promulgation of three new forms and the decertification of the existing corresponding forms, and the amendment of one form, as described herein, all of which would be incorporated into the forms table on the OSI website as the official promulgated forms. The forms are described below.

Purpose of Proposed Rule.

(i) NM form 6 Commitment for Title Insurance and NM form 6.1 Plain Language Commitment for Title Insurance. NMLTA proposes that the Superintendent decertify current NM forms 6 and 6.1 and promulgate in their place as NM form 6 the 801-16 version of the ALTA commitment form. Effective August 1, 2016, the ALTA adopted a new form of title commitment which updated and consolidated the 2006 ALTA commitment form (NM form 6) and the 2006 ALTA plain language commitment form (NM form 6.1). The new streamlined and

reformatted form of commitment expands and clarifies several aspects of the commitment to correspond with industry understanding and court interpretations of liability under a commitment, including:

The boldface Notice at the top of the form precluding third party liability. Clarified, in Condition 4(a), the insurer’s right to amend the commitment for matters appearing in the public record at commitment date that are not included as a requirement or exception.

Clarified, in Condition 5, the extent of the insurer’s liability for amending the commitment as permitted under Condition 4(a).

Incorporated the gap exception into the Conditions.

Underscored the contractual nature of the commitment by requiring both a named Proposed Insured and a specified dollar amount of coverage. Added some definitions from the Owner’s and Loan policy forms for consistency.

Added a Section 7 of the Conditions confirming that, when a commitment is issued by an agent, the agent’s role is limited to the issuance of title insurance commitments and policies and the agent is not the agent of the insurer for closing or settlement purposes.

Added a Section 8 of the Conditions indicating that if a pro forma policy is issued to the proposed insured, it does not reflect status of title and does not constitute a commitment to insure.

Added an optional section preceding Schedule A to identify basic reference details of the transaction for which the commitment is issued and stating in Subsection 5(f) of the Conditions that the insurer has no liability for the content of this data.

(ii) NM form 49 – Notice of Availability of Future Increase in Coverage and Potential Premium Discount for Future Policies. This proposed amendment to the form adds the NMAC regulation references for clarity and makes clear that discounts are not automatically available in every case.

(iii) NM form 81 – Closing

Protection Letter – Single Transaction and NM form 81.1 – Closing Protection Letter – Multiple Transactions. NMLTA proposes that the Superintendent decertify current NM forms 81 and 81.1 and promulgate in their place the most current versions of the ALTA Closing Protection Letters, adopted by ALTA December 1, 2015, but omitting the arbitration provision in paragraph 15 of the 2015 forms. The 2015 versions of the forms define a covered “actual loss” to the money received by the issuing agent, tie the definition of a loss to the definition under the title policy, clarify that the loss must have occurred solely as a result of the agent’s failures or fraud, and include a one-year limitations period.

Legal Authority for Proposed Rule. Section 59A-30-4.1 NMSA 1978 “Control and supervision by superintendent,” Section 59A-30-5 NMSA 1978 “Policy forms,” and Section 14-4-1, et. seq. NMSA 1978 “State rules.”

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rules are located on the OSI website at <http://www.osi.state.nm.us/>, under the “Legal” tab and also in the “Communications” section, under “Statutes and Rulemaking.”

OSI staff, all title insurers, and title insurance agents conducting business in New Mexico and the public are encouraged, to provide oral comments or file any written proposals, pursuant to the following schedule:

Oral comments will be accepted at the public hearing at **9:00 a.m. on Monday November 6, 2017**, at the State Capitol Building, 3rd Floor Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501 from any interested persons who are not Designated Parties or their respective employees and members; Comments of Designated Parties on the proposals are due no later than **September 29, 2017**. Any responsive proposals or comments of Designated Parties should be filed no later than **October 17, 2017**. Public comments of persons who

are not Designated Parties or their respective employees or members will be due by **October 27, 2017**.

A telephonic pre-hearing conference will be held on October 23, 2017; 10:00 a.m. MST to narrow the issues to be addressed at the public comment hearing and to hear any pending motions filed in the case. The Superintendent or his designated hearing examiner shall file a notice in the docket giving the call-in information required to attend the pre-hearing.

The Superintendent will hold a public comment hearing beginning at 9:00 a.m. on Monday November 6, 2017, at the State Capitol Building, 3rd Floor Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501. The record in this rulemaking shall close on the earlier of thirty (30) days following the Public Hearing; that is December 6, 2017, or the date a Final Order is issued in this case.

All documents shall be filed by hand delivering, mail, or electronic mail to:

Mr. Mariano Romero
OSI Records Management Bureau
1120 Paseo de Peralta, Room 331
P. O. Box 1689
Santa Fe, NM 87504-1689
Mariano.Romero@state.nm.us
ATTN: Docket No. 17-00025-RULE-PC

Any person with a disability requiring special assistance in order to participate in the hearing should contact **Melissa Martinez, at 505-476-0333 no later than October 27, 2017**.

**WORKERS’
COMPENSATION
ADMINISTRATION**

**NOTICE OF PROPOSED
RULEMAKING**

The New Mexico Workers’ Compensation Administration will conduct a public hearing on the adoption of new WCA Rules on:

Friday, October 27, 2017, 1:30 p.m., Workers’ Compensation

Administration, 2410 Centre Avenue SE, Albuquerque, NM 87106

The proposed rule will be available on the WCA website: <http://www.workerscomp.state.nm.us> on September 14, 2017. To receive a copy of the proposed rule by e-mail, contact the WCA General Counsel Office at (505) 841-6869. To receive a copy by mail, submit a self-addressed, stamped envelope with your request to WCA General Counsel Office, 2410 Centre Ave. SE, Albuquerque, NM 87106.

Comments may be made at the public hearing and written comments will be accepted until the close of business on October 27, 2017. The Director will take all comments into consideration.

Purpose of the Proposed Rule and Summary:

The WCA proposes to repeal and replace Part 4 (Claims Resolution) of Title 11 in order to implement rules for filing pleadings within the new WCA e-filing system. The proposed rule also makes minor changes to the Health Care Provider (HCP) section to clarify the HCP selection process. There were minor changes to the Mediation section, decreasing the time to reschedule a mediation conference from 90 to 75 days. The fee schedule is also being updated to coincide with the AMA codes. Both proposed rules will take effect January 1, 2018.

The Director of the WCA has authority to adopt reasonable rules pursuant to NMSA 1978, §52-5-4 (2003).

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact the General Counsel Office at (505) 841-6869. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

**End of Notices of
Rulemaking and
Proposed Rules**

Adopted Rules

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 in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.1 NMAC, Sections 9, 15 and 17, effective 09-26-17.

Explanatory statement: Statute citations throughout the rule were corrected to conform to correct legislative styles.

2.82.1.9 MEETINGS:

A. The New Mexico educational retirement board shall hold regular meetings in the months of February, April, June, August, October and December; provided however, that the board may change the date of a meeting by board action, which action shall be noted in the minutes. Special board meetings may be held in accordance with state law at the call of the chairman or by any three board members. Committee meetings shall be scheduled as directed by the chairman of each committee.

B. Four members of the board shall constitute a quorum at any regular or special meeting.

C. Notice of all meetings of the board and its committees shall be made in accordance with the Open Meetings Act (Chapter 10, Article 15 NMSA 1978) and the Open Meetings Resolution adopted by the board and shall be posted on the board's website and distributed as otherwise directed by the board. Notice shall be given at least eight days in advance of any regular meeting scheduled by the board at its last meeting. Notice shall be given at least three days in advance of any special meeting called by the chairman or any three members of the board.

D. The chairman shall set the agenda of board meetings; provided however, that if the

chairman refuses to place an item on the agenda, three individual board members may petition in writing and place an item on the agenda without the chairman's consent. Committee chairmen shall set the agendas of their respective committees. Notice of agendas shall be made in accordance with the Open Meetings Act and the Open Meetings Resolution adopted by the board and the director shall distribute board and committee agendas to board members, post the agendas to the board's website, and distribute the agendas as otherwise directed by the board.

E. Board members and their designees may attend and participate in any regular or special board meeting by telephone or other electronic device if:

(1) the member or designee cannot attend the meeting due to an emergency or unforeseen circumstance;

(2) the member or designee can clearly be heard by everyone attending the meeting and the member or designee clearly identifies [his or herself] themselves before speaking or participating in a vote;

(3) the member or designee has not attended regular meetings electronically more than twice in a rolling 12 month period;

(4) no more than two members or designees who otherwise qualify for participation under this section may do so at the same meeting; and

(5) the member or designee otherwise complies with the Open Meetings Act.

F. Failure of any board member other than state treasurer or secretary of public education to attend four consecutive regular meetings unless such absence is excused by

the board at a board meeting will be considered resignation from the board by that board member. Failure of the designee of the state treasurer or the secretary of public education, respectively, to attend four consecutive regular meetings when the state treasurer or the secretary of public education is absent will be considered resignation from the board by that designee. An excused absence must be recorded in the board meeting minutes.

G. Board members not officially assigned to the committee which is meeting may be temporarily appointed to the committee by the committee chairperson when necessary to achieve a quorum. [2.82.1.9 NMAC - Rp, 2.82.1.9 NMAC, 11-15-12; A, 09-26-17]

2.82.1.15 MEDICAL REVIEW [~~COMMITTEE~~] AUTHORITY AND APPEAL OF RECOMMENDATIONS:

A. The board shall engage a medical review [~~committee composed of three physicians well qualified in general medical knowledge~~] authority. The [~~committee~~] authority shall review all disability examination reports and advise the board of the nature and extent of disability for all applicants for disability benefits and the nature and extent of disability for those members already approved for benefits when it becomes necessary to determine their continued eligibility. [~~The committee shall also render advice to the board on the selection of physicians or other qualified persons to perform tests and examinations upon applicants for disability, if necessary, and other medical matters.~~]

B. The director may engage physicians and other qualified persons throughout the state to perform [~~tests and~~] independent

medical examinations upon applicants for disability, if necessary. Results of such examinations shall be reported in detail to, and reviewed by, the medical review [committee] authority. The director is authorized to pay a reasonable fee for the [reports and] examinations [requested by the committee].

C. Applicants for disability benefits and recipients of disability benefits whose benefits are subject to re-examination shall be given written notice of those recommendations of the medical review [committee] authority which propose denial of the application for disability or termination of disability benefits. The written notice shall contain the following:

(1) the recommendation of the medical review [committee] authority, and a clear and concise statement of the reasons supporting the recommendation;

(2) a statement that the applicant or disability recipient may appeal the recommendation within thirty (30) days after receipt of the notice in accordance with 2.82.11 NMAC. [2.82.1.15 NMAC - Rp, 2.82.1.14 NMAC, 11-15-12; A, 06-16-15; A, 09-26-17]

2.82.1.17 CONDUCT OF BUSINESS:

A. The business affairs of the board shall be conducted by the director within the authority outlined by the Educational Retirement Act and rules and procedures adopted by the board.

B. On behalf of the board, the director is authorized to execute vouchers, delegate others to execute vouchers, buy and sell, or assign, or otherwise acquire or dispose of stocks, bonds, notes, or other securities held by the board, and execute such other documents as may be necessary to the administration of the Educational Retirement Act.

C. The director shall obtain the board's approval before requesting a formal opinion interpreting the law from the attorney

general. The director may, however, obtain advice, either oral or written, from the attorney general as the need may arise.

D. The director is authorized to decide whether the agency will seek lead plaintiff status in securities class action lawsuits in order to insure a timely decision is made in accordance with applicable deadlines set out by the court. The director shall promptly apprise the chair of such decisions. All such decisions shall be presented at the next board meeting and the board may ratify or reject the director's decision. If the board rejects the director's decision, the agency shall seek to remove itself from lead plaintiff status.

~~D.~~ E. The rules and procedures of the board may be amended or expanded in the following manner:

(1) At any regular meeting, the board may request the director to prepare amendments or new rules for action at a subsequent meeting of the board.

(2) The director may, at any time, propose amendments or new rules for action at any meeting of the board.

(3) Any proposed amendment or new rule shall be drafted by the director and sent to each board member with the agenda for the meeting at which the proposal will be considered, and all proposed rule changes will be sent to all local administrative units, within a reasonable time, prior to being considered by the board.

~~E.~~ F. Interest rates that are to be set by the board under the Educational Retirement Act may be changed at any meeting of the board but shall at a minimum be set at a board meeting held in the final fiscal quarter of the year.

[2.82.1.17 NMAC - Rp, 2.82.1.16 NMAC, 11-15-12; A, 06-16-15; A, 09-26-17]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.3 NMAC, Sections 8, 9 and 12, effective 9-26-2017.

Explanatory Statement: Statute citations throughout the rule were corrected to conform to correct legislative styles.

2.82.3.8 SALARY COVERED; SALARY EXCLUDED:

A. Except as otherwise set forth herein and subject to the limitations set forth in Section 22-11-21.2 NMSA 1978, a member's annual salary for the purpose of contributions to the fund and computation of the member's benefit shall consist of total compensation or wages paid to the member for services rendered during each of the four calendar quarters of a fiscal year, beginning July 1 and ending June 30, excluding any salary earned while employed under the return to work program of the Educational Retirement Act. For purposes of determining contribution rates, a member's expected annual salary at the beginning of the fiscal year shall be considered. When relevant, a member's annual salary shall take into consideration the FTE of the position and the aggregation of salaries if the member will have multiple positions with the same or other local administrative units during the fiscal year. If a member's total annual salary is more than \$20,000, the member shall be subject to the contribution rate set forth in Subsection A of Section 22-11-21 NMSA 1978. If a member's total annual salary is \$20,000 or less the member shall be subject to the lower contribution rate set forth in Subsection B of Section 22-11-21 NMSA 1978. When a member whose salary is \$20,000 or less earns in excess of the \$20,000 limit during the fiscal year, the member shall be subject to the higher contribution rate in Subsection A of Section 22-11-21 NMSA 1978 effective the first day of the month in which the member earns in excess of the \$20,000 limit.

However, if a member whose salary is \$20,000 or less changes positions with a local administrative unit during the fiscal year or engages in additional employment with the same or other local administrative unit during the fiscal year, and that change in employment creates the expectation that the member's total annual salary shall be more than \$20,000, then the member's contribution rate shall be adjusted in accordance with the change in employment beginning the first day of the month of the change in employment.

(1) Salary includes payments made directly to the member or to a third party on behalf of or for the benefit of the member. Salary includes, without limitation:

(a) base salary, compensation, or wages;

(b) salary, compensation or wages for additional services rendered; examples include: teaching courses in addition to or above a full teaching load during the September to May academic year; teaching courses or performing research during summer (e.g., June through August) where such courses or research are not included in the duties on which the member's salary is based; and, performing work in addition to that specified in the employee's job description; performing administrative duties, such as serving as a department head, head of a faculty or staff group, or for providing other additional services;

(c) salary, compensation or wages based on professional certifications or qualifications, or skills such as being bilingual or multilingual;

(d) overtime, shift differential, and 'on-call' or call back pay.

(2) Retirement contributions shall be made by a local administrative unit and a member on base salary earnings before the salary is reduced due to the local administrative unit and member entering into a voluntary "cafeteria" plan.

(3) The salary or compensation paid to a member under a school bus owner-driver contract shall be covered for contributions and benefit calculation purposes. Contributions for compensation paid under a school bus owner-driver contract shall be based upon and limited to the compensation amount paid to a person who drives a single school bus owned by that person over a regularly established route under a regular contract in that person's name with a local administrative unit.

(4) Tips or other remuneration paid to a member by a third party are considered salary to the extent that a local administrative unit reports such amounts as the member's income for tax purposes.

B. The following items shall not be considered annual salary for the purposes of contributions to the fund and computation of the member's annual benefit:

(1) Bonuses, awards and prizes, pay supplements or salary supplements or other "one-time" payments which do not increase an employee's annual base pay or which are made in lieu of an increase in base pay, and similar additional payments, as well as allowances or reimbursements for travel, housing, food, equipment or similar items.

(2) Lump-sum payments to the member for accrued sick leave made at any time, and lump-sum payments of accrued annual leave (also referred to as "vacation leave") made after July 1, 2010. Lump-sum payments for accrued annual leave made on or before July 1, 2010 shall be includable as annual salary only to the extent that it does not include payment for more than 30 days of such leave.

(3) Payments made by a local administrative unit to a member where services are not rendered. By way of example, and with limitation to such examples: (a) payments by an employer to "buy-out" the remaining term of a member's employment contract or in

connection with an early retirement program are not payments for services rendered, irrespective of whether payment is made in a lump-sum or distributed over a period of time, and (b) payments as a result of a legal settlement, whether related to the member's employment or otherwise, are not payments for services rendered, unless such payments are specifically made for salary that was not previously paid.

(4) Stipends, salary, or other compensation paid to student teachers.

(5) Stipends or one-time payments for attending training sessions where such payments are not reimbursements for travel expenses.

(6) Allowances or reimbursements for, or expenses related to, travel, housing, food, equipment, cars, or similar items.

(7) After July 1, 2012, additional pay or a pay differential that is based solely on a member performing duties at (a) a location that is different than the location at which the member regularly performs his or her job duties or (b) that is based on the member performing duties outside of the United States and its insular areas, territories, and possessions (e.g., a location differential or hazard or hazardous duty pay).

[2.82.3.8 NMAC - Rp, 2.82.3.8 NMAC, 7-1-2012; A, 10-15-2012; A, 9-26-2017]

2.82.3.9 REFUNDS OF CONTRIBUTIONS:

A. In the event that a member should terminate employment for reasons other than retirement, disability, or death, the member shall be entitled to a refund of the member's contributions, plus interest calculated at the refund rate, reduced by the sum of any disability benefits which that member might have previously received. Contributions made by an employer on behalf of an employee (also referred to as a "member") pursuant to Subsection A of Section 22-11-21 NMSA 1978

are “employee contributions” and are subject to refund. A member is not entitled to a refund of any “employer contributions” (also referred to as “local administrative unit contributions”) made pursuant to Subsection B of Section 22-11-21 NMSA 1978. Interest paid by a member to reinstate withdrawn service credit is nonrefundable.

B. Any employee who was retired pursuant to the Public Employees Retirement Act (Chapter 10, Article 11 NMSA 1978) and who had made contributions to the fund prior to July 1, 2003, shall be entitled to a refund of such contributions, with interest calculated at the refund rate upon a bona fide termination of employment with the local administrative unit.

C. In order to obtain a refund of contributions, the eligible member must file a written request with the director on forms provided by the board.

D. A refund of a terminated member’s contributions shall be made as soon as practical after receipt of a fully executed refund request form in the office of the board. If the member’s record has been inactive for a full calendar quarter, the refund may be processed without further certification of termination by the last employer or the final monthly report upon which the member appears. If the member requesting a refund has an active record (i.e., a record reflecting contributions made in the preceding completed calendar quarter), the refund request shall not be processed without the last employer’s certification of termination and the final monthly report upon which the refunding member will appear. No refund shall be processed until the board has received all required contributions. The board shall not accept contributions subsequent to the submission of the final monthly report, as certified by the employer. If a refunding member returns to employment with any local administrative unit before the refund process is complete, the refund request shall be denied. For purposes of this rule, “termination”

means a complete severance of the employment relationship with no contract for, promise of, or expectation of future employment with any local administrative unit.

E. Refund of contributions for any period of service performed subsequent to July 1, 1957, will cancel all “prior service” credit which may have been credited to the member at the time of the refund. Restoration of all contributions withdrawn, together with interest calculated at the refund rate, will cause the prior service to be restored; provided, however, that as set forth Subsection C of [2.82.3.10] 2.82.3.11 NMAC, effective July 1, 2011, a member who was a member at any time prior to July 1, 2010 and who, on or before June 30, 2010, had all of his or her member contributions refunded pursuant to Section 22-11-15 NMSA 1978, and who, on or after July 1, 2010, returns to employment or returns the withdrawn contributions to the fund together with interest at the rate set by the board, is eligible to retire as if initially becoming a member on or after July 1, 2010.

F. Whenever a terminated member leaves a balance of \$500.00 or less in the member’s account, the account shall be closed into “unallocated income” after the member has been terminated for a period of not less than two years. The record of the terminated member’s contribution balance at the time that it was closed into “unallocated income” shall be maintained. If the terminated member subsequently returns to employment, the balance shall be restored to that member’s account. Alternatively, if the terminated member should later claim or request a refund of the amount transferred to unallocated income, such amount shall be restored to the terminated member’s account and refunded.

G. Whenever a terminated member has received a refund in excess of the amount due the member, such excess may be “closed out” into unallocated income by the director if it does not exceed \$1,000.00 after the excess refund has been outstanding for a period of not

less than two years, provided that staff has first made two or more separate attempts to contact the terminated member in writing and collect the excess refund. All such attempts must be documented by staff. All such “close out” actions shall be reported to the board in writing at its first regular meeting following that action. If a terminated member who received an excess refund that was closed into “unallocated income” should return to employment, such excess refund shall be charged to the member’s contribution account.

H. If a terminated member shall have received a refund in excess of \$1,000.00 over the amount due that member, and two or more separate attempts have been made to contact the terminated member and collect the excess refund, the director may, after taking into account the costs of doing so, direct staff to pursue legal action to recover the excess. If the amount is deemed uncollectible by the director, the matter shall be brought before the board to determine any further action.

I. Member contributions which have been withheld and paid to the educational retirement fund in error for a member who is not eligible to receive service credit for the time covered by the withholding, shall be returned to the employer, without interest, upon the member’s written request or upon the board learning that the member was not eligible to receive service credit for the time covered. The employer shall be responsible for returning such contributions to the member. [2.82.3.9 NMAC - Rp, 2.82.3.9 NMAC, 7-1-2012; A, 6-30-2016; A, 9-26-2017]

2.82.3.12 PURCHASE OF NON-REPORTED SERVICE; FAILURE TO DEDUCT MEMBER CONTRIBUTIONS:

A. Non-reported service must be purchased at the time it is discovered [~~at a rate adopted by the board~~]. Payment for non-reported service shall be at the contribution rate in effect at the time the non-reported service is discovered. The

full fiscal year salary for the position for which the member was hired shall determine whether a member pays the contribution rate applicable to members who earn \$20,000 or less per year in accordance with Section 22-11-21 NMSA 1978.

B. If the local administrative unit fails to deduct the applicable contribution from the salary paid to a member for each payroll period, the local administrative unit shall be responsible to remit to the fund the total amount due for both the member and the local administrative unit plus interest at a rate set by the board. [2.82.3.12 NMAC - N, 7-1-2012; A, 9-26-2017]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

This is an amendment to 19.15.7 NMAC, amending Section 16, effective 9/26/2017.

19.15.7.16 WELL COMPLETION OR RECOMPLETION REPORT AND LOG (Form C-105):

A. Within [20] 45 days following the completion or recompletion of a well, the operator shall file form C-105 with the appropriate division district office accompanied by a summary of special tests conducted on the well, including drill stem tests. In addition, the operator shall file a copy of electrical and radio-activity logs run on the well with form C-105. If the division does not receive form C-105 with attached logs and summaries within the specified [20-day] 45-day period, the division shall withhold the allowable for the well until the operator has complied with 19.15.7.16 NMAC.

B. In the case of a dry hole, a complete record of the well on form C-105 with the attachments listed in Subsection A of 19.15.7.16 NMAC shall accompany the notice of intention to plug the well, unless previously filed. The division shall not approve the plugging report or

release the bond the operator has complied with 19.15.7.16 NMAC.

C. The division shall not keep form C-105 and accompanying attachments confidential unless the well's owner requests in writing that the division keep it confidential. Upon such request, the division shall keep these data confidential for 90 days from the date of the well's completion, provided, however, that the report, logs and other attached data may, when pertinent, be introduced in a public hearing before division examiners, the commission or in a court of law, regardless of the request that they be kept confidential. [19.15.7.16 NMAC - Rp, 19.15.13.1105 NMAC, 12/1/2008; A, 9/26/2017]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

This is an amendment to 19.15.16 NMAC, amending Section 19, effective 9/26/2017.

19.15.16.19 LOG, COMPLETION AND WORKOVER REPORTS:

A. Completion report. Within [20] 45 days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different common source of supply, the operator shall file a completion report with the division on form C-105. For the purpose of 19.15.16.19 NMAC, a hole drilled or cored below fresh water or that penetrates oil- or gas-bearing formations or that an owner drills is presumed to be a well drilled for oil or gas. The operator shall signify on form C-105, or alternatively on form C-103, whether the well has been hydraulically fractured.

B. [For a hydraulically fractured well, the operator shall also complete and file the division's hydraulic fracturing disclosure form within 45 days after completion of the well. The hydraulic fracture disclosure form shall include the

well-API number; the well name; the well number; the well location by unit, lot, section, township and range; the county where the well is located; the well's surface and bottom hole locations by footage from the section line; the operator's name and address; the operator's OGRID; the operator's phone number; the fracture date; the well's production type (oil or gas); the pool code; the well's gross fractured interval; the well's true vertical depth; the total volume of fluid pumped; and a description of the hydraulic fluid composition and concentration listing each ingredient and for each ingredient the trade name, supplier, purpose, chemical abstract service number, maximum ingredient concentration in additive as percentage by mass, maximum ingredient concentration in the hydraulic fracturing fluid as percentage by mass; certification by the operator that the information included on the hydraulic fracture disclosure form is true and complete to the best of the operator's knowledge and belief; and the signature, printed name, e-mail address and title of the operator or operator's designated representative. The division does not require the reporting of information beyond the material safety data sheet data as described in 29 C.F.R. 1910.1200. The division does not require the reporting or disclosure of proprietary, trade secret or confidential business information.] **Hydraulic fracture disclosure.** For a hydraulically fractured well, the operator shall also complete and file with the FracFocus chemical disclosure registry a completed hydraulic fracturing disclosure within 45 days after completion, recompletion or other hydraulic fracturing treatment of the well. The hydraulic fracturing disclosure shall be completed on a then current edition of the hydraulic fluid product component information form published by FracFocus and shall include complete and correct responses disclosing all information called for by the FracFocus form, provided that:

(1) the

division does not require the reporting of information beyond the material safety data sheet data as described in 29 C.F.R. 1910.1200;

(2) the division does not require the reporting or disclosure of proprietary, trade secret or confidential business information; and

(3) the division shall download and archive New Mexico FracFocus submissions on a quarterly basis.

C. If the FracFocus chemical disclosure registry is temporarily inoperable, the operator of a well on which hydraulic fracturing treatment(s) were performed shall file the information required by the then most recent FracFocus form with the division along with Well Completion Report (form C-105) or Sundry Notice (form C-103) reporting the hydraulic fracture treatment and file the information on the FracFocus internet website when the website is again operable. If the FracFocus chemical disclosure registry is discontinued or becomes permanently inoperable, the operator shall continue filing the information with the division until otherwise provided by rule or order. [19.15.16.19 NMAC - Rp, 19.15.13.1104 NMAC, 12/1/2008; 19.15.16.19 NMAC - Rn & A, 19.15.16.18 NMAC, 2/15/2012; A, 9/26/2017]

HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an emergency amendment to 8.102.500, Sections 5, 8 and 9 effective 10/01/2017.

8.102.500.5 EFFECTIVE DATE: July 1, 2001, unless a later date is cited at the end of a section. [8.102.500.5 NMAC - Rp 8.102.500.5 NMAC, 07/01/2001; A/E, 10/01/2017]

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

[~~(1)~~] Income eligibility limits are revised and adjusted each year in October and can be found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information> [~~(2)~~]

The gross income limit for the size of the benefit group is as follows:

(a)	one person	\$842
(b)	two persons	\$1,135
(c)	three persons	\$1,428
(d)	four persons	\$1,721
(e)	five persons	\$2,015
(f)	six persons	\$2,308
(g)	seven persons	\$2,602
(h)	eight persons	\$2,897
(i)		

add \$295 for each additional person.]

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group [are as follows:

(1)	one person	\$990
(2)	two persons	\$1,335
(3)	three persons	\$1,680
(4)	four persons	\$2,025
(5)	five persons	\$2,370
(6)	six persons	\$2,715
(7)	seven persons	\$3,061
(8)	eight persons	\$3,408
(9)	add \$347 for each additional person]	

can be found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>.

D. Standard of need:

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

(a)	one person	\$266
(b)	two persons	\$357
(c)		

three persons	\$447
	(d)
four persons	\$539
	(e)
five persons	\$630
	(f)
six persons	\$721
	(g)
seven persons	\$812
	(h)
eight persons	\$922
	(i)
add \$91 for each additional person.	

E. Special needs:
(1) Special

clothing allowance: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a)

For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b)

The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c)

The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, or EWP cash assistance.

(2) Layette:

A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) Special

circumstance: Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act

requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group:

Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017]

8.102.500.9 PROSPECTIVE BUDGETING:

A. Eligibility for cash assistance programs shall be determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of disposition. Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

B. [Semiannual]

Simplified reporting: A benefit group subject to [semiannual] simplified reporting shall be subject to income methodology as specified in Subsection [H] E of 8.102.120.11 NMAC.

C. Changes in benefit group composition:

A person added to the benefit group shall have eligibility determined prospectively beginning in the month following the month the report is made.

D. Anticipating

income: In determining the benefit group's eligibility and benefit amount, the income already received and any income the benefit group expects to receive during the certification period

shall be used.

(1) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(2) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(3) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(4) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(5) Averaging is used to determine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to achieve a uniform amount for projecting.

E. Income received less frequently than monthly: The amount of monthly gross income that is received less frequently than monthly is determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not actually have a contract.

F. Contract income: A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis.

G. Using exact

income: Exact income, rather than averaged income, shall be used if:

(1) the benefit group has chosen not to average income;

(2) income is from a source terminated in the month of application;

(3) employment began in the application month and the income represents only

a partial month;
 (4) income is received more frequently than weekly.

H. Income projection:

Earned income shall be anticipated as described below.

(1) Earned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

I. Unearned income:

(1) Unearned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

J. Use of conversion factors: Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is averaged and multiplied by 4.0;

(2) income received on a biweekly basis is averaged and multiplied by 2.0;

(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

[8.102.500.9 NMAC - Rp 8.102.500.9 NMAC, 07/01/2001; A 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 04/01/2010; A/E, 10/01/2017]

HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an emergency amendment to 8.106.500, Section 8 effective 10/01/2017.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need

determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1,500 liquid or \$2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment

determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test:

The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

[-----**(1)**-----] Income eligibility limits are revised and adjusted each year in October and can be found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>.

[-----**(2)**-----] The gross-income limit for the size of the benefit group is as follows:

one person	\$842
two persons	\$1,135
three persons	\$1,428
four persons	\$1,721
five persons	\$2,015
six persons	\$2,308
seven persons	\$2,602
eight persons	\$2,897

add \$295 for each additional person.]

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) Notice:

The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test:

The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children:

A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental issuance: A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017]

HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an emergency amendment to 8.139.500 NMAC, Sections 8 and 10, effective 10/01/2017.

8.139.500.8 BASIS OF ISSUANCE:

A. Income standards: Determination of need in [the food-stamp program] SNAP is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income

eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act [42 USC 9902(2)].

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin islands is one hundred thirty percent of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by one hundred thirty percent, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 contiguous states and the District of Columbia and can be found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>.

~~**E. Issuance table:** The issuance table lists applicable income guidelines used to determine SNAP eligibility based on household size. Some amounts are increased to meet the needs of certain categorically eligible households. Some of the net income amounts listed are higher than the income limits for some household~~

sizes. Households not categorically eligible for SNAP benefits must have income below the appropriate gross income limit for household size.

Household Size	Maximum Gross Monthly Income-Categorical-Eligibility at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income- At 100% of Poverty	Maximum SNAP-Monthly Allotment
1	\$1,634	\$1,287	\$990	\$194
2	\$2,203	\$1,736	\$1,335	\$357
3	\$2,772	\$2,184	\$1,680	\$511
4	\$3,342	\$2,633	\$2,025	\$649
5	\$3,911	\$3,081	\$2,370	\$771
6	\$4,480	\$3,530	\$2,715	\$925
7	\$5,051	\$3,980	\$3,061	\$1,022
8	\$5,623	\$4,430	\$3,408	\$1,169
\$ Each Additional Member	+\$572	+\$451	+\$347	+\$146]

[F:] E. Deductions and standards:

(1) **Determination:** Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) **Yearly adjustment:** The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st, and can be found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information> and www.hsd.state.nm.us.

(3) Expense deductions and standards table:

Standard Deduction for Household Size of 1 through 3	\$157
Standard Deduction for Household of 4	\$168
Standard Deduction for Household Size of 5	\$197
Standard Deduction for Household Size of 6 or more	\$226
Earned Income Deduction (EID)	20%
Dependent Care Deduction	Actual Amount
Heating/Cooling Standard Utility Allowance (HCSUA)	\$325
Limited Utility Allowance (LUA)	\$125
Telephone Standard (TS)	\$40
Excess Shelter Cost Deduction Limit for Non-Elderly/Non-Disabled Households	\$517
Homeless Household Shelter Standard	\$143
Minimum Allotment for Eligible One and Two-Person Households	\$16]

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98, 11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A/E, 10/01/2006; A/E, 10/01/2007; A/E, 10/01/2008; A/E, 04/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 04/01/2010; A/E, 10/01/2010; A/E, 10/01/2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 04/16/2015; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017]

8.139.500.10 DETERMINING INCOME:

A. **Anticipating income:** In determining a household’s eligibility and SNAP benefit amount [the caseworker] ISD shall use income already received by the household during the certification period and any income the household and [the caseworker] ISD are reasonably certain shall be received during the remainder of the certification period.

- (1) If the amount of income or date of receipt is uncertain, that portion of the household’s income that is uncertain shall not be counted.
- (2) If the exact amount of the income is not known, that portion of the income which can be

anticipated with reasonable certainty shall be considered income.

(3) In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, a household may choose to average its income.

B. Income received during any past 30-day consecutive period that includes 30 days prior to the date of application through the date of timely disposition shall be used as an indicator of the income that is and shall be available to the household during the certification period.

(1) Past income is not used as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated during the certification period.

(2) If income fluctuates to the extent that a single four-week period does not provide an accurate indication of anticipated income, a longer period of past time can be used if it gives a more accurate indication of anticipated fluctuations in income.

(3) Income already received is not used and verification is obtained from the income source, if the household and [the caseworker] ISD decide that income already received by the household is not indicative of income expected to be received in future months.

C. Simplified reporting: A household filing an interim report form is subject to the income methodology specified at 8.139.500.9 NMAC.

D. Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

E. Use of conversion factors: Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is

averaged and multiplied by four;

(2) income received on a biweekly basis is averaged and multiplied by two;

(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

F. Held wages:

(1) Wages withheld at the request of an employee shall be considered income to a household in the month the wages would otherwise have been paid by the employer.

(2) Wages withheld by the employer as a general practice, even in violation of the law, shall not be counted as income to a household, unless the household anticipates that it will ask for and receive an advance.

(3) If a household anticipates asking for and receiving income from wages that were previously withheld by the employer as a general practice, the income shall be counted to determine eligibility.

G. Earned income:

(1) Earned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and [the caseworker] ISD are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification period; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and [the caseworker] ISD determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a

more accurate indicator of anticipated income.

(3) Provided the applicant and [the caseworker] ISD are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

H. Unearned income:

(1) Unearned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and [the caseworker] ISD are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and [the caseworker] ISD determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and [the caseworker] ISD are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

(4) Households receiving state or federal assistance payments, such as Title IV-A, GA, SSI or social security payments on a recurring monthly basis are not considered to have varied monthly income from these sources simply because mailing cycles may cause two payments to be received in one month.

I. Income received more frequently than weekly: The amount of monthly gross income

paid more frequently than weekly (i.e., daily) is determined by adding all the income received during the past four weeks. The gross income amount is used to anticipate income in the application month and the remainder of the certification period. Conversion factors shall not be applied to this income.

J. Income received less frequently than monthly: The amount of monthly gross income paid less frequently than monthly is determined by dividing the total income by the number of months it is intended to cover. [The caseworker] ISD shall carefully explain to the household how the monthly income was computed and what changes might result in a reportable change. Documentation shall be filed in the case record to establish clearly how the anticipated income was computed.

K. Use of conversion factors: Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

- (1) income received on a weekly basis is averaged and multiplied by four;
- (2) income received on a biweekly basis is averaged and multiplied by two;
- (3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

L. Known changes in income for future months at application:

- (1) At application or recertification, it shall be determined if any factors affecting income will change in future months. Such factors include a new income source, termination of income, or increases or decreases in income.
- (2) Income is considered only when the amount of the income and the date it will be received are reasonably certain.
- (3) In the event that a change is known for

future months, benefits are computed by taking into account the change in income.

M. Averaging income over the certification period:

(1) All households may choose to have their income averaged. Income is usually not averaged for destitute households because averaging would result in assigning to the month of application income from future periods which is not available for its current food needs.

(2) To average income, [the caseworker] ISD uses a household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period.

(3) **Contract income:** Households which, by contract, derive their annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis.

(a) Contract income includes income for school employees, farmers, self-employed households, and individuals who receive annual payments from the sale of real estate.

(b) These procedures do not include migrant or seasonal farm worker households.

(4) **Educational monies:** Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it is provided. All months which the income is intended to cover shall be used to average income, even if the income is received during the certification period. If the period has elapsed completely, the educational monies shall not be considered income.

N. Using exact income: Exact income, rather than averaged income, shall be used if:

- (1) the

household has chosen not to average income;

(2) income is from a source terminated in the application month;

(3) employment has just begun in the application month and the income represents only a partial month;

(4) in the month of application, the household qualifies for expedited service or is considered a destitute, migrant or seasonal farm worker household; or

(5) income is received more frequently than weekly, (i.e., daily).

[02/01/95, 11/01/95, 07/01/97, 06/01/99; 8.139.500.10 NMAC - Rn, 8 NMAC 3.FSP.502.7, 05/15/2001; A, 02/14/2002; A, 01/01/2004; A, 08/30/2007; A, 04/01/2010; A, 09/01/2017; A/E, 10/01/2017]

HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an emergency amendment to 8.139.510 NMAC, Sections 5 and 8, effective 10/01/2017.

8.139.510.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.
[02/01/95; 8.139.510.5 NMAC - Rn, 8 NMAC 3.FSP.000.5, 05/15/2001; A/E, 10/01/2017]

8.139.510.8 RESOURCE ELIGIBILITY STANDARDS:

A. [~~The maximum allowable resources, including both liquid and non-liquid assets, of all members of a household cannot exceed:~~] The maximum allowable resources for a household, including both liquid and non-liquid assets are revised and adjusted each year in October and can be found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>

- [~~(1) \$2,250; or~~
- ~~(2) \$3,250 for households consisting of or including~~

a member who is elderly or disabled as defined at Paragraph (28) of Subsection A of 8.139.100.7 NMAC.]

B. The value of a nonexempt resource is its equity value. Equity value is the fair market value less encumbrances. The value of stocks and bonds, such as U.S. savings bonds, is their cash value, not their face value.

C. It is a household's responsibility to report all resources held at the time of application and any anticipated to be received, or that are later received during the certification period, that might place the household's resources above the maximum allowed.

D. Categorically eligible households: Households that are categorically eligible do not need to meet the resource limits or provisions of this section.

E. Sponsored aliens: For households containing sponsored aliens, a prorated amount of the countable resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) are deemed to be those of the sponsored alien, in accordance with sponsored alien provisions in 8.139.420.9 NMAC.

F. Non-household members: The resources of non-household members, defined in 8.139.400.10 NMAC shall not be considered available to the household.

G. Resources of ineligible or disqualified household members: The resources of ineligible or disqualified household members shall be counted as available to the household in their entirety. If a resource exclusion applies to a household member, the exclusion shall also apply to the resources of an ineligible or disqualified person whose resources are counted as available to the household. [02/01/95, 07/01/97, 07/01/98, 06/01/99; 8.139.510.8 NMAC - Rn, 8 NMAC 3.FSP.510, 05/15/2001; A, 02/01/2002; A, 10/01/2002; A, 04/01/2010; A/E, 03/01/2015; A/E, 10/01/2017]

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

The Human Services Department reviewed at its 7/14/2017 hearing, to repeal its rule 8.200.400 NMAC, Medicaid Eligibility - General Recipient Rules, General Medicaid Eligibility (filed 12/2/2013) and replace it with 8.200.400 NMAC, Medicaid Eligibility - General Recipient Rules, General Medicaid Eligibility, adopted 9/13/2017 and effective 10/1/2017.

The Human Services Department reviewed at its 7/14/2017 hearing, to repeal its rule 8.200.410 NMAC, Medicaid Eligibility - General Recipient Rules, General Recipient Requirements (filed 12/2/2013) and replace it with 8.200.410 NMAC, Medicaid Eligibility - General Recipient Rules, General Recipient Requirements, adopted 9/13/2017 and effective 10/1/2017.

The Human Services Department reviewed at its 7/14/2017 hearing, to repeal its rule 8.231.400 NMAC, Medicaid Eligibility - Infants of Mothers who are Medicaid Eligible (Category 031), Recipient Policies (filed 12/10/2007) and replace it with 8.231.400 NMAC, Medicaid Eligibility - Infants of Mothers who are Medicaid Eligible (Category 031), Recipient Policies, adopted 9/13/2017 and effective 10/1/2017.

The Human Services Department reviewed at its 7/14/2017 hearing, to repeal its rule 8.231.500 NMAC, Medicaid Eligibility - Infants of Mothers who are Medicaid Eligible (Category 031), Income and Resource Standards (filed 2/12/2010) and replace it with 8.231.500 NMAC, Medicaid Eligibility - Infants of Mothers who are Medicaid Eligible (Category 031), Income and Resource Standards, adopted 9/13/2017 and effective 10/1/2017.

The Human Services Department

reviewed at its 7/14/2017 hearing, to repeal its rule 8.231.600 NMAC, Medicaid Eligibility - Infants of Mothers who are Medicaid or Medical Assistance Program Eligible, Benefit Description (filed 12/2/2013) and replace it with 8.231.600 NMAC, Medicaid Eligibility - Infants of Mothers who are Medicaid or Medical Assistance Program Eligible, Benefit Description, adopted 9/13/2017 and effective 10/1/2017.

The Human Services Department reviewed at its 7/14/2017 hearing, to repeal its rule 8.291.400 NMAC, Medicaid Eligibility - Affordable Care, Eligibility Requirements (filed 12/17/2013) and replace it with 8.291.400 NMAC, Medicaid Eligibility - Affordable Care, Eligibility Requirements, adopted 9/13/2017 and effective 10/1/2017.

The Human Services Department reviewed at its 7/14/2017 hearing, to repeal its rule 8.291.410 Medicaid Eligibility - Affordable Care, General Recipient Requirements (filed 12/17/2013) and replace it with 8.291.410 NMAC, Medicaid Eligibility - Affordable Care, General Recipient Requirements, adopted 9/13/2017 and effective 10/1/2017.

The Human Services Department reviewed at its 7/14/2017 hearing, to repeal its rule 8.302.2 NMAC, Medicaid General Provider Policies, Billing for Medicaid Services (filed 12/17/2013) and replace it with 8.302.2 NMAC, Medicaid General Provider Policies, Billing for Medicaid Services, adopted 9/1/2017 and effective 10/1/2017.

The Human Services Department reviewed at its 7/14/2017 hearing, to repeal its rule 8.308.14 NMAC, Managed Care Program, Cost Sharing (filed 12/17/2013) and replace it with 8.308.14 NMAC, Managed Care Program, Co-Payments, adopted 9/1/2017 and effective 10/1/2017.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 200 MEDICAID ELIGIBILITY - GENERAL RECIPIENT RULES
PART 400 GENERAL MEDICAID ELIGIBILITY**

8.200.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD). [8.200.400.1 NMAC - Rp, 8.200.400.1 NMAC, 10/1/2017]

8.200.400.2 SCOPE: The rule applies to the general public. [8.200.400.2 NMAC - Rp, 8.200.400.2 NMAC, 10/1/2017]

8.200.400.3 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. [8.200.400.3 NMAC - Rp, 8.200.400.3 NMAC, 10/1/2017]

8.200.400.4 DURATION: Permanent. [8.200.400.4 NMAC - Rp, 8.200.400.4 NMAC, 10/1/2017]

8.200.400.5 EFFECTIVE DATE: October 1, 2017, unless a later date is cited at the end of a section. [8.200.400.5 NMAC - Rp, 8.200.400.5 NMAC, 10/1/2017]

8.200.400.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD)

eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*. [8.200.400.6 NMAC - Rp, 8.200.400.6 NMAC, 10/1/2017]

8.200.400.7 DEFINITIONS: [RESERVED]

8.200.400.8 [RESERVED] [8.200.400.8 NMAC - Rp, 8.200.400.8 NMAC, 10/1/2017]

8.200.400.9 GENERAL MEDICAID ELIGIBILITY: Medicaid services are jointly financed by the federal government and the state of New Mexico and are administered by medical assistance division (MAD).

A. Within broad federal regulations, New Mexico determines categories of eligible recipients, eligibility requirements, types and range of services, levels of provider reimbursement and managed care capitation, and administrative and operating procedures.

B. New Mexico administers medical assistance programs using waivers of the Social Security Act for comparability of services, rules for income and resources and freedom of choice of provider.

C. Payments for medical and behavioral health services, durable equipment and supplies are made directly to service providers, not to the medicaid eligible recipient.

D. This chapter describes the New Mexico categories of medicaid and medical assistance programs eligibility. Each medicaid and medical assistance program includes detailed eligibility requirements which are organized into the following three chapter types:

- (1) recipient requirements (.400);
- (2) income and resources standards (.500); and

(3) benefit description (.600). [8.200.400.9 NMAC - Rp, 8.200.400.9 NMAC, 10/1/2017]

8.200.400.10 BASIS FOR DEFINING GROUP - MEDICAID CATEGORIES:

A. Except where noted, the HSD income support division (ISD) determines eligibility in the categories listed below:

- (1) other adult (Category 100);
- (2) parent caretaker (Category 200);
- (3) pregnant women (Category 300);
- (4) pregnancy-related services (Category 301);
- (5) loss of parent caretaker due to earnings from employment or due to spousal support (Categories 027 and 028);
- (6) newborn (Category 031);
- (7) children under age 19 (Categories 400, 401, 402, 403, 420, and 421);
- (8) children, youth, and families department medicaid (Categories 017, 037, 046, 04, 066, and 086); and
- (9) family planning (Category 029).

B. Medicare savings program (MSP): MSP assists an eligible recipient with the cost of medicare.

(1) Medicare is the federal government program that provides health care coverage for individuals 65 or older; or under 65 who have a disability. Individuals under 65 who have a disability are subject to a waiting period of 24 months from the approval date of social security disability insurance (SSDI) benefits before they receive medicare coverage. Coverage under medicare is provided in four parts.

- (a) Part A hospital coverage is usually free to beneficiaries when medicare taxes are paid while working.
- (b) Part B medical coverage requires monthly premiums, co-insurance

and deductibles to be paid by the beneficiary.

(c)

Part C advantage plan allows a beneficiary to choose to receive all medicare health care services through a managed care organization.

(d)

Part D provides prescription drug coverage.

(2) The

following MSP programs can assist an eligible recipient with the cost of medicare.

(a)

Qualified medicare beneficiaries (QMB) - Categories 041 and 044:

QMB covers low income medicare beneficiaries who have or are conditionally eligible for medicare Part A. QMB benefits are limited to the following:

(i)

cost for the monthly medicare Part B premium;

(ii)

cost of medicare deductibles and coinsurance; and

(iii)

cost for the monthly medicare Part A premium (for those enrolling conditionally).

(b)

Specified low-income medicare beneficiaries (SLIMB) - Category 045:

SLIMB medicaid covers low-income medicare beneficiaries who have medicare Part A. SLIMB is limited to the payment of the medicare Part B premium.

(c)

Qualified individuals 1 (QI1s) - Category 042:

QI1 medicaid covers low-income medicare beneficiaries who have medicare Part A. QI1 is limited to the payment of the medicare part B premium.

(d)

Qualified disabled working individuals (QDI) - Category 050:

QDI medicaid covers low income individuals who lose entitlement to free medicare Part A hospital coverage due to gainful employment. QDI is limited to the payment of the monthly Part A hospital premium.

(e)

Medicare Part D prescription drug

coverage - low income subsidy

(LIS) - Category 048: LIS provides individuals enrolled in medicare Part D with a subsidy that helps pay for the cost of Part D prescription premiums, deductibles and co-payments. An eligible recipient receiving medicaid through QMB, SLMB or QI1 is automatically deemed eligible for LIS and need not apply. Other low-income medicare beneficiaries must meet an income and resource test and submit an application to determine if they qualify for LIS.

C. Supplemental security income (SSI) related medicaid:

(1) SSI

- Categories 001, 003 and 004:

Medicaid for individuals who are eligible for SSI. Eligibility for SSI is determined by the social security administration (SSA). This program provides cash assistance and medicaid for an eligible recipient who is:

(a)

aged (Category 001);

(b)

blind (Category 003); or

(c)

disabled (Category 004).

(2) SSI

medicaid extension - Categories

001, 003 and 004: MAD provides coverage for certain groups of applicants or eligible recipients who have received supplemental security income (SSI) benefits and who have lost the SSI benefits for specified reasons listed below and pursuant to 8.201.400 NMAC:

(a)

the pickle amendment and 503 lead;

(b)

early widow(er);

(c)

disabled widow(er) and a disabled surviving divorced spouse;

(d)

child insurance benefits, including disabled adult children (DAC);

(e)

nonpayment SSI status (E01);

(f)

revolving SSI payment status "ping-pongs"; and

(g)

certain individuals who become

ineligible for SSI cash benefits and, therefore, may receive up to two months of extended medicaid benefits while they apply for another MAD category of eligibility.

(3) Working

disabled individuals (WDI) and medicare wait period - Category

074: There are two eligibility types:

(a) a

disabled individual who is employed; or

(b) a

disabled individual who has lost SSI medicaid due to receipt of SSDI and the individual does not yet qualify for medicare.

D. Long term care

medicaid:

(1) medicaid

for individuals who meet a nursing facility (NF) level of care (LOC), intermediate care facilities for the intellectually disabled (ICF-ID) LOC, or acute care in a hospital. SSI income methodology is used to determine eligibility. An eligible recipient must meet the SSA definition of aged (Category 081); blind (Category 083); or disabled (Category 084).

(2)

Institutional care (IC) medicaid

- Categories 081, 083 and

084: IC covers certain inpatient, comprehensive and institutional and nursing facility benefits.

(3) Program

of all-inclusive care for the elderly (PACE) - Categories 081, 083 and 084:

PACE uses an interdisciplinary team of health professionals to provide dual medicaid/medicare enrollees with coordinated care in a community setting. The PACE program is a unique three-way partnership between the federal government, the state, and the PACE organization. The PACE program is limited to specific geographic service area(s). Eligibility may be subject to a wait list for the following:

(a)

the aged (Category 081);

(b)

the blind (Category 083); or

(c)

the disabled (Category 084).

(4) Home and community-based 1915 (c) waiver services (HCBS) - Categories 090, 091, 092, 093, 094, 095 and 096:

A 1915(c) waiver allows for the provision of long term care services in home and community based settings. These programs serve a variety of targeted populations, such as people with mental illnesses, intellectual disabilities, or physical disabilities. Eligibility may be subject to a wait list.

(a) There are two HCBS delivery models:

(i) traditional agency delivery where HCBS are delivered and managed by a MAD enrolled agency; or

(ii) mi via self-directed where an eligible recipient, or his or her representative, has decision-making authority over certain services and takes direct responsibility to manage the eligible mi via recipient's services with the assistance of a system of available supports; self-direction of services allows an eligible mi via recipient to have the responsibility for managing all aspects of service delivery in a person-centered planning process.

(b) HCBS waiver programs include:

(i) acquired immunodeficiency syndrome (AIDS) and AIDS-related condition (ARC) (Category 090);

(ii) disabled and elderly aged (Category 091), blind (Category 093), disabled (Category 094);

(iii) medically fragile (Category 095);

(iv) developmental disabilities (Category 096);

(v) brain injury (Category 092); and

(vi) mi via (self directed model for Categories 090, 091, 093, 094, 095, 096 and 092).

E. Emergency medical services for aliens (EMSA): EMSA medicaid covers certain noncitizens who either are

undocumented or who do not meet the qualifying alien criteria specified in 8.200.410 NMAC. Non-citizens must meet all eligibility criteria for one of the medicaid categories noted in 8.285.400 NMAC, except for citizenship or qualified alien status. An eligible EMSA recipient does not receive the full medicaid benefit package. Medicaid eligibility for and coverage of services under EMSA are limited to the payment of emergency services from a medicaid provider.

F. Refugee medical assistance (RMA) - Categories 049 and 059:

RMA offers health coverage to certain low income refugees during the first eight months from their date of entry to the United States (U.S.) when they do not qualify for other medicaid categories of eligibility. A RMA eligible refugee recipient has access to a benefit package that parallels the full coverage medicaid benefit package. RMA is funded through a grant under Title IV of the Immigration and Nationality Act (INA). A RMA applicant who exceeds the RMA income standards may "spend-down" below the RMA income standards for Category 059 by subtracting incurred medical expenses after arrival into the U.S.

G. Breast and cervical cancer (BCC) - Category 052:

BCC medicaid provides coverage to an eligible uninsured woman, under the age of 65 who has been screened and diagnosed by the department of health (DOH) as having breast or cervical cancer to include pre-cancerous conditions. The screening criteria are set forth in the centers for disease control and prevention's national breast and cervical cancer early detection program (NBCCEDP). Eligibility is determined using DOH notification and without a separate medicaid application or determination of eligibility.

[8.200.400.10 NMAC - Rp, 8.200.400.10 NMAC, 10/1/2017]

8.200.400.11 PRESUMPTIVE ELIGIBILITY FOR BREAST AND CERVICAL CANCER: PE provides immediate access to health

services when an individual appears to be eligible for Category 052.

A. Breast and cervical cancer (BCC) (Category 052):

PE provides temporary medicaid coverage for an uninsured woman, under the age of 65 who has been screened and diagnosed by the DOH as having breast or cervical cancer to include pre-cancerous conditions. Only one PE period is allowed per calendar year.

B. PE is determined by a qualified entity certified by HSD. Qualified entities may include community and rural health centers, hospitals, physician offices, local health departments, family planning agencies and schools.

C. The PE period begins on the date the provider determines presumptive eligibility and terminates at the end of the following month.

D. Providers shall notify the MAD claims processing contractor of the determination within 24-hours of the PE determination.

E. For continued medicaid eligibility beyond the PE period, a completed and signed application for medicaid must be submitted to HSD/ISD. An eligible PE provider must submit the application to ISD within 10 calendar days from the receipt of the application.

[8.200.400.11 NMAC - Rp, 8.200.400.13 NMAC, 10/1/2017]

8.200.400.12 12 MONTHS CONTINUOUS ELIGIBILITY FOR CHILDREN (42 CFR 435.926):

A. HSD provides continuous eligibility for the period specified in Subsection B of 8.200.400.14 NMAC for an individual who is:

(1) Under age 19 and

(2) Eligible and enrolled for mandatory or optional coverage under the State plan.

B. The continuous eligibility period is 12 months. The continuous eligibility period

begins on the effective date of the individual's eligibility or most recent redetermination or renewal of eligibility.

C. A child's eligibility may not be terminated during a continuous eligibility period, regardless of any changes in circumstances, unless:

(1) The child attains the maximum age of 19;

(2) The child or child's representative requests a voluntary termination of eligibility;

(3) The child ceases to be a resident of New Mexico;

(4) The agency determines that eligibility was erroneously granted at the most recent determination, redetermination or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative; or

(5) The child dies.

[8.200.400.12 NMAC - Rp, 8.200.400.14 NMAC, 10/1/2017]

8.200.400.13 AUTHORIZED REPRESENTATIVE: HSD must permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications.

A. Such a designation must be in writing including the applicant's signature, and must be permitted at the time of application and at other times. Legal documentation of authority to act on behalf of an applicant or beneficiary under state law, such as a court order establishing legal guardianship or a power of attorney, shall serve in the place of written authorization by the applicant or beneficiary.

B. Representatives may be authorized to:

(1) sign an application on the applicant's behalf;

(2) complete and submit a renewal form;

(3)

receive copies of the applicant or beneficiary's notices and other communications from the agency; and

(4) act on behalf of the applicant or beneficiary in all other matters with the agency.

C. The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on his or her behalf, or the authorized representative informs the agency that he or she is no longer acting in such capacity, or there is a change in the legal authority upon which the individual's or organization's authority was based. Such notice must be in writing and should include the applicant or authorized representative's signature as appropriate.

D. The authorized representative is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation to the same extent as the individual he or she represents, and must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or beneficiary provided by the agency.

E. As a condition of serving as an authorized representative, a provider, staff member or volunteer of an organization must sign an agreement that he or she will adhere to the regulations relating to confidentiality (relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization acting on the facility's behalf), as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information (42 CFR 435.923).

[8.200.400.13 NMAC - Rp, 8.200.400.16 NMAC, 10/1/2017]

8.200.400.14 NMAC [RESERVED]

8.200.400.15 NMAC [RESERVED]

8.200.400.16 NMAC [RESERVED]

HISTORY OF 8.200.400 NMAC: The material in this part was derived from that previously filed with the State Records Center: 8 NMAC 4.MAD.400, Recipient Policies, Recipient Rights and Responsibilities, filed 12/30/1994.

History of Repealed Material: 8.200.400 NMAC, General Medicaid Eligibility, filed 6/15/2001 - Repealed effective 1/1/2014. 8.200.400 NMAC, General Medicaid Eligibility, filed 12/2/2013 - Repealed effective 10/1/2017.

NMAC History: 8.200.400 NMAC, General Medicaid Eligibility, filed 12/2/2013 was replaced by 8.200.400 NMAC, General Medicaid Eligibility effective 10/1/2017.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 200 MEDICAID ELIGIBILITY - GENERAL RECIPIENT RULES PART 410 GENERAL RECIPIENT REQUIREMENTS

8.200.410.1 ISSUING AGENCY: New Mexico Human Services Department (HSD). [8.200.410.1 NMAC - Rp, 8.200.410.1 NMAC, 10/1/2017]

8.200.410.2 SCOPE: The rule applies to the general public. [8.200.410.2 NMAC - Rp, 8.200.410.2 NMAC, 10/1/2017]

8.200.410.3 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.
[8.200.410.3 NMAC - Rp,
8.200.410.3 NMAC, 10/1/2017]

8.200.410.4 DURATION:
Permanent.
[8.200.410.4 NMAC - Rp,
8.200.410.4 NMAC, 10/1/2017]

8.200.410.5 EFFECTIVE DATE: October 1, 2017, unless a later date is cited at the end of a section.
[8.200.410.5 NMAC - Rp,
8.200.410.5 NMAC, 10/1/2017]

8.200.410.6 OBJECTIVE:
The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.
[8.200.410.6 NMAC - Rp,
8.200.410.6 NMAC, 10/1/2017]

8.200.410.7 DEFINITIONS:
[RESERVED]

8.200.410.8 [RESERVED]

8.200.410.9 GENERAL RECIPIENT REQUIREMENTS:
To be eligible or continue eligibility for medicaid or other medical assistance programs, an applicant or eligible recipient must meet specific non-financial requirements. In addition to the rules in this chapter, refer to 8.100.130 NMAC regarding the following requirements:
A. citizenship or non-citizen status;
B. enumeration;
C. residence;
D. non-concurrent receipt of assistance;
E. applications for other benefits; and

F. assignment of medical support rights.
[8.200.410.9 NMAC - Rp,
8.200.410.9 NMAC, 10/1/2017]

8.200.410.10 USE OF SOCIAL SECURITY NUMBER (42 CFR 435.910): Federal law requires, as a condition of eligibility, that each individual (including children) seeking medicaid furnish each of his or her social security numbers (SSN).
A. HSD will advise the applicant of:
(1) the statute or other authority under which the agency is requesting the applicant's SSN; and
(2) the uses HSD will make of each SSN, including its use for verifying income, eligibility, and amount of medical assistance payments per 42 CFR 435.940 through 435.960.

B. If an applicant cannot recall his or her SSN or SSNs or has not been issued a SSN HSD will:
(1) assist the applicant in completing an application for an SSN;
(2) obtain evidence required under the social security administration (SSA) regulations to establish the age, the citizenship or non-citizen status, and the true identity of the applicant; and
(3) either send the application to SSA or, if there is evidence that the applicant has previously been issued a SSN, request SSA to furnish the number.

C. HSD cannot deny or delay services to an otherwise eligible individual pending issuance or verification of the individual's SSN by SSA or if the individual meets one of the exceptions in Paragraph (5) of Subsection A of 8.200.410.10 NMAC.

D. HSD will verify the SSN furnished by an applicant or beneficiary with SSA to ensure the SSN was issued to that individual, and to determine whether any other SSNs were issued to that individual.

E. Exception:
(1) The requirement of Paragraph (3) of

Subsection A of 8.200.410.10 NMAC does not apply and HSD may give a medicaid identification number to an individual who:

(a) is not eligible to receive an SSN;
(b) does not have an SSN and may only be issued an SSN for a valid non-work reason in accordance with 20 CFR 422.104; or

(c) refuses to obtain an SSN because of well-established religious objections.
(2) The identification number may be either an SSN obtained by HSD on the applicant's behalf or another unique identifier.

(3) The term well established religious objections means that the applicant;

(a) is a member of a recognized religious sect or division of the sect; and
(b)

adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number.

(4) HSD may use the medicaid identification number established by HSD to the same extent as an SSN is used for purposes described in Subparagraph (b) of Paragraph (1) of Subsection A of 8.200.410.NMAC.

[8.200.410.10 NMAC - Rp,
8.200.410.10 NMAC, 10/1/2017]

8.200.410.11 CITIZENSHIP:
To be eligible for medicaid, an individual must be a citizen of the United States; United States national or a non-citizen who meets the requirements set forth in either Subsection A or B of 8.200.410.11 NMAC.

A. **Non-citizens who entered the United States prior to August 22, 1996:** Non-citizens who entered the United States prior to August 22, 1996, will not be subject to the five-year bar for purposes of medicaid eligibility. These classes of non-citizens are as follows.

(1) Qualified

non-citizens who entered the United States prior to August 22, 1996, and obtained their qualified non-citizen status prior to that date, are eligible for medicaid without the 5 year waiting period.

(2) Non-citizens who entered the United States prior to August 22, 1996, and remained continuously present in the United States until the date they obtained qualified non-citizen status on or after August 22, 1996; any single absence from the United States of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt "continuous presence".

(3) Lawful Permanent Residents (LPRs) are qualified non-citizens per 8 USC 1641.

B. Qualified non-citizens who entered the United States on or after August 22, 1996:

(1) Qualified non-citizens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under Category 085), unless meeting an exception below. LPRs who adjust from a status exempt from the five-year bar are not subject to the five-year bar. The five-year bar begins on the date the non-citizen obtained qualified status. The following classes of qualified non-citizens are exempt from the five-year bar:

(a) a non-citizen admitted to the United States as a refugee under Section 207 of the Immigration and Nationality Act;

(b) a non-citizen granted asylum under Section 208 of the Immigration and Nationality Act;

(c) a non-citizen whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;

(d) a non-citizen who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of non-citizen status; is on active duty

other than on active duty for training, in the armed forces of the United States; or the spouse or unmarried dependent child under the age of 18 of such veteran or active duty non-citizen;

(e) a non-citizen who was granted status as a Cuban and Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(f) a non-citizen granted Amerasian immigrant status as defined under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988;

(g) victims of a severe form of trafficking, in accordance with Section 107(b)(1) of the Trafficking Victims Protection Act of 2000, P.L. 106-386;

(h) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e);

(i) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies;

(j) Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010; and

(k) Non-citizens receiving SSI.

(2) Qualified non-citizen: A "qualified non-citizen", for purposes of this regulation, is a non-citizen, who at the time the non-citizen applies for, receives, or attempts to receive a federal public benefit, is:

(a) a non-citizen who is granted asylum under Section 208 of such act; or

(b) a refugee who is admitted to the United States under Section 207 of the act; or

(c) an Amerasian who is admitted to the United States under Section 207 of the act; or

(d)

a non-citizen who is paroled into the United States under Section 212(d)(5) of such act for a period of at least one year; or

(e) a non-citizen whose deportation is being withheld under Section 243(h) of such act or under Section 241(b)(3); or

(f) a non-citizen who is granted conditional entry pursuant to 203(a)(7) or such act as in effect prior to April 1, 1980; or

(g) a non-citizen who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980); or

(h) a non-citizen who has been battered per 8 USC 1641(c) or subject to extreme cruelty in the United States by a spouse or a parent or by a member of the spouse's or parent's family who is residing in the same household as the non-citizen; but only after having resided in the United States for at least five calendar years from the date the non-citizen obtained qualified status. The child or children of a battered non-citizen meeting these requirements are also eligible.

(i) victims of a severe form of trafficking and their spouses, children, siblings, or parents; or

(j) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); or

(k) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies; or

(l) Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010.

(3) Children under age 21 and pregnant women exempt from the five year bar:

As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows lawfully residing children under age 21 and pregnant women, if otherwise eligible including meeting state residency and income

requirements, to obtain medicaid coverage. Lawfully residing children under age 21 and pregnant women must meet the residency requirement as set forth in 8.200.410.12 NMAC. A child or pregnant woman is considered lawfully present if he or she is:

- (a) a non-citizen in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission as defined under 8 USC 1101(a)(15);
- (b) a non-citizen who has been paroled into the United States pursuant to Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. Section 1182(d)(5)) for less than one year, except for a non-citizen paroled for prosecution, for deferred inspection or pending removal proceedings;
- (c) a non-citizen who belongs to one of the following classes:
 - (i) aliens currently in temporary resident status pursuant to Section 210 or 245A of the Immigration and Nationality Act (8 U.S.C. Section 1160 or 1255a, respectively);
 - (ii) non-citizens currently under temporary protected status (TPS) pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. Section 1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) non-citizens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) family unity beneficiaries pursuant to Section 301 of Pub. L. 101-649, as amended;
 - (v) non-citizens currently under deferred enforced departure (DED) pursuant to a decision made by the president;
 - (vi) non-citizens currently in deferred action status except those with deferred action under "Defined Action

for Childhood Arrivals" who are not considered lawfully present.

- (vii) non-citizens whose visa petitions have been approved and who have a pending application for adjustment of status;
 - (d) A non-citizen with pending applicants for asylum under Section 208(a) of the INA (8 U.S.C. Section 1158) or for withholding of removal under Section 241(b)(3) of the INA (8 U.S.C. Section 1231) or under the convention against torture who has been granted employment authorization, or is an applicant under the age of 14 and has had an application pending for at least 180 days;
 - (e) non-citizens whose applications for withholding of removal under the convention against torture have been granted;
 - (f) children who have pending applications for special immigrant juvenile status as described in Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. Section 1101(a)(27)(J));
 - (g) non-citizens who are lawfully present in American Samoa under the immigration laws of American Samoa; or
 - (h) victims of trafficking.
- (4) Non-citizen sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996): The income and resources of a non-citizen sponsor, of any individual applying for medicaid, are deemed available to the applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of non-citizen sponsor income and resources is effective until the sponsored non-citizen achieves citizenship.
- (5) The state assures that it provides limited

medicaid services for treatment of an emergency medical condition, not related to an organ transplant procedure, as defined in 1903(v)(3) of the social security act and 8.285.400 NMAC and implemented at 42 CFR 440.255, to the following individuals who meet all medicaid eligibility requirements, except documentation of citizenship or satisfactory immigration status or present an SSN.

- (a) qualified non-citizens subject to the 5 year waiting period described in 8 USC 1613; or
- (b) non-qualified non-citizens, unless covered as a lawfully residing child or pregnant woman by the state under the option in accordance with 1903(v)(4) and implemented at 42 CFR 435.406(b). [8.200.410.11 NMAC - Rp, 8.200.410.11 NMAC, 10/1/2017]

8.200.410.12 TYPES OF ACCEPTABLE DOCUMENTARY EVIDENCE OF CITIZENSHIP (42 CFR 435.407):

- A. Stand-alone evidence of citizenship:** The following must be accepted as sufficient documentary evidence of citizenship:
- (1) A U.S. passport, including a U.S. passport card issued by the department of state, without regard to any expiration date as long as such passport or card was issued without limitation.
 - (2) A certificate of naturalization.
 - (3) A certificate of U.S. citizenship.
 - (4) A valid state-issued driver's license if the state issuing the license requires proof of U.S. citizenship, or obtains and verifies a SSN from the applicant who is a citizen before issuing such license.
 - (a) A real ID issued on or after November 14, 2016 is sufficient documentary evidence of citizenship.
 - (b) A driver authorization card (DAC) is not sufficient documentary evidence of

citizenship.

(5)

Documentary evidence issued by a federally recognized indian tribe identified in the federal register by the bureau of Indian affairs within the U.S. department of the interior, and including tribes located in a state that has an international border, which;

(a)

Identifies the federally recognized indian tribe that issued the document;

(b)

Identifies the individual by name; and

(c)

Confirms the individual's membership, enrollment, or affiliation with the tribe.

(d)

Documents described in Paragraph (5) of Subsection A of 8.200.410.12 NMAC include, but are not limited to:

(i)

A tribal enrollment card;

(ii)

A certificate of degree of indian blood;

(iii)

A tribal census document;

(iv)

Documents on tribal letterhead, issued under the signature of the appropriate tribal official, that meet the requirements of Paragraph (5) of Subsection A of 8.200.410.12 NMAC.

(6) A data

match with the SSA.

B. Evidence of

citizenship: If an applicant does not provide documentary evidence from the list in Subsection A of 8.200.410.12 NMAC, the following must be accepted as satisfactory evidence to establish citizenship if also accompanied by an identity document listed in Subsection C of 8.200.410.12 NMAC:

(1) A U.S.

public birth certificate showing birth in one of the 50 States, the District of Columbia, Guam, American Samoa, Swain's Island, Puerto Rico (if born on or after January 13, 1941), the Virgin Islands of the U.S. or the Commonwealth of the Northern Mariana Islands (CNMI) (if born after November 4, 1986, (CNMI local time)). The birth record

document may be issued by a state, commonwealth, territory, or local jurisdiction. If the document shows the individual was born in Puerto Rico or the Northern Mariana Islands before the applicable date referenced in Paragraph (1) of Subsection B of 8.200.410.12 NMAC, the individual may be a collectively naturalized citizen. The following will establish U.S. citizenship for collectively naturalized individuals:

(a)

Puerto Rico: Evidence of birth in Puerto Rico and the applicant's statement that he or she was residing in the U.S., a U.S. possession, or Puerto Rico on January 13, 1941;

(b)

Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI));

(i)

Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986, (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

(ii)

Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration before January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

(iii)

Evidence of continuous domicile in the NMI since before January 1, 1974, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time). Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(2) A

certification of report of birth, issued to U.S. citizens who were born outside the U.S.

(3) A report of

birth abroad of a U.S. citizen.

(4) A

certification of birth in the U.S.

(5) A U.S.

citizen identification card.

(6) A Northern

Marianas identification card issued by the U.S. department of homeland security (or predecessor agency).

(7) A final

adoption decree showing the child's name and U.S. place of birth, or if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth.

(8) Evidence

of U.S. civil service employment before June 1, 1976.

(9) U.S.

military record showing a U.S. place of birth.

(10) A data

match with the Systematic Alien Verification for Entitlements (SAVE) Program or any other process established by the department of homeland security (DHS) to verify that an individual is a citizen.

(11)

Documentation that a child meets the requirements of section 101 of the Child Citizenship Act of 2000 as amended (8 U.S.C. 1431).

(12) Medical

records, including, but not limited to, hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.

(13) Life,

health, or other insurance record that indicates a U.S. place of birth.

(14) Official

religious record recorded in the U.S. showing that the birth occurred in the U.S.

(15) School

records, including pre-school, head start and daycare, showing the child's name and U.S. place of birth.

(16) Federal

or state census record showing U.S. citizenship or a U.S. place of birth.

(17) If the

applicant does not have one of the documents listed in Subsection A or Paragraph (1) through (17) of

Subsection B of 8.200.410.12 NMAC, he or she may submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, date of birth, and place of U.S. birth. The affidavit does not have to be notarized.

C. Evidence of identity:

(1) HSD will accept the following as proof of identity, provided such document has a photograph or other identifying information sufficient to establish identity, including, but not limited to, name, age, sex, race, height, weight, eye color, or address:

(a) Identity documents listed at 8 CFR 274a.2 (b)(1)(v)(B)(1), except a driver's license issued by a Canadian government authority.

(b) Driver's license issued by a state or territory.

(c) School identification card.

(d) U.S. military card or draft record.

(e) Identification card issued by the federal, state, or local government.

(f) Military dependent's identification card.

(g) U.S. coast guard merchant mariner card.

(h) For children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.

(i) Two other documents containing consistent information that corroborates an applicant's identity. Such documents include, but are not limited to, employer identification cards; high school, high school equivalency and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.

(2) Finding of identity from a federal or state governmental agency. The agency

may accept as proof of identity a finding of identity from a federal agency or another state agency including but not limited to a public assistance, law enforcement, internal revenue or tax bureau, or corrections agency, if the agency has verified and certified the identity of the individual.

(3) If the applicant does not have any document specified in Paragraph (1) of Subsection C of 8.200.410.12 NMAC and identity is not verified under Paragraph (2) of Subsection C 8.200.410.12 NMAC, the agency must accept an affidavit signed, under penalty of perjury, by a person other than the applicant who can reasonably attest to the applicant's identity. Such affidavit must contain the applicant's name and other identifying information establishing identity, as described in Paragraph (1) of Subsection C 8.200.410.12 NMAC. The affidavit does not have to be notarized.

D. Verification of citizenship by a federal agency or another state: HSD may rely, without further documentation of citizenship or identity, on a verification of citizenship made by a federal agency or another state agency, if such verification was done on or after July 1, 2006.

E. Assistance with obtaining documentation: HSD will provide assistance to individuals who need assistance in securing satisfactory documentary evidence of citizenship in a timely manner.

F. Documentary evidence: A photocopy, facsimile, scanned or other copy of a document must be accepted to the same extent as an original document under this section, unless information on the copy submitted is inconsistent with other information available to HSD or HSD otherwise has reason to question the validity of, or the information in, the document.

[8.200.410.12 NMAC - N, 10/1/2017]

8.200.410.13 REASONABLE OPPORTUNITY PERIOD (42 CFR 435.956(b)):

A. HSD provides

a reasonable opportunity period to individuals who have made a declaration of citizenship or satisfactory immigration status in accordance with 42 CFR 435.406, and for whom the HSD is unable to verify citizenship or satisfactory immigration status. During the reasonable opportunity period, the HSD continues efforts to complete verification of the individual's citizenship or satisfactory immigration status, or request documentation if necessary. The HSD provides notice of such opportunity that is accessible to persons who have limited English proficiency and individuals with disabilities, consistent with 42 CFR 435.905(b). During such reasonable opportunity period, the HSD must, if relevant to verification of the individual's citizenship or satisfactory immigration status:

(1) in the case of individuals declaring citizenship who do not have an SSN at the time of such declaration, assist the individual in obtaining an SSN in accordance with 42 CFR 435.910 and Paragraph (2) of Subsection A of 8.200.410.10 NMAC, and attempt to verify the individual's citizenship once an SSN has been obtained and verified;

(2) provide the individual with information on how to contact the electronic data source so that he or she can attempt to resolve any inconsistencies defeating electronic verification directly with such source, and pursue verification of the individual's citizenship or satisfactory immigration status if the individual or source informs the HSD that the inconsistencies have been resolved; and

(3) provide the individual with an opportunity to provide other documentation of citizenship or satisfactory immigration status, in accordance with section 1137(d) of the Act and 42 CFR 435.406 or 435.407 and 8.200.410.12 NMAC.

B. The reasonable opportunity period:

(1) begins on the date on which the notice is

received by the individual. The date on which the notice is received is considered to be five days after the date on the notice, unless the individual shows that he or she did not receive the notice within the five-day period; and

(2) ends on the earlier of the date the HSD verifies the individual's citizenship or satisfactory immigration status or determines that the individual did not verify his or her citizenship or satisfactory immigration status or 90 days except that;

(3) HSD extends the reasonable opportunity period beyond 90 days, allowing for up to three 10 day extensions, for individuals declaring to be in a satisfactory immigration status if the HSD determines that the individual is making a good faith effort to obtain any necessary documentation or the agency needs more time to verify the individual's status through other available electronic data sources or to assist the individual in obtaining documents needed to verify his or her status.

(4) if, by the end of the reasonable opportunity period, the individual's citizenship or satisfactory immigration status has not been verified the HSD will take action within 30 days to terminate eligibility.
[8.200.410.13 NMAC - N, 10/1/2017]

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

A. Establishing residence: Residence 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 a child in school or getting a state driver's license. 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: An applicant or an eligible recipient who receives 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 eligible 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, the state must provide limited medicaid coverage for medicaid services that are part of the state 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 an eligible recipient leaves the state for specific purposes with time-limited goals. Residence is considered abandoned when the applicant or the eligible recipient leaves the state 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 consecutive calendar days, without notifying HSD of his or her departure or intention of returning.

E. Evidence of immigration status may not be used to determine that an individual is not a state resident per 42 CFR 435.956 (c) (2).
[8.200.410.14 NMAC - Rp, 8.200.410.12, 10/1/2017]

8.200.410.15 NON-CONCURRENT RECEIPT OF ASSISTANCE:

A. An applicant or an eligible recipient receiving medicaid in another state is not medical assistance program eligible in New Mexico except when:

(1) institutional care medicaid begins on a specific date within the month rather than automatically reverting to the first day of the month, if an applicant for institutional care medicaid (Category 081, 083 or 084) moves to New Mexico from another state and it can be verified that the other state will terminate the individual's medicaid eligibility under that state program prior to the initial eligibility date in New Mexico, the application may be approved even though the individual receives medicaid from the other state for part of the month; coverage in New Mexico begins after the end date of services from the other state;

(2) an individual is court ordered into full or partial responsibility 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 medicaid coverage for medicaid services that are part of New Mexico's medicaid benefit package and not available in the new state of residence.

B. An individual who is eligible for a full-coverage medicaid program may also be eligible for one of the medicare cost sharing medical assistance program categories. See 8.200.400 NMAC.

C. When a supplemental security income (SSI) recipient enters into a nursing home or hospital (institutionalized), SSA will re-evaluate SSI and related medicaid eligibility.

(1) When SSA determines that the individual remains eligible for SSI while institutionalized, the SSI benefit is adjusted as follows:

(a) if institutionalized for more than 90 calendar days - the SSI benefit is

limited to thirty (\$30) a month; or
(b) if institutionalized for 90 calendar days or less - the SSI benefit continues at the regular amount.

(2) When SSA determines that the individual is not eligible for SSI, the individual or his or her authorized representative should file an application at HSD for institutional care medicaid. If the individual meets all factors of eligibility, approval of the institutional care medicaid application should be coordinated with the SSI closure date. If eligible, there will not be a break in eligibility and the individual shall not receive both SSI and institutional care medicaid in the same month pursuant to 8.281.400.10 NMAC.
 [8.200.410.15 NMAC - Rp, 8.200.410.13, 10/1/2017]

8.200.410.16 APPLICATIONS FOR OTHER BENEFITS: As a condition of eligibility, a medicaid applicant or an eligible recipient must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled, within 30 calendar days from the date HSD furnishes notice of the potential benefit, unless they can show good cause for not doing so.

A. Benefit types: Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, old age survivors and disability insurance (OASDI) benefits, railroad retirement benefits, and unemployment compensation.

B. Exceptions to general requirement/good cause: An individual may request a good cause waiver to this requirement by presenting ISD with corroborating evidence that:

- (1)** applying for other benefits is against the best interest of the individual, child or others, including physical or emotional harm to a child, parent or caregiver relative, adoption proceedings, and potential for emotional impairment; or
- (2)** exceptions applicable to institutional care

medicaid, the SSI-related categories and the home and community based waivers are pursuant to Subsection B of 8.215.500.9 NMAC, Subsection B of 8.281.500.9 NMAC, and Subsection B of 8.290.500.9 NMAC.

C. Failure to apply for and take steps to determine eligibility for other benefits: When the parent(s) or where applicable the specified relative fails or refuses to apply for and take steps to determine eligibility within 30 calendar days from the date HSD furnishes notice of the potential benefit, the parent(s) or specified relative is not eligible for medicaid. An eligible recipient under the age of 18 years shall not lose his or her medicaid eligibility under this provision.
 [8.200.410.16 NMAC - Rp, 8.200.410.14, 10/1/2017]

8.200.410.17 INMATE IN A PUBLIC INSTITUTION:

A. A public institution is a:

- (1)** state and private correctional facility;
- (2)** county and privately operated jail;
- (3)** department of health behavioral health facility forensic unit;
- (4)** detention facility operated under the authority of CYFD; or
- (5)** facility that is operated under the authority of CYFD that provides for the care and rehabilitation of an individual who is under 18 years of age and who has committed an act that would be designated as a crime under the law if committed by an individual who is 18 years of age or older.

B. An inmate is a person incarcerated in a public institution listed in Subsection A of 8.200.410.15 NMAC for 30 or more days.

C. An inmate who is incarcerated in a public institution is not eligible for MAP services. The only exception are those services provided to an inmate while he or she is an inpatient in a medical facility outside the public institution for 24

hours or longer.

D. Incarceration in a public institution is not a basis for denying or terminating a MAP category of eligibility. During the time of incarceration an inmate may apply or recertify for a MAP category of eligibility.
 [8.200.410.17 NMAC - Rp, 8.200.410.15, 10/1/2017]

HISTORY OF 8.200.410 NMAC:

History of Repealed Material:
 8.200.410 NMAC, General Recipient Requirements, filed 6/11/2003 - Repealed effective 1/1/2014.
 8.200.410 NMAC, General Recipient Requirements, filed 12/2/2013 - Repealed effective 10/1/2017.

NMAC History:
 8.200.410 NMAC, General Recipient Requirements, filed 12/2/2013 was replaced by 8.200.410 NMAC, General Recipient Requirements effective 10/1/2017.

**HUMAN SERVICES DEPARTMENT
 MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES
 CHAPTER 231 MEDICAID ELIGIBILITY - INFANTS OF MOTHERS WHO ARE MEDICAID ELIGIBLE (CATEGORY 031)
 PART 400 RECIPIENT POLICIES**

8.231.400.1 ISSUING AGENCY: New Mexico Human Services Department.
 [8.231.400.1 NMAC - Rp, 8.231.400.1 NMAC, 10/1/2017]

8.231.400.2 SCOPE: The rule applies to the general public.
 [8.231.400.2 NMAC - Rp, 8.231.400.2 NMAC, 10/1/2017]

8.231.400.3 STATUTORY AUTHORITY: The New Mexico

medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991). [8.231.400.3 NMAC - Rp, 8.231.400.3 NMAC, 10/1/2017]

8.231.400.4 DURATION:

Permanent

[8.231.400.4 NMAC - Rp, 8.231.400.4 NMAC, 10/1/2017]

8.231.400.5 EFFECTIVE DATE:

October 1, 2017, unless a later date is cited at the end of a section.

[8.231.400.5 NMAC - Rp, 8.231.400.5 NMAC, 10/1/2017]

8.231.400.6 OBJECTIVE:

The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.

[8.231.400.6 NMAC - Rp, 8.231.400.6 NMAC, 10/1/2017]

8.231.400.7 DEFINITIONS:

[RESERVED]

8.231.400.8 [RESERVED]

[8.231.400.8 NMAC - Rp, 8.231.400.8 NMAC, 10/1/2017]

8.231.400.9 NEWBORN - CATEGORY 031:

The New Mexico medicaid program covers infants for 13 months born to mothers who are eligible for and receiving New Mexico medicaid at the time of the child's birth including during a period of retroactive eligibility. Mothers eligible to receive emergency medical services for aliens (EMSA) at the time of labor and delivery are considered to meet the standard of medicaid eligibility for the mother.

[8.231.400.9 NMAC - Rp, 8.231.400.9 NMAC, 10/1/2017]

8.231.400.10 BASIS FOR DEFINING THE GROUP (42 CFR 435.177):

A. Eligibility: HSD

provides medicaid to children from birth through the month of the child's first birthday without application if, for the date of the child's birth, the child's mother was eligible for and received covered services under:

(1) the medicaid state plan (including during a period of retroactive eligibility under 42 CFR 435.915) regardless of whether payment for services for the mother is limited to services necessary to treat an emergency medical condition, as defined in section 1903(v)(3) of the Act and 8.285.400.10 NMAC under the emergency medical services for aliens (EMSA) program.

(2) the child is deemed to have applied and been determined eligible under the medicaid state plan effective as of the date of birth, and remains eligible regardless of changes in circumstances through the month of the child's first birthday, unless the child dies or ceases to be a resident of the state or the child's representative requests a voluntary termination of eligibility.

B. Medicaid

identification number: The medicaid identification number of the mother serves as the child's identification number, and all claims for covered services provided to the child may be submitted and paid under such number, unless and until the state issues the child a separate identification number. HSD will issue a separate medicaid identification number for the child prior to the effective date of any termination of the mother's eligibility or prior to the date of the child's first birthday, whichever is sooner, except that HSD will issue a separate medicaid identification number in the case of a child born to a mother:

(1) whose coverage is limited to services necessary for the treatment of an emergency medical condition, consistent with 42 CFR 435.139 or 435.350 and 8.285.400.10 NMAC under the EMSA program; or

(2) who received medicaid in another state on

the date of birth.

[8.231.400.10 NMAC - Rp, 8.231.400.10 NMAC, 10/1/2017]

8.231.400.11 GENERAL RECIPIENT REQUIREMENTS: [RESERVED]

[8.231.400.11 NMAC - Rp, 8.231.400.11 NMAC, 10/1/2017]

8.231.400.12 USE OF SOCIAL SECURITY NUMBER: The infant is not required to have a social security number as a condition of eligibility.

[8.231.400.12 NMAC - Rp, 8.231.400.12 NMAC, 10/1/2017]

8.231.400.13 CITIZENSHIP:

An eligible newborn is considered to have met the citizenship and identity requirements.

[8.231.400.13 NMAC - Rp, 8.231.400.13 NMAC, 10/1/2017]

8.231.400.14 RESIDENCE:

To be eligible for medicaid, an applicant/recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have demonstrated intent to remain in the state. A temporary absence from the state does not prevent eligibility. A temporary absence exists if the applicant/recipient leaves the state for a specific purpose with a time-limited goal, and intends to return to New Mexico when the purpose is accomplished.

[8.231.400.14 NMAC - Rp, 8.231.400.14 NMAC, 10/1/2017]

8.231.400.15 SPECIAL RECIPIENT RESPONSIBILITIES: [RESERVED]

[8.231.400.15 NMAC - Rp, 8.231.400.15 NMAC, 10/1/2017]

8.231.400.16 AGE: An applicant/recipient newborn is eligible for medicaid under this category from birth through the month of the child's first birthday.

[8.231.400.16 NMAC - Rp, 8.231.400.16 NMAC, 10/1/2017]

8.231.400.17

RECIPIENT RIGHTS AND RESPONSIBILITIES:

An applicant/recipient is responsible for establishing his/her eligibility for medicaid. As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. An applicant/recipient must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information which are necessary to establish eligibility.
[8.231.400.17 NMAC - Rp, 8.231.400.17 NMAC, 10/1/2017]

8.231.400.18 ASSIGNMENT OF SUPPORT:

Assignment of child support rights is not required for applicants/recipients eligible for category 031.
[8.231.400.18 NMAC - Rp, 8.231.400.18 NMAC, 10/1/2017]

HISTORY OF 8.231.400 NMAC:

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

ISD 290.1000, Medical Assistance for Woman and Children, filed 11/13/1984.

ISD FA 830, Medical Assistance for Woman and Children and AFDC Related Groups, filed 2/10/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 8/11/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 9/8/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 9/30/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 12/1/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 3/31/1989.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 6/8/1989.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 12/28/1989.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 12/29/1989.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 3/1/1991.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 6/5/1992.

History of Repealed Material:

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 6/5/1992 -

Repealed effective 2/1/1995.

8.231.400 NMAC, Recipient Policies, (filed 12/10/2007) - Repealed effective 10/1/2017.

NMAC History:

8.231.400 NMAC, Recipient Policies (filed 12/10/2007) was replaced by 8.231.400 NMAC, Recipient Policies, effective 10/1/2017.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES

CHAPTER 231 MEDICAID ELIGIBILITY - INFANTS OF MOTHERS WHO ARE

MEDICAID ELIGIBLE (CATEGORY 031)

PART 500 INCOME AND RESOURCE STANDARDS

8.231.500.1 ISSUING

AGENCY: New Mexico Human Services Department.

[8.231.500.1 NMAC - Rp, 8.231.500.1 NMAC, 10/1/2017]

8.231.500.2 SCOPE: The rule applies to the general public.

[8.231.500.2 NMAC - Rp, 8.231.500.2 NMAC, 10/1/2017]

8.231.500.3 STATUTORY AUTHORITY:

The New Mexico

medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).
[8.231.500.3 NMAC - Rp, 8.231.500.3 NMAC, 10/1/2017]

8.231.500.4 DURATION:

Permanent.

[8.231.500.4 NMAC - Rp,

8.231.500.4 NMAC, 10/1/2017]

8.231.500.5 EFFECTIVE

DATE: October 1, 2017, unless a later date is cited at the end of a section.

[8.231.500.5 NMAC - Rp,

8.231.500.5 NMAC, 10/1/2017]

8.231.500.6 OBJECTIVE:

The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.

[8.231.500.6 NMAC - Rp,

8.231.500.6 NMAC, 10/1/2017]

8.231.500.7 DEFINITIONS:

[RESERVED]

8.231.500.8 [RESERVED]

8.231.500.9 NEED

DETERMINATION:

[8.231.500.9 NMAC - Rp,

8.231.500.9 NMAC, 10/1/2017]

8.231.500.10 RESOURCE

STANDARDS: Resources are not a factor in the eligibility determination for category 031.

[8.231.500.10 NMAC - Rp,

8.231.500.10 NMAC, 10/1/2017]

8.231.500.11 INCOME

STANDARDS: Income is not a factor in the eligibility determination for category 031.

[8.231.500.11 NMAC - Rp,

8.231.500.11 NMAC, 10/1/2017]

HISTORY OF 8.231.500 NMAC:

Pre-NMAC History: The material in this part was derived from that

previously filed with the State Records Center.
 ISD 290.1000, Medical Assistance for Woman and Children, filed 11/13/1984.
 ISD FA 830, Medical Assistance for Woman and Children and AFDC Related Groups, filed 2/10/1988.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 8/11/1988.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 9/8/1988.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 9/30/1988.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 12/1/1988.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 3/31/1989.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 6/8/1989.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 12/28/1989.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 12/29/1989.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 3/1/1991.
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 6/5/1992.

History of Repealed Material:
 MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 6/5/1992 - Repealed effective 2/1/1995.
 8.231.500 NMAC, Income and Resource Standards (filed 12/10/2007) - Repealed effective 10/1/2017.

NMAC History:
 8.231.500 NMAC, Income and Resource Standards (filed 12/10/2007) was replaced by 8.231.500 NMAC, Income and Resource Standards (filed 12/10/2007) effective 10/1/2017.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 231 MEDICAID ELIGIBILITY - INFANTS OF MOTHERS WHO ARE MEDICAID OR MEDICAL ASSISTANCE PROGRAM ELIGIBLE
PART 600 BENEFIT DESCRIPTION

8.231.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
 [8.231.600.1 NMAC - Rp, 8.231.600.1 NMAC, 10/1/2017]

8.231.600.2 SCOPE: The rule applies to the general public.
 [8.231.600.2 NMAC - Rp, 8.231.600.2 NMAC, 10/1/2017]

8.231.600.3 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.
 [8.231.600.3 NMAC - Rp, 8.231.600.3 NMAC, 10/1/2017]

8.231.600.4 DURATION: Permanent.
 [8.231.600.4 NMAC - Rp, 8.231.600.4 NMAC, 10/1/2017]

8.231.600.5 EFFECTIVE DATE: October 1, 2017, unless a later date is cited at the end of a section.
 [8.231.600.5 NMAC - Rp, 8.231.600.5 NMAC, 10/1/2017]

8.231.600.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health

care programs. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapters located at 8.291.400 NMAC through 8.291.430 NMAC.
 [8.231.600.6 NMAC - Rp, 8.231.600.6 NMAC, 10/1/2017]

8.231.600.7 DEFINITIONS: [RESERVED]

8.231.600.8 [RESERVED]
 [8.231.600.8 NMAC - Rp, 8.231.600.8 NMAC, 10/1/2017]

8.231.600.9 BENEFIT DESCRIPTION: An applicant or recipient who is eligible for medicaid under this category is eligible to receive the full range of medicaid services.
 [8.231.600.9 NMAC - Rp, 8.231.600.9 NMAC, 10/1/2017]

8.231.600.10 BENEFIT DETERMINATION:
A. Medical service providers must give the name and case number of the New Mexico medicaid eligible mother and the name, birth date, sex of the newborn, and the name of the hospital where the birth occurred to local county income support division (ISD) office. Within three days after receipt of this information, the income support specialist (ISS):

(1) determines if the mother was eligible for New Mexico medicaid at the time of birth or if the birth and delivery was covered by emergency medical services to undocumented aliens (EMSA);

(2) registers the newborn for medicaid on the system; a signed application is not required;

(3) provides eligibility information to the hospital; and

(4) notifies the mother that a signed application is necessary to establish the newborn's eligibility for TANF, if applicable.

B. Processing time limit: All applications must be

processed within 45 days from the date of application. The time limit begins on the day the signed application is received. Applications must be acted upon and notice of approval, denial or delay sent out within the required time limit. The ISS explains the time limit and that the applicant may request an administrative hearing if the application pends longer than the time limit allows.

[8.231.600.10 NMAC - Rp,
8.231.600.10 NMAC, 10/1/2017]

8.231.600.11 ONGOING

BENEFITS: A newborn remains eligible for assistance under Category 031 from birth through the month of the child's first birthday as long as the newborn remains in New Mexico.

[8.231.600.11 NMAC - Rp,
8.231.600.12 NMAC, 10/1/2017]

8.231.600.12 RETROACTIVE

BENEFIT COVERAGE: A newborn is deemed to have applied and been found eligible for the newborn category of eligibility from birth through the month of the child's first birthday. This applies in instances where the labor and delivery services were furnished prior to the date of the application and covered by medicaid based on the mother applying for up to three months of retroactive eligibility.

A. Application

for retroactive benefit coverage:

Application for retroactive medicaid can be made by checking "yes" in the "application for retroactive medicaid payments" box on the application/redetermination of eligibility for medicaid assistance (MAD 381) form or by checking "yes" to the question "does anyone in your household have unpaid medical expenses in the last three months?" on the application for assistance (ISD S) form. Applications for retroactive medicaid benefits must be made no later than 180 days from the date of application for assistance. Medicaid covered services which were furnished more than two years prior to application are not covered.

B. Approval

requirements: To establish

retroactive eligibility, the ISS must verify that all conditions of eligibility were met for each of the three retroactive months and that the applicant received medicaid-covered services. Each month must be approved or denied on its own merits. Retroactive eligibility can be approved on either the eligibility system (for categories programmed on that system) or on the retroactive medicaid eligibility authorization (MAD 333) form.

C. Notice:

(1) Notice

to applicant: The applicant must be informed if eligibility for any of the retroactive months is denied.

(2) Recipient

responsibility to notify provider: After the retroactive eligibility has been established, the ISD worker must notify the recipient that he is responsible for informing all providers with outstanding bills of the retroactive eligibility determination. If the recipient fails to inform all providers and furnish verification of eligibility which can be used for billing and the provider consequently does not submit the billing within 120 days from the date of approval of retroactive coverage, the recipient is responsible for payment of the bill.

[8.231.600.12 NMAC - Rp,
8.231.600.13 NMAC, 10/1/2017]

8.231.600.13 CHANGE IN

ELIGIBILITY: If the newborn is placed on MAD Category 400 or 420 and then loses eligibility for either of these categories, the newborn can still be eligible for Category 031 if he meets Category 031 requirements for the remainder of the 12 month period. A new application is not required.

[8.231.600.13 NMAC - Rp,
8.231.600.14 NMAC, 10/1/2017]

8.231.600.14 PERIODIC

REDETERMINATIONS OF ELIGIBILITY (42 CFR

435.117(d)): A redetermination of eligibility must be completed on behalf of the children described in this provision in accordance with 8.291.410.19 NMAC.

[8.231.600.14 NMAC - N, 10/1/2017]

8.231.600.15 ENUMERATION AND CITIZENSHIP:

A. HSD requires, as a condition of eligibility, that each individual (including children) seeking medicaid furnish each of his or her Social Security numbers (SSN) per 42 CFR 435.910(a) and 8.200.410.10 NMAC. HSD will request an SSN at renewal if not already provided.

B. Newborns who were initially eligible for medicaid as deemed newborns are considered to have provided satisfactory documentation of citizenship, identity, and age.

[8.231.600.15 NMAC - N, 10/1/2017]

HISTORY OF 8.231.600 NMAC:

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

ISD 290.1000, Medical Assistance for Woman and Children, filed 11/13/1984.

ISD FA 830, Medical Assistance for Woman and Children and AFDC Related Groups, filed 2/10/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 8/11/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 9/8/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 9/30/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 12/1/1988.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 3/31/1989.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 6/8/1989.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 12/28/1989.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 12/29/1989.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 3/1/1991.

MAD Rule 830, Medical Assistance

for Women and Children and AFDC - Related Groups, filed 6/5/1992.

History of Repealed Material:

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 6/5/1992 - Repealed effective 2/1/1995.
 8.231.600 NMAC, Benefit Description, filed 12/10/2007 - Repealed 1/1/2014.
 8.231.600 NMAC, Benefit Description, filed 12/2/2013 - Repealed effective 10/1/2017.

NMAC History:

8.231.600 NMAC, Benefit Description, filed 12/2/2013 was replaced by 8.231.600 NMAC, Benefit Description, effective 10/1/2017.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

**TITLE 8 SOCIAL SERVICES
 CHAPTER 291 MEDICAID ELIGIBILITY - AFFORDABLE CARE
 PART 400 ELIGIBILITY REQUIREMENTS**

8.291.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
 [8.291.400.1 NMAC - Rp, 8.291.400.1 NMAC, 10/1/2017]

8.291.400.2 SCOPE: The rule applies to the general public.
 [8.291.400.2 NMAC - Rp, 8.291.400.2 NMAC, 10/1/2017]

8.291.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is 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.
 [8.291.400.3 NMAC - Rp,

8.291.400.3 NMAC, 10/1/2017]

8.291.400.4 DURATION: Permanent.
 [8.291.400.4 NMAC - Rp, 8.291.400.4 NMAC, 10/1/2017]

8.291.400.5 EFFECTIVE DATE: October 1, 2017, unless a later date is cited at the end of a section.
 [8.291.400.5 NMAC - Rp, 8.291.400.5 NMAC, 10/1/2017]

8.291.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
 [8.291.400.6 NMAC - Rp, 8.291.400.6 NMAC, 10/1/2017]

8.291.400.7 DEFINITIONS:
A. Action: an approval, termination, suspension, or reduction of medicaid eligibility or a reduction in the level of benefits and services, including a determination of income for the purposes of imposing any premiums, enrollment fees, or cost-sharing. It also means determinations made by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determination made by a state with regard to the preadmission screening and resident review requirements.

B. Advance payments of the premium tax credit (APTC): payment of the tax credits specified in Section 36B of the Internal Revenue Code which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange.

C. Affordable Care Act (ACA): the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148), as amended by the Health Care and Education

Reconciliation Act of 2010 (Public Law 111-152) and the Three Percent Withholding Repeal and Job Creation Act (Public Law 112-56).

D. Affordable insurance exchanges (exchanges): a governmental agency or non-profit entity that meets the applicable requirements and makes qualified health plans available to qualified individuals and qualified employers. Unless otherwise identified, this term refers to state exchanges, regional exchanges, subsidiary exchanges, and a federally-facilitated exchange.

E. Agency: the single state agency designated or established by a state to administer or supervise the administration of the medicaid state plan. This designation includes a certification by the state attorney general, citing the legal authority for the single state agency to make rules and regulations that it follows in administering the plan or that are binding upon local agencies that administer the plan.

F. Appeal record: the appeal decision, all papers and requests filed in the proceeding, and if a hearing was held, the transcript or recording of hearing testimony or an official report containing the substance of what happened at the hearing, and any exhibits introduced at the hearing.

G. Appeal request: a clear expression, either verbally or in writing, by an applicant, enrollee, employer, or small business employer or employee to have any eligibility determination or redetermination contained in a notice issued reviewed by an appeals entity.

H. Appeals entity: a body designated to hear appeals of eligibility determinations or redeterminations contained in notices, or notices issued in accordance with future guidance on exemptions.

I. Appeals decision: a decision made by a hearing officer adjudicating a fair hearing, including by a hearing officer employed by an exchange appeals entity to which the agency has delegated authority to conduct such hearings.

J. Applicable modified

adjusted gross income (MAGI) standard: the income standard for each category of ACA eligibility.

K. Application: the single streamlined application required by ACA and other medicaid applications used by the agency.

L. Authorized representative: the agency must permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications with the agency.

(1) Such a designation must be in writing including the applicant's signature, and must be permitted at the time of application and at other times. Legal documentation of authority to act on behalf of an applicant or beneficiary under state law, such as a court order establishing legal guardianship or a power of attorney, shall serve in the place of written authorization by the applicant or beneficiary.

(2) Representatives may be authorized to:

(a) sign an application on the applicant's behalf;

(b) complete and submit a renewal form;

(c) receive copies of the applicant or beneficiary's notices and other communications from the agency; and

(d) act on behalf of the applicant or beneficiary in all other matters with the agency.

(3) The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on his or her behalf, or the authorized representative informs the agency that he or she is no longer acting in such capacity, or there is a change in the legal authority upon which the individual's or organization's authority was based. Such notice must be in writing and should include the applicant or

authorized representative's signature as appropriate.

(4) The authorized representative is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation to the same extent as the individual he or she represents, and must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or beneficiary provided by the agency.

(5) As a condition of serving as an authorized representative, a provider, staff member or volunteer of an organization must sign an agreement that he or she will adhere to the regulations relating to confidentiality (relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization acting on the facility's behalf), as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information.

M. Beneficiary: an individual who has been determined eligible and is currently receiving medicaid.

N. Citizenship: a national of the United States means a citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

O. Code: the internal revenue code.

P. Coordinated content: information included in an eligibility notice regarding the transfer of the individual's or households electronic account to another insurance affordability program for a determination of eligibility.

Q. Current beneficiaries: individuals who have been determined financially eligible for medicaid using MAGI-based methods.

R. Dependent child: an un-emancipated child who is under the age of 19.

S. Documentary evidence: a photocopy facsimile,

scanned or other copy of a document must be accepted to the same extent as an original document.

T. Electronic account: an electronic file that includes all information collected and generated by the state regarding each individual's medicaid eligibility and enrollment, including all documentation required to support the agency's decision on the case.

U. Expedited appeals: the agency must establish and maintain an expedited review process for hearings when an individual requests or a provider requests, or supports the individual's request, that the time otherwise permitted for a hearing could jeopardize the individual's life or health or ability to attain, maintain, or regain maximum function. If the agency denies a request for an expedited appeal, it must use the standard appeal timeframe.

V. Family size: the number of persons counted as members of an individual's household. In the case of determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. In the case of determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

W. Insurance affordability program: a state medicaid program under Title XIX of the act, state children's health insurance program (CHIP) under Title XXI of the act, a state basic health program established under ACA and coverage in a qualified health plan through the exchange with cost-sharing reductions established under Section 1402 of ACA.

X. MAGI-based income: For the purposes of this section, MAGI-based income means income calculated using the same financial methodologies used to determine a modified adjusted gross income as defined in Section 36B(d) (2) (B) of the Internal Revenue Code,

with the certain exceptions.

Y. Managed care organization (MCO): an organization licensed or authorized through an agreement among state entities to manage, coordinate and receive payment for the delivery of specified services to medicaid eligible members.

Z. Modified adjusted gross income (MAGI): has the meaning of 26 CFR 1.36B-1 Section (2).

AA. Non-applicant: an individual who is not seeking an eligibility determination for himself or herself and is included in an applicant's or beneficiary's household to determine eligibility for such applicant or beneficiary.

BB. Non-citizen: has the same meaning as the term "alien" and includes any individual who is not a citizen or national of the United States (8 USC 1101(a)(22)).

CC. Parent caretaker: a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care (as may, but is not required to, be indicated by claiming the child as a tax dependent for federal income tax purposes) and who is one of the following:

- (1) the child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;
- (2) the spouse of such parent or relative, even after the marriage is terminated by death or divorce; or
- (3) other relatives within the fifth degree of relationship (42 CFR 435.4).

DD. Patient Protection and Affordable Care Act (PPACA): also known as the Affordable Care Act (ACA) and is the health reform legislation passed by the 111th congress and signed into law in March of 2010.

EE. Tax dependent: has the same meaning as the term "dependent" under Section 152

of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under Section 151 of the Internal Revenue Code for a taxable year.

[8.291.400.7 NMAC - Rp, 8.291.400.7 NMAC, 10/1/2017]

8.291.400.8 [RESERVED]
[8.291.400.8 NMAC - Rp, 8.291.400.8 NMAC, 10/1/2017]

8.291.400.9 LEGAL BASIS: HSD is the single state agency designated to administer the New Mexico Title XIX medicaid program in accordance with 42 CFR 431.10, single state agency. State authority is provided by Section 27-2-12 NMSA 1978 (Repl. 1984). Title XIX of the Social Security Act and United States department of health and human services rules establish the requirements for state plans for medical assistance.

[8.291.400.9 NMAC - Rp, 8.291.400.9 NMAC, 10/1/2017]

8.291.400.10 BASIS FOR DEFINING GROUP: Medicaid is a federally matched program that makes certain essential health care services available to eligible New Mexico residents who otherwise would not have the financial resources to obtain them. With certain exceptions, medicaid benefits are provided through the department's medicaid managed care program.

A. Requirements outlined in 8.291.400 through 8.298.600 NMAC provides eligibility requirements for the ACA related categories listed below.

- B. ACA related categories** include the following:
- (1) other adult;
 - (2) parent caretaker;
 - (3) pregnant women;
 - (4) pregnancy-related services;
 - (5) children under 19 years of age;
 - (6) adult caretaker recipients who are in

transition to self-support due to the amount of spousal support; and
(7) adult caretaker recipients who are in transition to self-support due to the amount of earned income.

[8.291.400.10 NMAC - Rp, 8.291.400.10 NMAC, 10/1/2017]

8.291.400.11 CONTINUOUS ELIGIBILITY FOR CHILDREN(42 CFR 435.926):

A. HSD provides continuous eligibility for the period specified in Subsection B of 8.291.400.11 NMAC for an individual who is:

- (1) under age 19; and
- (2) eligible and enrolled for mandatory or optional coverage under the state plan.

B. The continuous eligibility period is 12 months. The continuous eligibility period begins on the effective date of the individual's eligibility or most recent redetermination or renewal of eligibility.

C. A child's eligibility may not be terminated during a continuous eligibility period, regardless of any changes in circumstances, unless:

- (1) the child attains the maximum age of 19;
- (2) the child or child's representative requests a voluntary termination of eligibility;
- (3) the child ceases to be a resident of New Mexico;
- (4) the agency determines that eligibility was erroneously granted at the most recent determination, redetermination or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative; or
- (5) The child dies.

[8.291.400.11 NMAC - Rp, 8.291.400.11 NMAC, 10/1/2017]

8.291.400.12 REPORTING REQUIREMENTS: A medicaid

eligible recipient is required to report certain changes which might affect his or her eligibility to ISD within 10 calendar days from the date the change occurred. A timely change that is reported within 10 calendar days that may result in a more beneficial medicaid eligibility category shall be evaluated in the month the change occurred. An untimely change that is reported after 10 calendar days that may result in a more beneficial medicaid eligibility category shall be evaluated in the month the change was reported. A reported change that does not result in the same or a more beneficial medicaid category is considered an adverse action and is applied prospectively in accordance with 8.100.180.10 NMAC. See 8.100.110.9 NMAC for the various ways applicants and recipients can submit changes to the HSD. The following changes must be reported to ISD:

A. living arrangements or change of address: any change in where an individual lives or receives mail must be reported;

B. household size: any change in the household size must be reported, this includes the death of an individual included in the assistance unit or budget group;

C. enumeration: any new social security number must be reported; or

D. income: any increase or decrease in the amount of income or change in the source of income must be reported.

[8.291.400.12 NMAC - Rp, 8.291.400.12 NMAC, 10/1/2017]

8.291.400.13 PRESUMPTIVE ELIGIBILITY: Presumptive eligibility (PE) provides medicaid benefits under one of the eligible groups outlined in Subsection B of 8.291.400.10 NMAC, starting with the date of the PE determination and ending with the last day of the following month.

A. Only one presumptive eligibility period is allowed per pregnancy or per 12 month period for other ACA related

categories.

B. Determinations can be made only by individuals employed by eligible entities and certified as presumptive eligibility PE determiners by the medical assistance division. Determiners must notify the medical assistance division (MAD) claims processing contractor of the determination within 24 hours of the determination of presumptive eligibility.

(1) Processing PE information: MAD authorizes certain providers to make PE determinations based on the qualified entity. The provider must notify MAD through an established procedure of the determination within 24 hours of the determination of presumptive eligibility.

(2) PE: The PE provider must process both presumptive eligibility as well as an application for medical assistance.

(3) Provider eligibility: Entities who may participate must be:

(a) a qualified hospital that participates as a provider under the medicaid state plan or a medicaid 1115 demonstration, notifies the medicaid agency of its election to make presumptive eligibility determinations and agrees to make PE determinations consistent with state policies and procedures; or

(b) a qualified hospital that has as not been disqualified by the medicaid agency for failure to make PE determinations in accordance with applicable state policies and procedures or for failure to meet any standards that may have been established by the medicaid agency; or

(c) a federally qualified health center (FQHC), an Indian health service (IHS) facility, a department of health (DOH) clinic, a school, a children, youth and families department (CYFD) child care bureau staff member, a primary care provider who is contracted with at least one HSD contracted MCO, or a head start agency; or

(d)

other entities HSD has determined as an eligible presumptive participant.

C. PE approval limitations:

(1) all MAD authorized PE determiners can approve PE for children and pregnant women ACA categories;

(2) hospitals opting to do PE can approve PE for all ACA related categories; and

(3) correctional facilities (state prisons and county jails) and health facilities operated by the Indian health Service, a tribe, or tribal organization, or an urban Indian organization can approve PE for the other adult, parent caretaker, pregnant women, pregnancy-related services, and children under 19 years of age ACA categories.

D. Children's health insurance program (CHIP): to be eligible for CHIP, the child cannot have other health insurance coverage.

E. A PE provider must ensure that a signed application for medicaid coverage is submitted to the ISD office within 10 days.

F. For pregnant women, PE allows medicaid payment for ambulatory prenatal services furnished to a pregnant woman while her application for medicaid is being processed. Only one presumptive eligibility period is allowed per pregnancy. A pregnant woman can receive ambulatory prenatal care from the date of the PE determination until the end of the month following the month the determination was made.

(1) For PE, an approved PE provider must accept self attestation of pregnancy.

(2) The needs and income of the unborn child(ren) are considered when determining the woman's countable family size.

[8.291.400.13 NMAC - Rp, 8.291.400.13 NMAC, 10/1/2017]

HISTORY OF 8.291.400 NMAC:

History of Repealed Material: 8.291.400 NMAC, Eligibility Requirements, filed 9/17/2013 - Duration expired 12/31/2013. 8.291.400 NMAC, Eligibility

Requirements, filed 12/2/2013 -
Repealed effective 10/1/2017.

NMAC History:

8.291.400 NMAC, Eligibility Requirements, filed 9/17/2013 was replaced by 8.291.400 NMAC, Eligibility Requirements effective 10/1/2017.

**HUMAN SERVICES
DEPARTMENT**

**MEDICAL ASSISTANCE
DIVISION**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 291 MEDICAID
ELIGIBILITY - AFFORDABLE
CARE
PART 410 GENERAL
RECIPIENT REQUIREMENTS**

8.291.410.1 ISSUING

AGENCY: New Mexico Human Services Department (HSD).
[8.291.410.1 NMAC - Rp,
8.291.410.1 NMAC, 10/1/2017]

8.291.410.2 SCOPE: The rule applies to the general public.

[8.291.410.2 NMAC - Rp,
8.291.410.2 NMAC, 10/1/2017]

8.291.410.3 STATUTORY

AUTHORITY: The New Mexico medicaid program is 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.

[8.291.410.3 NMAC - Rp,
8.291.410.3 NMAC, 10/1/2017]

8.291.410.4 DURATION:

Permanent.
[8.291.410.4 NMAC - Rp,
8.291.410.4 NMAC, 10/1/2017]

8.291.410.5 EFFECTIVE

DATE: October 1, 2017, unless a later date is cited at the end of a section.

[8.291.410.5 NMAC - Rp,

8.291.410.5 NMAC, 10/1/2017]

8.291.410.6 OBJECTIVE:

The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medical assistance programs (MAP) and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.

[8.291.410.6 NMAC - Rp,
8.291.410.6 NMAC, 10/1/2017]

8.291.410.7 DEFINITIONS:

Refer to 8.291.400.7 NMAC.

[8.291.410.7 NMAC - Rp,
8.291.410.7 NMAC, 10/1/2017]

8.291.410.8 [RESERVED]

[8.291.410.8 NMAC - Rp,
8.291.410.8 NMAC, 10/1/2017]

**8.291.410.9 GENERAL
RECIPIENT REQUIREMENTS:**

To be eligible for MAP, applicants or recipients must meet specific requirements as outlined in this part.

[8.291.410.9 NMAC - Rp,
8.291.410.9 NMAC, 10/1/2017]

**8.291.410.10 USE OF SOCIAL
SECURITY NUMBER:**

Refer to 8.200.410.10 NMAC.

[8.291.410.10 NMAC - Rp,
8.291.410.10 NMAC, 10/1/2017]

8.291.410.11 AGE: The age of the applicant recipient is verified to determine if he or she is under or over the specified age limit.

A. Age of child:

Verification of age, including self-attestation of an applicant or recipient under 21 years of age is mandatory for MAP enrollment.

B. Age of adults:

Age of an applicant or recipient 21 years of age or older is verified if questionable.

C. Documents that can

be used to verify age can be found in 8.100.130 NMAC.

[8.291.410.11 NMAC - Rp,

8.291.410.11 NMAC, 10/1/2017]

8.291.410.12 RELATIONSHIP:

Verification of relationship is mandatory, see 8.291.410.20 NMAC

A. Documents that can be used to verify relationship can be found at 8.100.130 NMAC.

B. The documentary evidence must contain the names of related individuals in question.

(1) If the relative is other than a parent, the relationship must be traced if questionable.

(2) In situations in which both parents are living in the home and the father's paternity has not been established by operation of law or determined through court order, it will be necessary to establish the relationship of the applicant or recipient under 21 years of age to the father by completion of the HSD child support enforcement division (CSED) acknowledgment of paternity packet.

(3) If the child is living with a relative, it will be necessary to establish the relationship of the absent parents. A CSED acknowledgement of paternity will be an acceptable means of establishing relationship.

C. The following relatives are within the fifth degree of relationship:

(1) father

(biological or adoptive);

(2) mother

(biological or adoptive);

(3) grandfather, great grandfather, great great grandfather, great great great grandfather;

(4) grandmother, great grandmother, great great grandmother, great great great grandmother;

(5) spouse of child's parent (stepparent);

(6) spouse of child's grandparent, great grandparent, great great grandparent, great great great grandparent (step grandparent);

(7) brother, half-brother, brother-in-law, step-

brother;

(8) sister, half-sister, sister-in-law, step-sister;

(9) uncle of the whole or half blood, uncle-in-law, great uncle, great great uncle;

(10) aunt of the whole or half blood, aunt-in-law, great aunt, great great aunt;

(11) first cousin and spouse of first cousin;

(12) son or daughter of first cousin (first cousin once removed);

(13) son or daughter of great aunt or great uncle (first cousin once removed) and spouse; or

(14) nephew or niece and spouses.

D. Effect of divorce or death on relationship: A relationship based upon marriage, such as the “in-law” or “step” relationships, continues to exist following the dissolution of the marriage by divorce or death.

[8.291.410.12 NMAC - Rp, 8.291.410.12 NMAC, 10/1/2017]

8.291.410.13 IDENTITY: Refer to 8.200.410.12 NMAC.

[8.291.410.13 NMAC - Rp, 8.291.410.13 NMAC, 10/1/2017]

8.291.410.14 CITIZENSHIP/ ALIEN STATUS: Refer to 8.200.410.12 NMAC.

[8.291.410.14 NMAC - Rp, 8.291.410.14 NMAC, 10/1/2017]

8.291.410.15 RESIDENCE: To meet MAP requirements for eligibility, 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. Applicants or recipients court ordered into full or partial responsibility of the state children youth and families department (CYFD): When CYFD places an applicant or recipient 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 MAD benefit package and not available in the new state of residence.

D. Abandonment: Residence is not abandoned by temporary absences. Temporary absences occur when applicants or recipients leave New Mexico for specific purposes with time-limited goals. An applicant or recipient 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 he or she is a resident there for the purposes of MAP enrollment. 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 calendar 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 applicant or recipient may be considered a resident in the state in which he or she is physically located.

F. Evidence of immigration status may not be used to determine that an individual is not a state resident per 42 CFR. 435.956 (c) (2).

[8.291.410.15 NMAC - Rp, 8.291.410.15 NMAC, 10/1/2017]

8.291.410.16 NON-CONCURRENT RECEIPT OF ASSISTANCE: A MAP applicant or recipient receiving medicaid in another state is not eligible for MAP enrollment in accordance with 8.200.410 NMAC.

[8.291.410.16 NMAC - Rp, 8.291.410.16 NMAC, 10/1/2017]

8.291.410.17 APPLICATIONS FOR OTHER BENEFITS: As a condition of eligibility, a MAP applicant or recipient must take all necessary steps to obtain any benefits he or she is entitled to in accordance with 8.200.410 NMAC.

[8.291.410.17 NMAC - Rp, 8.291.410.17 NMAC, 10/1/2017]

8.291.410.18 APPLICATIONS (42 CFR 435.907):

A. Basis and implementation. In accordance with section 1413(b)(1)(A) of the Affordable Care Act, HSD will accept an application from the applicant, an adult who is in the applicant’s household, as defined in 42 CFR 435.603, or family, as defined in section 36B(d)(1) of the Code, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant, and any documentation required to establish eligibility:

(1) Via the internet web site;

(2) By telephone;

(3) Via mail;

(4) In person; and

(5) Through other commonly available electronic means.

B. The application must be:

(1) The single, streamlined application for all insurance affordability programs or

(2) An alternative single, streamlined application for all insurance affordability programs, which may be no more burdensome on the applicant than the application described in Paragraph (1) of Subsection B of 8.291.410.18 NMAC. HSD uses the HSD 100 and MAD 100 application forms, and Your Eligibility System NM (Yes NM).

C. For individuals applying, or who may be eligible, for assistance on a basis other than the applicable modified adjusted gross income (MAGI) standard in accordance with 42 CFR 435.911 HSD will use an application described in Subsection B of 8.291.410.18 NMAC and supplemental forms to collect additional information needed to determine eligibility on such other basis.

D. HSD may not require an in-person interview as part of the application process for a determination of eligibility using MAGI-based income.

E. Limits on information: HSD will only require an applicant to provide the information necessary to make an eligibility determination or for a purpose directly connected to the administration of the state plan.

F. HSD accepts on applications electronic, including telephonically recorded, signatures and handwritten signatures transmitted via any other electronic transmission.

[8.291.410.18 NMAC - Rp, 8.291.410.18 NMAC, 10/1/2017]

8.291.410.19 Periodic renewal of medicaid eligibility (42 CFR 435.916):

A. Renewal of individuals whose medicaid eligibility is based on MAGI.

(1) Except as provided in Subsection D of 8.291.410.19 NMAC, the eligibility of medicaid beneficiaries whose financial eligibility is determined using MAGI-based income must be renewed once every 12 months, and no more frequently than once every 12 months.

(2) Renewal on basis of information available to HSD. HSD will make a redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to HSD, including but not limited to information accessed through any data bases accessed by HSD under 42 CFR 435.948, 435.949 and 435.956. If the HSD is able to renew eligibility based on such information, HSD will notify the individual:

(a) Of the eligibility determination, and basis; and

(b) That the individual must inform the HSD, through any of the modes permitted for submission of applications under 42 CFR 435.907(a) and Subsection A of 8.291.410.18 NMAC, if any of the information contained in such notice is inaccurate, but that the individual is not required to sign and return such notice if all information provided on such notice is accurate.

(3) Use of a pre-populated renewal form. If HSD cannot renew eligibility in accordance with Paragraph (2) of Subsection A of 8.291.410.19 NMAC, HSD will:

(a) Provide the individual with:
(i) A renewal form containing information available to HSD that is needed to renew eligibility.

(ii) At least 30 days from the date of the renewal form to respond and provide any necessary information through any of the modes of submission specified in 42 CFR 435.907(a) and 8.291.410.18(A) NMAC and to

sign the renewal form in a manner consistent with 42 CFR 435.907(f) and Subsection F of 8.291.410.18 NMAC.

(iii) Notice of the HSD decision concerning the renewal of eligibility.

(b) Verify any information provided by the beneficiary in accordance with 42 CFR 435.945 through 435.956.

(c) Reconsider in a timely manner the eligibility of an individual who is terminated for failure to submit the renewal form or necessary information, if the individual subsequently submits the renewal form within 90 days after the date of termination without requiring a new application;

(d) Not require an individual to complete an in-person interview as part of the renewal process.

B. Redetermination of individuals whose medicaid eligibility is determined on a basis other than modified adjusted gross income: HSD will redetermine the eligibility of medicaid beneficiaries excepted from modified adjusted gross income per 42 CFR 435.603, for circumstances that may change, at least every 12 months. HSD will make a redetermination of eligibility in accordance with the provisions of Paragraph (2) of Subsection A of 8.291.410.19 NMAC, if sufficient information is available to do so. HSD adopts the procedures described at 42 CFR 435.916(a) (3) for individuals whose eligibility cannot be renewed in accordance with Paragraph (3) of Subsection A of 8.291.410.19 NMAC.

(1) HSD will consider blindness as continuing until the reviewing physician under 42 CFR 435.531 determines that a beneficiary's vision has improved beyond the definition of blindness contained in the plan; and

(2) HSD will consider disability as continuing until the review team, under 42 CFR 435.541, determines that a beneficiary's disability no longer

meets the definition of disability contained in the plan.

C. Procedures for reporting changes: HSD has procedures designed to ensure that beneficiaries make timely and accurate reports of any change in circumstances that may affect their eligibility and that such changes may be reported through any of the modes for submission of applications described in 43 CFR 435.907(a) and Subsection A of 8.291.410.18 NMAC.

D. HSD action on information about changes: Consistent with the requirements of 42 CFR 435.952, HSD will promptly redetermine eligibility between regular renewals of eligibility described in Subsections B and C of 8.291.410.19 NMAC whenever it receives information about a change in a beneficiary's circumstances that may affect eligibility. Auto renewal is only applicable to the following medicaid categories: working disabled individuals, qualified medicare beneficiaries, specified low income medicare beneficiary, qualified individuals, parent caretaker, pregnant women, children's medicaid, children's health insurance program (CHIP), pregnancy related services, other adult and family planning.

(1) For renewals of medicaid beneficiaries whose financial eligibility is determined using MAGI-based income, the agency must limit any requests for additional information from the individual to information relating to such change in circumstance.

(2) If HSD has enough information available to it to renew eligibility with respect to all eligibility criteria, the HSD will begin a new 12-month renewal period.

(3) If HSD has information about anticipated changes in a beneficiary's circumstances that may affect his or her eligibility, HSD will redetermine eligibility at the appropriate time based on such changes.

E. HSD will request from beneficiaries only the information needed to renew

eligibility. Requests for non-applicant information must be conducted in accordance with 42 CFR 435.907.

F. Determination of ineligibility and transmission of data pertaining to individuals no longer eligible for medicaid.

(1) Prior to making a determination of ineligibility, HSD will consider all bases of eligibility, consistent with 42 CFR 435.911.

(2) For individuals determined ineligible for medicaid, the agency must determine potential eligibility for other insurance affordability programs and comply with the procedures set forth in 42 CFR 435.1200.

G. Any renewal form or notice will be accessible to persons who are limited english proficient and persons with disabilities, consistent with 42 CFR 435.905. [8.291.410.19 NMAC - N, 10/1/2017]

8.291.410.20 VERIFICATION

METHODS: Verification will be obtained through various methods. Not all methods will necessarily be used in each case. This section details the specific types of methods to be used in establishing the applicant or recipient's eligibility.

A. Prior case data not subject to change: Verification of an eligibility factor not subject to change, which previously has been verified and accepted, will not be subject to re-verification. The caseworker shall not ask an applicant or recipient for verification of any eligibility factors which have previously been established through documents in HSD's possession and are not subject to change. Such factors include U.S. citizenship, birth date, relationship and enumeration.

B. Electronic data: Every applicant or recipient shall be informed that the information provided is subject to verification through state, federal and contracted data systems. The caseworker shall not require further verification of such information unless it is disputed by the applicant or recipient, or the information is otherwise questionable

as defined in 8.100.130 NMAC.

C. Self-attestation is the information that an applicant or recipient reports on an application and is certifying as true and correct to the best of their knowledge.

D. Documentary evidence is the primary source of verification for information not established in prior case information or electronic source data. Obtaining necessary verification through documentary evidence readily available to the applicant or recipient shall always be explored before collateral contacts or sworn statements are used. Documentary evidence consists of a written confirmation of a household's circumstances. Acceptable verification is not limited to any single type of document. The types of documents which may be accepted as verification are specified under the sections pertaining to verification methods later in this chapter. The caseworker shall provide applicants or recipients with receipts for verification documents provided subsequent to the interview.

E. Collateral contact is defined at 8.100.130 NMAC.

F. Sworn statement is defined at 8.100.130 NMAC. [8.291.410.20 - Rp, 8.291.410.19, 10/1/2017]

8.291.410.21 VERIFICATION

STANDARDS: Below is a list of standards HSD will utilize to determine eligibility for MAP categories defined at 8.291.400.10 NMAC. If verification cannot be confirmed utilizing the various methods described in each section of this rule, HSD may request additional information. If information is provided and becomes questionable as defined at 8.100.130 NMAC, then additional documentation must be provided as described by 8.100.130 NMAC.

A. Income: Verification of income is mandatory for ACA related MAP and HSD will utilize electronic sources and documents provided by the applicant or recipient to verify his or her

income. Examples of acceptable documentation can be found at 8.100.130 NMAC.

B. Residency: Self attestation is an acceptable form of verification of residency.

C. Age: Self attestation is an acceptable form of verification of age.

D. Enumeration: HSD will utilize electronic sources to verify an applicant or recipient's enumeration.

E. Citizenship: HSD will utilize electronic sources to verify an applicant or recipient's citizenship.

F. Immigration status: HSD will utilize electronic sources to verify an applicant or recipient's immigration status.

G. Relationship: Self attestation is an acceptable form of verification of relationship.

H. Receipt of other benefits: HSD will utilize electronic sources to verify an applicant or recipient's receipt of other benefits. [8.291.410.21 - Rp, 8.291.410.20, 10/1/2017]

8.291.410.22 VERIFYING FINANCIAL INFORMATION (42 CFR 435.948):

A. HSD will request the following information relating to financial eligibility from other agencies in the state and other states and federal programs to the extent HSD determines such information is useful to verifying the financial eligibility of an individual.

(1)

Information related to wages, net earnings from self-employment, unearned income and resources from the state wage information collection agency (SWICA), the internal revenue service (IRS), the social security administration (SSA), the agencies administering the state unemployment compensation laws, the state-administered supplementary payment programs under section 1616(a) of the Act, and any state program administered under a plan approved under Titles I, X, XIV, or XVI of the Act; and

(2)

Information related to eligibility or enrollment from the supplemental nutrition assistance program (SNAP), the state program funded under Part A of Title IV of the Act, and other insurance affordability programs.

B. To the extent that the information identified in Subsection A of 8.291.410.22 NMAC is available through the electronic service established in accordance with 8.291.410.23 NMAC HSD will obtain the information through such service.

C. HSD will request the information by SSN, or if an SSN is not available, using other personally identifying information in the individual's account, if possible. [8.291.410.22 NMAC - N, 10/1/2017]

8.291.410.23 VERIFICATION OF INFORMATION THROUGH AN ELECTRONIC SERVICE (42 CFR 435.949(a) and (b)):

The federal government will establish an electronic service through which HSD may verify certain information with, or obtain such information from, federal agencies and other data sources, including SSA, the department of treasury, and the department of homeland security. To the extent that information related to eligibility for medicaid is available through the electronic service, HSD must obtain the information through such service. [8.291.410.23 NMAC - N, 10/1/2017]

8.291.410.24 USE OF INFORMATION AND REQUESTS OF ADDITIONAL INFORMATION FROM INDIVIDUALS (42 CFR 435.952):

A. HSD will promptly evaluate information received or obtained by it in accordance with regulations per 42 CFR 435.940 through 435.960 to determine whether such information may affect the eligibility of an individual or the benefits to which he or she is entitled.

B. If information provided by or on behalf of an individual (on the application or renewal form or otherwise) is reasonably compatible with information obtained by HSD in

accordance with 42. CFR 435.948, 435.949 or 435.956 HSD will determine or renew eligibility based on such information.

C. An individual must not be required to provide additional information or documentation unless information needed by the agency HSD in accordance with 42 CFR 435.948, 435.949 or 435.956 cannot be obtained electronically or the information obtained electronically is not reasonably compatible, as provided in the verification plan described in 8.291.410.24 NMAC with information provided by or on behalf of the individual.

(1) Income information obtained through an electronic data match shall be considered reasonably compatible with income information provided by or on behalf of an individual if both are either above or at or below the applicable income standard or other relevant income threshold.

(2) If information provided by or on behalf of an individual is not reasonably compatible with information obtained through an electronic data match, HSD must seek additional information from the individual including:

(a) A statement which reasonably explains the discrepancy; or

(b) Other information (which may include documentation), provided that documentation from the individual is permitted only to the extent electronic data are not available and establishing a data match would not be effective, considering such factors as the administrative costs associated with establishing and using the data match compared with the administrative costs associated with relying on paper documentation, and the impact on program integrity in terms of the potential for ineligible individuals to be approved as well as for eligible individuals to be denied coverage.

(c) HSD must provide the individual a reasonable period, defined as 10 calendar days, to furnish any additional information required under

Subsection C of 8.291.410.24 NMAC.

(3) Exception for special circumstances. HSD must establish an exception to permit, on a case-by-case basis, self-attestation of individuals for all eligibility criteria when documentation does not exist at the time of application or renewal, or is not reasonably available, such as in the case of individuals who are homeless or have experienced domestic violence or a natural disaster. This exception does not apply if documentation is specifically required under title XI or XIX, such as requirements for verifying citizenship and immigration status.

D. HSD may not deny or terminate eligibility or reduce benefits for any individual on the basis of information received in accordance with regulations under 42 CFR 435.940 through 435.960 of this subpart unless HSD has sought additional information from the individual in accordance with Subsection C of 8.291.410.24 NMAC and provided proper notice and hearing rights to the individual. [8.291.410.24 NMAC - N, 10/1/2017]

8.291.410.25 VERIFICATION PLAN:

HSD has a verification plan describing the verification policies and procedures to implement the provisions set forth in 42 CFR 435.940 through 435.956 and 8.100.130 and 8.291.410 NMAC. The state verification plan is posted on the HSD website. [8.291.410.25 NMAC - N, 10/1/2017]

8.291.410.26 TIMEFRAME FOR DISPOSITION:

An applicant or recipient is given a timeframe to provide necessary verification in order for ISD to process an application within the timeframe set forth in this section. This requirement pertains to requests for verification for initial applications as well as for verification for ongoing eligibility. ISD shall make an eligibility decision within three working days of the receipt of all necessary verification.

A. The application disposition deadline for MAP is 45 days from the date of application.

(1) Day one: the date of application is the first day.

(2) No later than day 44, or by the preceding work day if day 44 falls on a weekend or holiday:

(a) if verification provided establishes eligibility or ineligibility; or

(b) if the day following day 44 is not a work day, then decision must be made earlier than day 44 to allow for mailing on or before the deadline.

(3) No later than day 45 by the next work day if day 45 falls on a weekend or holiday, if needed verification is not provided until day 42 - 44.

(4) Day 45 by the next work day if day 45 falls on a weekend or holiday, if needed verification is provided on day 45, or is not provided.

(5) After day 45:

(a) When an applicant or recipient requests one or more 10-calendar day extensions of time to provide needed verification. An applicant or recipient is entitled to receive up to three 10-calendar day extensions of time upon request.

(b) The eligibility decision must be made as soon as possible and within three working days of receipt of all necessary verification.

B. Tracking the application processing time limit: The application processing time limit begins on the day the signed application is received in the ISD county office.

C. Delayed determination: If an eligibility determination is not made within the required application processing time limit, the applicant or recipient shall be notified in writing of the reason for the delay and that the applicant or recipient has the right to request a HSD administrative hearing regarding ISD's failure to act within the time limit.

D. Extensions of time: Up to three 10-calendar day

extensions for providing verification shall be granted at the applicant or recipient's request. The extension begins at the end of the application processing time period or at the end of the previous extension.

E. Lack of verification: If verification needed to determine eligibility is not provided and no extension of time is requested, the application will be denied on the 45th day after the application date or by the next work day if 45th day falls on weekend or holiday.

F. Per 42 CFR 435.912(c)(3) the determination of eligibility for any medicaid applicant may not exceed:

(1) ninety days for applicants who apply for medicaid on the basis of disability; and

(2) forty-five days for all other medicaid applicants.

G. Per 42 CFR 435.912(g) HSD may not use the time standards cited at Subsection F of 8.291.410.26 NMAC:

(1) as a waiting period before determining eligibility; or

(2) as a reason for denying eligibility (because it has not determined eligibility within the time standards).

H. Case documentation (42 CFR 435.914).

(1) HSD includes in each applicant's case record facts to support the agency's decision on the application.

(2) HSD disposes of each application by a finding of eligibility or ineligibility, unless:

(a) there is an entry in the case record that the applicant voluntarily withdrew the application, and that HSD sent a notice confirming the decision;

(b) there is a supporting entry in the case record that the applicant has died; or

(c) there is a supporting entry in the case record that the applicant cannot be located.

[8.291.410.26 - Rp 8.291.410.21, 10/1/2017]

HISTORY OF 8.291.410 NMAC:
History of Repealed Material:
 8.291.410 NMAC, General Recipient Requirements, filed 9/17/2013 - Duration expired 12/31/2013.
 8.291.410 NMAC, General Recipient Requirements, filed 12/17/2013 – Repealed effective 10/1/2017.

NMAC History:
 8.291.410 NMAC, General Recipient Requirements, filed 12/17/2013 was replaced by 8.291.410 NMAC, General Recipient Requirements effective 10/1/2017.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

**TITLE 8 SOCIAL SERVICES
 CHAPTER 299 MEDICAID ELIGIBILITY - FAMILY PLANNING SERVICES
 PART 400 RECIPIENT REQUIREMENTS**

8.299.400.1 ISSUING
AGENCY: New Mexico Human Services Department (HSD).
 [8.299.400.1 NMAC - N, 10/1/2017]

8.299.400.2 SCOPE: The rule applies to the general public.
 [8.299.400.2 NMAC - N, 10/1/2017]

8.299.400.3 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.
 [8.299.400.3 NMAC - N, 10/1/2017]

8.299.400.4 DURATION:
 Permanent.
 [8.299.400.4 NMAC - N, 10/1/2017]

8.299.400.5 EFFECTIVE DATE: October 1, 2017, unless

a later date is cited at the end of a section.
 [8.299.400.5 NMAC - N, 10/1/2017]

8.299.400.6 OBJECTIVE:
 The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
 [8.299.400.6 NMAC - N, 10/1/2017]

8.299.400.7 DEFINITIONS:
[RESERVED]

8.299.400.8 [RESERVED]
 [8.299.400.7 NMAC-N, 10/1/2017]

8.299.400.9 WHO CAN BE A RECIPIENT (42 CFR 435.214):
 HSD provides medicaid limited to family planning and family planning related services to individuals (of any gender) who:
 A. are not pregnant;
 and
 B. meet the general recipient requirements found at 8.291.410 NMAC; and
 C. meet the income eligibility requirements found at Subsection B of 8.299.500.10 NMAC.
 [8.299.400.9 NMAC - N, 10/1/2017]

8.299.400.10 BASIS FOR DEFINING THE GROUP: At time of application, an applicant or recipient and the department shall identify everyone who is to be considered for inclusion in the assistance unit and budget group as defined in 8.291.430 NMAC.
 [8.299.400.10 NMAC - N, 10/1/2017]

HISTORY OF 8.299.400 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

**TITLE 8 SOCIAL SERVICES
 CHAPTER 299 MEDICAID ELIGIBILITY - FAMILY PLANNING SERVICES
 PART 500 INCOME AND RESOURCE STANDARDS**

8.299.500.1 ISSUING
AGENCY: New Mexico Human Services Department (HSD).
 [8.299.500.1 NMAC - N, 10/1/2017]

8.299.500.2 SCOPE: The rule applies to the general public.
 [8.299.500.2 NMAC - N, 10/1/2017]

8.299.500.3 STATUTORY AUTHORITY: The New Mexico medicaid program is 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.
 [8.299.500.3 NMAC - N, 10/1/2017]

8.299.500.4 DURATION:
 Permanent.
 [8.299.500.4 NMAC - N, 10/1/2017]

8.299.500.5 EFFECTIVE DATE: October 1, 2017, unless a later date is cited at the end of a section.
 [8.299.500.5 NMAC - N, 10/1/2017]

8.299.500.6 OBJECTIVE:
 The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
 [8.299.500.6 NMAC - N, 10/1/2017]

8.299.500.7 DEFINITIONS:

[RESERVED]

8.299.500.8 [RESERVED]

8.299.500.9 RESOURCE STANDARDS: Resources are not an eligibility factor for this category of eligibility.
[8.299.500.9 NMAC - N, 10/1/2017]

8.299.500.10 INCOME STANDARD: In order to become eligible for family planning medicaid, the total countable income of the budget group must be less than two hundred fifty percent of the federal poverty guidelines found at 8.291.430 NMAC.
[8.299.500.10 NMAC - N, 10/1/2017]

8.299.500.11 INCOME ELIGIBILITY: Income methodology is based on modified adjusted gross income (MAGI) found at 8.291.430.15 NMAC. Income from a 30 day-period is used to determine eligibility. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover. Income received more frequently than monthly will be converted using the following multipliers:
 A. four (paid weekly);
 B. two (paid biweekly/semi-monthly).
 [8.299.500.10 NMAC - N, 10/1/2017]

8.299.500.12 DISREGARD: An income disregard according to 8.291.430 NMAC will be given only to individuals whose countable modified adjusted gross income (MAGI) is at or above two hundred fifty percent of the federal poverty level for the size of the budget group.
[8.299.500.10 NMAC - N, 10/1/2017]

HISTORY OF 8.299.500 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 299 MEDICAID ELIGIBILITY - FAMILY PLANNING SERVICES
PART 600 BENEFIT DESCRIPTION**

8.299.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.299.600.1 NMAC - N, 10/1/2017]

8.299.600.2 SCOPE: The rule applies to the general public.
[8.299.600.2 NMAC - N, 10/1/2017]

8.299.600.3 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.
[8.299.600.3 NMAC - N, 10/1/2017]

8.299.600.4 DURATION: Permanent.
[8.299.600.4 NMAC - N, 10/1/2017]

8.299.600.5 EFFECTIVE DATE: October 1, 2017, unless a later date is cited at the end of a section.
[8.299.600.5 NMAC - N, 10/1/2017]

8.299.600.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.299.600.6 NMAC - N, 10/1/2017]

8.299.600.7 DEFINITIONS:
[RESERVED]

8.299.600.8 [RESERVED]

8.299.600.9 BENEFIT DESCRIPTION: This category provides a limited range of medicaid-covered services for family planning and family planning-related services for both men and women.
[8.299.600.9 NMAC - N, 10/1/2017]

8.299.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. Up to three months of retroactive medicaid coverage is provided to applicants who have received medicaid-covered services during the retroactive period and who would have met applicable eligibility criteria had they applied. Eligibility for each retroactive month is determined separately. Application for retroactive medicaid must be made within 180 days of the date of the medicaid application.
[8.299.600.10 NMAC - N, 10/1/2017]

8.299.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:
 A. A redetermination of eligibility is conducted in accordance with 8.291.410 NMAC.
 B. Family planning services continue for 12 months. Changes in household income do not affect eligibility during this period.
 C. A woman covered under family planning must report a pregnancy within 10 days of becoming aware of the pregnancy.
 [8.299.600.11 NMAC - N, 10/1/2017]

HISTORY OF 8.299.600 NMAC:
[RESERVED]

**HUMAN SERVICES
DEPARTMENT**

**MEDICAL ASSISTANCE
DIVISION**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 302 MEDICAID
GENERAL PROVIDER
POLICIES
PART 2 BILLING FOR
MEDICAID SERVICES**

8.302.2.1 ISSUING
AGENCY: New Mexico Human Services Department (HSD).
[8.302.2.1 NMAC - Rp, 8.302.2.1 NMAC, 10/1/2017]

8.302.2.2 SCOPE: The rule applies to the general public.
[8.302.2.2 NMAC - Rp, 8.302.2.2 NMAC, 10/1/2017]

8.302.2.3 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 (HHS) under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq., NMSA 1978.
[8.302.2.3 NMAC - Rp, 8.302.2.3 NMAC, 10/1/2017]

8.302.2.4 DURATION: Permanent.
[8.302.2.4 NMAC - Rp, 8.302.2.4 NMAC, 10/1/2017]

8.302.2.5 EFFECTIVE DATE: October 1, 2017, unless a later date is cited at the end of a section.
[8.302.2.5 NMAC - Rp, 8.302.2.5 NMAC, 10/1/2017]

8.302.2.6 OBJECTIVE: The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance programs (MAP).
[8.302.2.6 NMAC - Rp, 8.302.2.6 NMAC, 10/1/2017]

8.302.2.7 DEFINITIONS:
A. “Authorized representative” means the individual designated to represent and act on behalf of the eligible recipient or member’s behalf. The member 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 eligible recipient or member.

B. “Eligible recipient” means an individual who has met a medical assistance program (MAP) category of eligibility and receives his or her medical assistance division (MAD) services through the fee-for-service (FFS) program.

C. “Member” means a MAP eligible recipient and who receives his or her MAD services through a HSD contracted managed care organization (MCO).

D. “Co-payment” means a fixed dollar amount that a medicaid recipient must pay directly to a provider for a service, visit or item. A co-payment is to be paid at the time of service or receipt of the item.
[8.302.2.7 NMAC – Rp, 8.302.7 NMAC, 10/1/2017]

8.302.2.8 [RESERVED]
[8.302.2.8 NMAC - Rp, 8.302.2.8 NMAC, 10/1/2017]

8.302.2.9 BILLING FOR MEDICAID SERVICES: Health care for New Mexico medical assistance program MAP eligible recipients and members 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 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 website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instruction, service standards, utilization review (UR) instructions, and other pertinent material. 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. MAD makes available on the HSD website, on other program specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, service standards, UR instructions, and other pertinent material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD PPA and all applicable statutes, regulations, rules, billing instructions, service standards, UR instructions, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only. Providers must supply necessary information in order for payment to be made. See 8.308.14 NMAC for additional MCO provider responsibilities.
[8.302.2.9 NMAC - Rp, 8.302.2.9 NMAC, 10/1/2017]

8.302.2.10 BILLING INFORMATION:
A. Billing for services: MAD only makes payment to a provider or to the following individuals or organizations for services:

(1) a

government agency or third party with a court order, based on a valid provider payment assignment; see 42 CFR Section 447.10(d)(e); or

(2) a business agent, such as billing service or accounting firm that provides statements and receives payment in the name of the provider; the agent's compensation must be related to the cost of processing the claims and not based on a percentage of the amount that is billed or collected or dependent upon collection of the payment.

B. Billing for services from group practitioners or employers of practitioners:

MAD may make payments to a group practice and to an employer of an individual practitioner if the practitioner is required to turn over his fees to the employer as a condition of employment. See 42 CFR 447.10(g) (2) (3). MAD may make payments to a facility where the services are furnished or to a foundation, plan, or similar organization operating as an organized health care delivery system if the facility, foundation, plan, or organization is required by contract to submit claims for an individual practitioner.

C. Billing for referral services: A referring provider must submit to the provider receiving the referral, specimen, image, or other record, all information necessary for the provider rendering the service to bill MAD within specified time limits. An eligible recipient or their authorized representative or MAD is not responsible for payment if the provider rendering the service fails to obtain this information from the referring provider. Ordering, referring, prescribing, rendering and attending providers must participate in a MCO or the MAD (FFS) program, or otherwise be identifiable as a participating, out-of-network, or in-network provider for services, as determined by MAD.

D. Hospital-based services: For services that are hospital based, the hospital must provide MAP recipient eligibility and billing information to providers of services within the hospital,

including professional components, hospital emergency room (ER) physicians, hospital anesthesiologists, and other practitioners for whom the hospital performs admission, patient registration, or the patient intake process. An eligible recipient, member or his or her authorized representative, or MAD is not responsible for payment if the hospital-based provider does not obtain this information from the hospital as necessary to bill within the specified time limits.

E. Coordinated service contractors:

Some MAD services are managed by a coordinated service contractor. Contracted services may include behavioral health services, dental services, physical health services, transportation, pharmacy or other benefits as designated by the MAD. The coordinated service contractor may be responsible for any or all aspects of program management, prior authorization, (UR), claims processing, and issuance of remittance advices and payments. A provider must submit claims to the appropriate coordinated service contractor as directed by MAD.

F. Reporting of service units: A provider must correctly report service units.

(1) For current procedural terminology (CPT) codes or healthcare common procedural coding system (HCPCS) codes that describe how units associated with time should be billed, providers are to follow those instructions.

(2) For CPT or HCPCS for services for which the provider is to bill 1 unit per 15 minute or per hour of service, the provider must follow the chart below when the time spent is not exactly 15 minutes or one hour.

Continued on the following page

time spent	number of 15-minute units that may be billed	number of 1-hour units that may be billed
Less than 8 minutes	0 <i>services that are in their entirety less than 8 minutes cannot be billed.</i>	0 <i>services that are in their entirety less than 8 minutes cannot be billed</i>
8 minutes through 22 minutes	1	.25
23 minutes through 37 minutes	2	.5
38 minutes through 52 minutes	3	.75
53 minutes through 67 minutes	4	1
68 minutes through 82 minutes	5	1.25
83 minutes through 97 minutes	6	1.5

(3) Only time spent directly working with an eligible recipient or member to deliver treatment services is counted toward the time codes.

(4) Total time spent delivering each service using a timed code must be recorded in the medical record of each eligible recipient or member. If services provided are appropriately described by using more than one CPT or HCPCS code within a single calendar day, then the total number of units that can be billed is limited to the total treatment time. Providers must assign the most units to the treatment that took the most time.

(5) The units for codes do not take precedence over centers for medicare and medicaid services (CMS) national correct coding initiative (NCCI).

(6) Anesthesia units must be billed according to 8.310.3 NMAC.

(7) Units billed by a home and community-based services waiver provider, a behavioral health provider, an early intervention provider, and all rehabilitation services providers must also follow the requirements of this section unless exceptions are specifically stated in published MAD program rules or provider billing instructions.

G. MAD has established co-payments for specified groups of eligible recipients and members for specific services. Exemptions and limits apply to the collection of co-payments.

(1) **Provider responsibilities for collection of co-payments:**

(a) The professional provider is responsible for collecting any applicable co-payments due for any outpatient visit or service provided, including a physician, other practitioner, clinic, urgent care, dental, outpatient therapy, or behavioral health session or visit.

(b) The hospital provider is responsible for collecting any applicable co-payments due for any inpatient services provided.

(c) The pharmacy is responsible for collecting any co-payments due for drug items dispensed.

(d) The provider may not deny covered care or services to an eligible recipient or member because of the eligible recipient or member's inability to pay the co-payment amount at the time of service. The eligible recipient or member remains liable for the co-payment. The provider may attempt to collect the co-payment amount at a later appointment or by billing the eligible recipient or member.

(e) After an eligible recipient or member's assistance unit has reached the maximum out-of-pocket cost sharing limit (five percent of the eligible recipient or member's family's income, calculated on a quarterly basis), a provider shall reimburse any co-payments that it has collected from the eligible recipient or member in excess of the maximum out-of-pocket co-payment limit. This includes anytime a provider receives a remittance advice indicating that the co-payment was not deducted from the reimbursement.

(f) A provider is required to report the co-payment amount charged on the CMS-1500, UB, or pharmacy claim form or their corresponding electronic billing transactions.

(g) When a co-payment is applied to a claim, a provider shall accept the amounts paid by MAD or the MCO plus the applicable co-payment as payment in full.

(h) A provider may not impose more than one type of co-payment for any service.

(2) **Provider to understand the application of co-payments:** The provider is responsible for understanding and applying the rules for co-payments, including when to contact the payer to determine if a co-payment is applicable for the service for the specific eligible recipient or member.

(a) Co-payments are not applied when one or more of the following conditions are met:

(i) the service is a medicare claim or medicare advantage claim, or follows other insurer payment, so the payment is therefore toward a deductible, co-insurance, or co-payment determined by the primary payer;

(ii) the eligible recipient or member is a native American;

(iii) the service is rendered by an Indian health service (IHS), tribal 638, or urban Indian facility regardless of the race of the eligible recipient or member;

(iv) the service is for an eligible recipient enrolled in hospice;

(v) the recipient is under age 21 and has only presumptive eligibility (PE) at the time of service;

(vi) the maximum family out-of-pocket cost sharing limit has been reached;

(vii) the service was rendered prior to any eligibility being established including when eligibility is retroactively established to the time period of the service;

(viii) the eligible recipient or member is in foster care or has an adoption category of eligibility;

(ix) the eligible recipient or member resides in a nursing facility or a facility for individuals with intellectual disabilities (IID), has a level of care determination or nursing facility care, or other residential care, or for community benefits, or for a home and community-based services waiver;

(x) the service is not for a MAP category of eligibility such as the department of health children's medical services program;

(xi) the service is a provider preventable condition or is solely to treat a provider preventable condition; or

(xii) the eligible recipient, member or service is exempt from co-payment as otherwise described in these rules.

(b) Co-payments are not applied when the services are one of the following:

(i) family planning services, procedures drugs, supplies, or devices;

(ii) preventive services (well child checks, vaccines, preventive dental

cleanings/exams, periodic health exams) unless treatment is rendered; or

(iii) prenatal and postpartum care and deliveries, and prenatal drug items.

(3) Payment of claims with applicable co-payments:

(a) Payment to the provider will be reduced by the amount of an eligible recipient or member's applicable cost sharing obligation, regardless of whether the provider has collected the payment.

(b) A provider may not adopt a policy of waiving all MAD co-payments or use such a policy to promote his or her practice.

(4) Children's health insurance program (CHIP) co-payment requirement: Eligible recipients or members whose benefits are determined using criteria for CHIP are identified by their category of eligibility. The following co-payments apply to CHIP eligible recipients or members:

(a) \$2 per prescription; applies to prescription and non-prescription drug items;

(b) \$5 per outpatient visit, including physician or other practitioner visits, therapy sessions, and behavioral health service sessions;

(c) \$5 per dental visit, unless all the services are preventive services; and

(d) \$25 per inpatient hospital admission unless the hospital is receiving the eligible recipient or member as a transfer from another hospital.

(5) Working disabled individual's copayment requirements (WDI): Eligible recipients or members whose benefits are determined using criteria for WDI are identified by their category of eligibility. The following co-payments apply to WDI eligible recipients or members:

(a) \$3 per prescription; applies to

prescription and non-prescription drug items;

(b) \$7 per outpatient visit, including physician or other practitioner visits, therapy sessions, and behavioral health service sessions;

(c) \$7 per dental visit, unless all the services are preventive services; and

(d) \$30 per inpatient hospital admission unless the hospital is receiving the eligible recipient or member as a transfer from another hospital.

H. Billing state gross receipts tax: For providers subject and registered to pay, gross receipts tax, the provider may include gross receipt tax in the billed amount when the tax applies to the item or service. The provider may only bill tax to the extent the tax is also charged to the general public. A provider may not include gross receipts tax in the billed amount when the provider is not obligated to pay gross receipts tax to the state.

[8.302.2.10 NMAC - Rp, 8.302.2.10 NMAC, 10/1/2017]

8.302.2.11 BILLING AND CLAIMS FILING LIMITATIONS:

A. Claims must be received within the MAD filing limits as determined by the date of receipt by MAD or its selected claims processing contractor.

(1) Claims for services must be received within 90 calendar days of the date of service unless an alternative filing limit is stated within this section.

(2) Inpatient hospital and other inpatient facility claims must be received within 90 calendar days of the date of the eligible recipient or member's discharge, transfer, or otherwise leaving the facility.

(3) When the provider can document that a claim was filed with another primary payer including medicare, a HSD contracted MCO, medicare replacement plans, or another insurer, the claim must be received within 90 calendar days of the date the other payer paid or

denied the claim as reported on the explanation of benefits or remittance advice of the other payer, not to exceed 210 calendar days from the date of service. It is the provider's responsibility to submit the claim to another primary payer within a sufficient timeframe to reasonably allow the primary payer to complete the processing of the claim and also meet the MAD timely filing limit. Denials by the primary payer due to the provider not meeting administrative requirements in filing the claim must be appealed by the provider to the primary payer. MAD only considers payment for a claim denied by the other primary payer when under the primary payer's plan the eligible recipient or member is not eligible, the diagnosis, service or item is not within the scope of the benefits, benefits are exhausted, pre-existing conditions are not covered, or out-of-pocket expenses or the deductibles have not been met. MAD will evaluate a claim for further payment including payment toward a deductible, co-insurance, co-payment or other patient responsibility. Claims for payment towards a deductible, co-insurance, co-payment or other patient responsibility also must be received within 90 calendar days of the date of the other payer's payment, not to exceed 210 calendar days from the date of service.

(4) For an eligible recipient or member for whom MAD benefits were not established at the time of service but retroactive eligibility has subsequently been established, claims must be received within 90 calendar days of the date the eligibility was added to the eligibility record of MAD or its selected claims processing contractor.

(5) For a provider of services not enrolled as a MAD provider at the time the services were rendered, including a provider that is in the process of purchasing an enrolled MAD provider entity such as a practice or facility, claims must be received within 90 calendar days of the date the provider is notified of the MAD approval of the PPA, not to

exceed 210 calendar days from the date of service. It is the provider's responsibility to submit a PPA within a sufficient timeframe to allow completion of the provider enrollment process and submission of the claim within the MAD timely filing limit.

(6) For claims that were originally paid by a HSD contracted MCO from which the capitation payment is recouped resulting in recoupment of a provider's claim by the MCO, the claim must be received within 90 calendar days of the recoupment from the provider.

(7) For claims that were originally paid by MAD or its selected claims processing contractor and subsequently recouped by MAD or its selected claims processing contractor due to certain claims conflicts such as overlapping duplicate claims, a corrected claim subsequently submitted by the provider must be received within 90 calendar days of the recoupment.

B. The provider is responsible for submitting the claim timely, for tracking the status of the claim and determining the need to resubmit the claim.

(1) Filing limits are not waived by MAD due to the providers inadequate understanding of the filing limit requirements or insufficient staff to file the claim timely or failure to track pending claims, returns, denials, and payments in order to resubmit the claim or request an adjustment within the specified timely filing limitation.

(2) A provider must follow up on claims that have been transmitted electronically or hard copy in sufficient time to resubmit a claim within the filing limit in the event that a claim is not received by MAD or its selected claims processing contractor. It is the provider's responsibility to re-file an apparently missing claim within the applicable filing limit.

(3) In the event the provider's claim or part of the claim is returned, denied, or paid at an incorrect amount, the provider must resubmit the claim or an

adjustment request within 90 calendar days of the date of the return, denial or payment of an incorrect amount, that was submitted in the initial timely filing period. This additional 90 calendar day period is a one-time grace period following the return, denial or mis-payment for a claim that was filed in the initial timely filing period and is based on the remittance advice date or return notice.

Additional 90 calendar day grace periods are not allowed. However, within the 90 calendar day grace period the provider may continue to resubmit the claim or adjustment requests until the 90 calendar day grace period has expired.

(4) Adjustments to claims for which the provider feels additional payment is due, or for which the provider desires to change information previously submitted on the claim, the claim or adjustment request with any necessary explanations must be received by MAD or its selected claims processing contractor with the provider using a MAD-approved adjustment format and supplying all necessary information to process the claim within the one-time 90 calendar day allowed grace period.

C. The eligible recipient, member or his or her authorized representative is responsible for notifying the provider of MAP eligibility or pending eligibility and when retroactive MAP eligibility is received. When any provider including an enrolled provider, a non-enrolled provider, a MCO provider, and an out-of-network provider is informed of a recipient's MAP eligibility, the circumstances under which an eligible recipient, member or his or her authorized representative can be billed by the provider are limited.

(1) When the provider is unwilling to accept the eligible recipient as a (FFS) eligible recipient or a MCO member, the provider must provide the eligible recipient, member or his or her authorized representative written notification that they have the right to seek treatment with another provider

that does accept a FFS eligible recipient or a MCO member. It is the provider's responsibility to have the eligible recipient, member or his or her authorized representative receive and sign a statement that they are aware the proposed service may be covered by MAD if rendered by an approved MAD or MCO provider and that by authorizing a non-approved provider to render the service, they agree to be held financially responsible for any payment to that provider. A provider may only bill or accept payment for services from an eligible recipient, member or his or her authorized representative if all the following requirements are satisfied:

(a)

The eligible recipient, member or his or her authorized representative is advised by the provider before services are furnished that he or she does not accept patients whose medical services are paid for by MAD.

(b)

The eligible recipient, member or his or her authorized representative is advised by the provider regarding the necessity, options, and the estimated charges for the service, and of the option of going to a provider who accepts MAD payment.

(2)

The eligible recipient or member is financially responsible for payment if a provider's claims are denied because of the eligible recipient, member or his or her authorized representative's failure to notify the provider of established eligibility or retroactive eligibility in a timely manner sufficient to allow the provider to meet the filing limit for the claim.

(3)

When a provider is informed of MAP eligibility or pending eligibility prior to rendering a benefit, the provider cannot bill the eligible recipient, member or his or her authorized representative for the benefit even if the claim is denied by MAD or its selected claims processing contractor unless the denial is due to the recipient not being eligible for the MAP category of eligibility or the

benefit, or item is not a MAD benefit. In order to bill the eligible recipient or member for an item or benefit that is not a MAD benefit, prior to rendering the benefit or providing the item the provider must inform the eligible recipient, member or his or her authorized representative the benefit is not covered by MAD and obtain a signed statement from the eligible recipient, member or his or her authorized representative acknowledging such notice. It is the provider's responsibility to understand or confirm the eligible recipient or member's MAD benefits and to inform the eligible recipient, member or his or her authorized representative when the benefit is not a MAD benefit and to inform the eligible recipient, member or his or her authorized representative.

(4)

The provider must accept MAD payment as payment in full and cannot bill a remaining balance to the eligible recipient, member or his or her authorized representative other than a MAD allowed co-payment, coinsurance or deductible.

(5)

If the provider claim is denied, the provider cannot use a statement signed by the eligible recipient, member or his or her authorized representative to accept responsibility for payment unless such billing is allowed by MAD rules. It is the responsibility of the provider to meet the MAD program requirements for timely filing and other administrative requirements, to provide information to MAD or its selected claims processing contractor regarding payment issues on a claim, and to accept the decision of MAD or its selected claims processing contractor for a claim. The eligible recipient, member or his or her authorized representative does not become financially responsible when the provider has failed to meet the timely filing and other administrative requirements in filing a claim. The eligible recipient, member or his or her authorized representative does not become financially responsible for payment for services or items solely because MAD or its selected claims

processing contractor denies payment for a claim.

(6)

When a provider has been informed of MAP eligibility or pending eligibility of a recipient, the provider cannot turn an account over to collections or to any other entity intending to collect from the eligible recipient, member or his or her authorized representative. If a provider has turned an account over for collection, it is the provider's responsibility to retrieve that account from the collection agency and to accept the decision on payment of the claim by MAD or its selected claims processing contractor and to notify the eligible recipient or member.

D.

The filing limit does not apply to overpayments or money being returned to MAD or its selected claims processing contractor.

(1)

If a provider receives payment from another source, such as any insurance plan, or other responsible third party, after receiving payment from MAD, an amount equal to the lower of either the insurance payment or the amount paid through MAD must be remitted to MAD or its selected claims processing contractor third party liability unit, properly identifying the claim to which the refund applies.

(2)

For claims for which an over-payment was made to the provider, the provider must return the overpayment to MAD or its selected claims processing contractor. For more details see 8.351.2 NMAC. The timely filing provisions for payments and adjustments to claims do not apply when the provider is attempting to return an overpayment.

E.

MAD or its selected claims processing contractor may waive the filing limit requirement in the following situations:

(1)

An error or delay on the part of MAD or its selected claims processing contractor prevented the claim from being filed correctly within the filing limit period. In considering waiver of a filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to initially file

the claim in a timely manner and the follow up efforts made to secure payment in a timely manner from the other payer.

(2) The claim was filed within the filing limit period but the claim is being reprocessed or adjusted for issues not related to the filing limit.

(3) The claim could not be filed timely by the provider because another payer or responsible party could not or did not process the claim timely or provide other information necessary to file the claim timely. In considering a waiver of the filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to initially file the claim and to follow up on the payment from another payer or responsible party in order to attempt to meet the MAD filing limit.

(4) An eligible recipient or member for whom MAP or medicare eligibility was established by hearing, appeal, or court order. In considering a waiver of the filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to file the claim timely after the hearing or court decision.

(5) The claim is being reprocessed by MAD or its selected claims processing contractor for issues not related to the provider's submission of the claim. These circumstances may include when MAD is implementing retroactive price changes, or reprocessing the claim for accounting purposes.

(6) The claim was originally paid but recouped by another primary payer. In considering a waiver of the filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to file the claim timely after the recoupment.

(7) The claim is from a federal IHS facility operating within HHS which is responsible for native American health care or is a PL 93-638 tribally

operated hospital and clinic which must be finalized within two years of the date of service.

(8) The claim is from a MAD school-based service program when providing services to an eligible recipient or member through an individualized education plan or an individualized family service plan to which an initial filing limit of 90 calendar days is applied.

F. MAD is jointly funded through state and federal sources. Claims will not be processed when the federal standards are not met, thereby precluding federal financial participation in payment of the claim.

G. A provider may not bill an eligible recipient, member or his or her authorized representative for a service or item when a claim is denied due to provider error in filing the claim or failing to meet the timely filing requirements. It is the provider's responsibility to understand or verify the specific MAP category of eligibility in which an eligible recipient or member is enrolled, the covered or non-covered status of a service or item, the need for prior authorization for a service or item, and to bill the claim correctly and supply required documentation. The eligible recipient, member or his or her authorized representative cannot be billed by the provider when a claim is denied because these administrative requirements have not been met.

(1) The provider cannot bill the eligible recipient, member or his or her authorized representative for a service or item in the event of a denial of the claim unless the denial is due to the recipient not being eligible for the MAD service; or if the service is not a MAD benefit, prior to rendering the service the provider informed the eligible recipient, member or his or her authorized representative that the specific service is not covered by MAD and obtained a signed statement from the eligible recipient, member or his or her authorized representative acknowledging such.

(2) The

provider cannot bill the eligible recipient, member or his or her authorized representative for the service in the event that a payment is recouped by another primary payer and MAD or its selected claims processing contractor determines that the claim will not be reimbursed by MAD or its selected claims processing contractor.

(3) The provider cannot turn an account over to collections or to any other factor intending to collect from the eligible recipient, member or his or her authorized representative. If a provider has turned an account over to a collection agency, it is the provider's responsibility to retrieve that account back from the collection agency and to accept the decision on payment of the claim by MAD or its selected claims processing contractor.

(4) The provider cannot bill the eligible recipient, or member or his or her authorized representative for office tasks such as billing claims, checking eligibility, making referrals calls, in the form of either routine charges or as penalties including missed appointments, failure to cancel an appointment, failure to show eligibility card or similar charges unless specifically allowed by MAD rules.

H. When documentation is required to show the provider met applicable filing limits, the date a claim is received by MAD or its selected claims processing contractor will be documented by the date on the claim transaction control number (TCN) as assigned by MAD or its selected claims processing contractor. Documentation of timely filing when another third party payer, including medicare, is involved will be accepted as documented on explanation of benefits payment dates and reason codes from the third party. Documentation may be required to be submitted with the claim.

[8.302.2.11 NMAC - Rp, 8.302.2.11 NMAC, 10/1/2017]

8.302.2.12 BILLING FOR DUAL-ELIGIBLE MEDICAID

RECIPIENTS: To receive payment for services furnished to an eligible recipient or member who is also entitled to medicare, a provider must first bill the appropriate medicare payer. The medicare payer pays the medicare covered portion of the bill. After medicare payment, MAD pays the amount the medicare payer determines is owed for co-payments, co-insurance and deductibles, subject to MAD reimbursement limitations. If a medically necessary service is excluded from medicare and it is a MAD covered benefit, MAD will pay for service. When the medicare payment amount exceeds the amount that MAD would have allowed for the service, no further payment is made for the coinsurance, deductible, or co-payment. The claim is considered paid in full. The provider may not collect any remaining portion of the medicare coinsurance, deductible, or co-payment from the eligible recipient or their authorized representative. For behavioral health professional services for which medicare part B applies to a "psych reduction" to the provider payment and increases the eligible recipient or member coinsurance rate, medicare coinsurance and deductible amounts are paid at an amount that allows the provider to receive eighty percent of the medicare allowed amount even if such amount exceeds the MAD allowed amount for the service. A provider must accept assignment on medicare claims for MAD eligible recipients and members. A provider who chooses not to participate in medicare or accept assignment on a medicare claim must inform the MAD eligible recipient, member or his or her authorized representative that the provider is not a medicare provider or will not accept assignment; and because of those provider choices, MAD cannot pay for the service. Additionally, the provider must inform the eligible recipient, member or his or her authorized representative of the estimated amount for which the eligible recipient or member will be responsible, that service is available from other providers who will accept assignment on a

medicare claim, and identify an alternative provider to whom the eligible recipient or member may seek services. The provider cannot bill a dually eligible MAP recipient or member for a service that medicare cannot pay because the provider chooses not to participate in medicare, or which MAD cannot pay because the provider chooses not to accept assignment on a claim, without the expressed consent of the eligible recipient, member or his or her authorized representative even when the medicare eligibility is established retro-actively and covers the date of service.

A. Claim crossover:

If there is sufficient information for medicare to identify an individual as an eligible recipient or member, medicare may send payment information directly to the MAD claims processing contractor in a form known as a "cross-over claim". In all cases where claims fail to crossover automatically to MAD, a provider must bill the appropriate MAD claims processing contractor directly, supplying the medicare payment and medicare "explanation of benefits" (EOB) information and meet the MAD filing limit.

B. Medicare replacement plan or other health maintenance organization (HMO) plan:

When an eligible recipient or member belongs to a medicare replacement plan or HMO, MAD pays the amount the payer determines is owed for co-payment, coinsurance or deductible, subject to MAD reimbursement limitations. When the payer payment amount exceeds the amount that MAD would have allowed for the service, no further payment is made for the co-payment, coinsurance or deductible. The claim is considered paid in full. The provider may not collect any remaining portion of the payer co-payment, coinsurance or deductible from the eligible recipient, member or his or her authorized representative. For behavioral health services for which medicare part B applies to a "psych reduction" to the provider payment and increases the eligible

recipient or member coinsurance rate, medicare coinsurance and deductible amounts are paid at the amount that allows the provider to receive up to eighty percent of the payer amount allowed even if the amount exceeds the MAD allowed amount for the services.

C. All other HMO and medicare replacement plan requirements, including provider network restrictions must be met for MAD to make payment on a claim. [8.302.2.12 NMAC - Rp, 8.302.2.12 NMAC, 10/1/2017]

8.302.2.13 BILLING FOR CONTRACTED SERVICES:

MAD only makes payment to a provider who actually rendered the services. However, in the following instances a MAD provider can bill and be paid for covered contracted services.

A. A provider is reimbursed at encounter rates or other all-inclusive rates that may have some contracted services built into those rates. These providers include NF, ICF-IDD, residential treatment centers, a group home, a hospice agency, a federally qualified health center, a rural health clinic, and an IHS or tribal 638 facility.

B. A practitioner group, a clinic, an institutional professional component, and providers of professional services may bill for services furnished by practitioners under contract when the provider applications are approved by MAD, and the following apply:

(1) the MAD provider participation applications are completed by the billing entity and the practitioner rendering the service or in their employ; and

(2) the practitioner is listed as the rendering provider on the claim form.

C. Transportation providers may bill for contracted personnel, equipment or vehicles.

D. A provider may bill MAD directly for contracted services for the construction or assembly of equipment or prosthetic devices, construction of dental devices and

prosthetics, hearing and vision prosthesis, orthotics, and repairs, when:

(1) the provider customarily uses the dental laboratory, optical supplier, hearing aid supplier, prosthetic or orthotic supplier equipment dealer, or manufacturer to do work; and

(2) the contractor doing the work does not qualify as an eligible provider in his or her own right.

E. For all other contracted services not specified above, written prior approval must be obtained from MAD or its designee before the provision of services.

F. Billing rates for contracted services: All services provided by a contractor and billed through a participating MAD provider must be billed at a rate based on direct and indirect costs, plus a reasonable administrative charge. The billing provider must ensure all MAD requirements are met by the contractor furnishing the service, including prior approval requirements, if applicable. Reimbursement for contracted services is included in the fee paid to the provider. For example, the amount paid to a dentist for a crown includes the dentist's work fitting the crown and the dental lab fees for making the crown.

G. Recipient freedom of choice: A provider cannot enter into contracts that are used to restrict an eligible recipient or member's freedom of choice. Some restrictions to this freedom of choice may apply to the purchases of medical devices and laboratory and radiology tests, and transportation 42 CFR Section 431.54(e), or for providers whose enrollment is under a moratorium as identified or approved by the secretary of the federal HHS or by CMS. [8.302.2.13 NMAC - Rp, 8.302.2.13 NMAC, 10/1/2017]

8.302.2.14 BILLING AND PAYMENT LIMITATIONS:

A. Payment not allowed: MAD does not pay factors either directly or by power of attorney 42 CFR Section 447.10(h). A factor

is an individual or an organization, such as a collection agency or service bureau.

B. No reimbursement for the discharge day: An institutional or other residential provider, such as a NF, a hospital, an ICF-IID, and a provider of treatment foster care services are reimbursed for services furnished to an eligible recipient or member on the day of admission but are not reimbursed for services furnished on day of discharge.

C. No payment made for wrong services: A provider shall not bill MAD for:

- (1) services provided to the wrong patient;
- (2) a service performed on the wrong body part of an eligible recipient or member; and
- (3) an incorrect procedure performed on an eligible recipient or member.

D. Payments for acquired conditions: MAD may deny or limit payment on claims for services to treat an eligible recipient or member for a condition acquired during the course of a facility stay or in the rendering of other services. [8.302.2.14 NMAC - Rp, 8.302.2.14 NMAC, 10/1/2017]

8.302.2.15 INTEREST RATES ON COST SETTLEMENTS:

MAD charges interest on overpayments and pays interest on underpayments as a result of year-end cost settlements, unless waived.

A. Interest periods: Interest accrues from the date of the final determination of costs or from a date required by a subsequent administrative reversal. Interest is charged on the overpayment balance or paid on the underpayment balance for each 30 calendar day period that payment is delayed.

(1) For purposes of this provision, a final determination is considered to occur when:

- (a) MAD, the MAD selected claims processing contractor, or the MAD

audit contractor makes a written demand for payment or a written determination of underpayment; or

(b) a cost report which was filed in a timely manner indicates that an amount is due MAD and the amount due is not included with the report.

(2) The date of final determination for an additional overpayment or underpayment, as determined by the MAD audit contractor, is considered to occur if any of the previously mentioned events occur.

(3) The date of final determination for an unfiled cost report occurs the day after the date the cost report was due. A single extension of time not to exceed 30 calendar days is granted for good cause. A written request for the time extension must be received and approved by MAD before the cost report due date. When the cost report is filed, a second final determination date is calculated based on the occurrence of either of the aforementioned events.

B. Interest rates: The interest rate on overpayments and underpayments is based on the prevailing rate specified in bulletins issued under article 8020.20 of the treasury fiscal requirement manual. When a provider signs a repayment agreement with MAD for an overpayment, the following provisions apply:

(1) the rate of interest specified in the agreement is binding unless a default in the agreement occurs; or

(2) the rate of interest on the balance may change to the prevailing rate if the provider or supplier defaults on an installment and the prevailing rate in effect on the date the installment becomes overdue is higher than the rate specified in the agreement.

C. Accrual of interest: Even though a filed cost report does not show an overpayment, interest begins to accrue on the date of final determination, if MAD, the MAD audit contractor, or the MAD selected claims processing contractor

determines that providers have been overpaid.

(1)

Interest continues to accrue during administrative or judicial appeals and until final disposition of claims.

(2)

If a cost report is filed which indicates that an amount is due MAD, interest on the amount due accrues from the date the cost report is filed unless:

(a)

the full payment on the amount due accompanies the cost report; or

(b)

the provider and the MAD audit contractor agree in advance to liquidate the overpayment through a reduction in interim payments over the next 30 calendar day period.

(3)

If the MAD audit contractor determines that a further overpayment exists, interest accrues from the date of final determination.

(4)

If the cost report is not filed, interest accrues from the day following the date the report was due, plus a single extension of time not to exceed 30 calendar days if granted for good cause, until the time the cost report is filed. Written requests for time extensions must be received for approval by MAD before cost reports due dates.

(5)

Interest accrues on an underpayment owed by MAD to a provider beginning 30 calendar days from the date of MAD's notification of the underpayment by the MAD audit contractor.

D. Interest charge

waivers: MAD may waive the interest charges when:

(1)

the overpayment is liquidated within 30 calendar days from the date of the final determination; or

(2)

MAD determines that the administrative cost of collection exceeds the interest charges; interest is not waived for the period of time during which cost reports are due but remain unfiled for more than 30 calendar days.

E. Interest charges

with installment or partial

payments: If an overpayment is repaid in installments or recouped by withholding from several payments due to a billing provider, the amounts are applied in the following manner:

(1)

each payment or recoupment is applied first to accrued interest and then to the principle; and

(2)

after each payment or recoupment, interest accrues on the remaining unpaid balance; if an overpayment or an underpayment determination is reversed following an administrative hearing, appropriate adjustments are made on the overpayment or underpayment and the amount of interest charged.

F. Allowable interest

cost: Allowable interest cost is the necessary and proper interest on both current and capital indebtedness. An interest cost is not allowable if it is one of the following:

(1)

an interest assessment on a determined overpayment; or

(2)

interest on funds borrowed to repay an overpayment; following an administrative review and favorable provider decision, interest paid on funds borrowed to repay an overpayment or the interest assessed on an overpayment becomes an allowable cost.

[8.302.2.15 NMAC - Rp, 8.302.2.15 NMAC, 10/1/2017]

HISTORY OF 8.302.2 NMAC:

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

SP-004.1902, Methods and Standards of Establishing Payment Rates - Other Types of Care, filed 3/5/1981.

SP-004.2000, Section 4, General Program Administration Direct Payments to Certain Recipients for Physician's or Dentist's Services, filed 3/5/1981.

SP-004.2100, Section 4, General Program Administration Prohibition Against Reassignment of Provider Claims, filed 3/5/1981.

SP-006.0100, Section 6, Financial

Administration Fiscal Policies and Accountability, filed 3/5/1981.

SP-006.0200, Section 6, Financial Administration Cost Allocation, filed 3/5/1981.

SP-006.0300, Section 6, Financial Administration State Financial Participation, filed 3/5/1981.

SP-004.1905, Definition of Timely Payment Requirement for the State of New Mexico, filed 6/10/1981.

ISD 304.1000, Provider Reimbursement Responsibility, filed 1/7/1980.

ISD 304.1000, Provider Reimbursement Responsibility, filed 9/9/1981.

ISD 304.2000, Recipient Reimbursement Responsibility, filed 1/9/1980.

ISD 304.3000, Reimbursement Limitations, filed 1/7/1980.

ISD 304.3000, Reimbursement Limitations, filed 9/9/1981.

ISD 304.3000, Reimbursement Limitations, filed 12/17/1985.

ISD 304.4000, Billing Limitations, filed 1/7/1980.

ISD 304.4000, Billing Limitations, filed 9/9/1981.

ISD 304.7000, Reimbursement To Out-of-State Providers, filed 1/7/1980.

ISD 304.7000, Reimbursement To Out-of-State Providers, filed 9/9/1981.

ISD 304.8000, Third Party Liability, filed 1/7/1980.

ISD 304.8000, Third Party Liability, filed 9/9/1981.

ISD 304.9000, Usual and Customary, filed 1/7/1980.

ISD 304.9000, Reasonable Charge Pricing, filed 9/9/1981.

ISD Rule 304.9000, Reasonable Charge Pricing, filed 2/17/1984.

ISD Rule 304.9000, Reasonable Charge Price, filed 3/30/1984.

MAD Rule 304.9, Reimbursement, filed 12/15/1987.

MAD Rule 304.9, Reimbursement, filed 8/11/1988.

MAD Rule 304, Billing and Reimbursement, filed 11/8/1989.

MAD Rule 304, Billing and Reimbursement, filed 4/21/1992.

History of Repealed Material:

MAD Rule 304, Billing And Reimbursement, filed 4/21/1992 -

Repealed effective 2/1/1995.
 8.302.2 NMAC, Billing for Medicaid Services, filed 4/16/2004 - Repealed effective 1/1/2014.
 8.302.2 NMAC, Billing for Medicaid Services filed 12/17/2013 - Repealed effective 10/1/2017.

NMAC History: 8.302.2 NMAC, Billing for Medicaid Services filed 12/17/2013 was replaced by 8.302.2 NMAC, Billing for Medicaid Services effective 10/1/2017.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

**TITLE 8 SOCIAL SERVICES
 CHAPTER 308 MANAGED CARE PROGRAM
 PART 14 CO-PAYMENTS**

8.308.14.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
 [8.308.14.1 NMAC - Rp, 10/1/2017]

8.308.14.2 SCOPE: This rule applies to the general public.
 [8.308.14.2 NMAC - Rp, 10/1/2017]

8.308.14.3 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.
 [8.308.14.3 NMAC - Rp, 10/1/2017]

8.308.14.4 DURATION: Permanent.
 [8.308.14.4 NMAC - Rp, 10/1/2017]

8.308.14.5 EFFECTIVE DATE: October 1, 2017, unless a later date is cited at the end of a section.
 [8.308.14.5 NMAC - Rp, 10/1/2017]

8.308.14.6 OBJECTIVE: The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance programs (MAP).
 [8.308.14.6 NMAC - Rp, 10/1/2017]

8.308.14.7 DEFINITIONS: Co-payment: A co-payment is a fixed dollar amount that a medicaid recipient must pay directly to a provider for a service, visit or item. A co-payment is to be paid at the time of service or receipt of the item.
 [8.308.14.5 NMAC - Rp, 10/1/2017]

8.308.14.8 [RESERVED]
 [8.308.14.8 NMAC - Rp, 10/1/2017]

8.308.14.9 CO-PAYMENTS IN THE MEDICAID MANAGED CARE PROGRAM: The medical assistance division (MAD) imposes co-payment provisions on certain members, certain categories of eligibility and on certain services. The member's HSD contracted managed care organization (MCO) is required to impose co-payments as directed by MAD at 8.302.2 NMAC and in accordance with federal regulations. General requirements regarding co-payments:

- A. The MCO or its contracted providers may not deny services for a member's failure to pay the co-payment amounts.
- B. The MCO must take measures to educate and train both its contracted providers and members on co-payment requirements.
- C. The MCO shall not impose co-payment provisions on certain services that, in accordance with federal regulations, are always exempt from co-payment provisions. See 42 CFR 447.56, *limitations on premiums and cost sharing* and 8.302.2 NMAC.
- D. The MCO shall not impose co-payment provisions on certain member categories of eligibility that, in accordance with federal and state regulations and rules, are exempt from cost-sharing provisions.
- E. Payments to MCO contracted providers: In accordance

with 42 CFR 447.56, *limitations on premiums and cost sharing*, the MCO must reduce the payment it makes to a contracted provider by the amount of the member's applicable co-payment obligation, regardless of whether the provider has collected the payment.

F. At the direction of MAD, the MCO must report all co-payment amounts collected.

G. The MCO may not impose more than one type of co-payment for any service, in accordance with 42 CFR 447.52.

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

I. The MCO must report to the provider when a co-payment has been applied to the provider's claim and when a co-payment was not applied to the provider's claim. The MCO shall be responsible for assuring the provider is aware that:

- (1) the provider shall be responsible for refunding to the member any co-payments the provider collects after the member has reached the co-payment cap (five percent of the member's household income, calculated on a quarterly basis) which occurs because the MCO was not able to inform the provider of the exemption from co-payment due to the timing of claims processing;
- (2) the provider shall be responsible for refunding to the member any co-payments 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
- (3) failure

to refund a collected co-payment to a member and to accept full payment from the MCO may result in a credible allegation of fraud, see 8.351.2 NMAC.
[8.308.14.9 NMAC - Rp, 10/1/2017]

8.308.14.10 MEMBER RIGHTS AND RESPONSIBILITIES:

A. When a MAD benefit has a co-payment assigned for a MAP category of eligibility, the eligible recipient will at the time of service make payment or make arrangements with the provider for payment at a later date.

B. A member shares the responsibility to track his or her co-payments for each quarter. The member has the right to request from his or her MCO at any time an account of his or her household's co-payment total per quarter. If the member believes he or she has met the household's out-of-pocket (OOP) limit, he or she may request that the provider wait to charge future co-payments if the member has contacted his or her MCO to determine if the OOP limit has been met.

C. If a member had reached his or her household OOP limit but was not aware of it at the time the member paid a co-payment, the provider must refund the member the co-payment.

(1) The provider must refund the member within 10 working days after the member requests a reimbursement of the paid co-payment or the member's MCO notifies the provider that the member's OOP limit has been met.

(2) The member may notify verbally or in writing his or her MCO of the provider's failure to refund the co-payment within the required timeframe.

(3) Failure of the MCO to intervene to have its contracted provider refund the co-payment within 10 working days of the member notifying the MCO constitutes a MCO adverse action and the member may file a MCO appeal and if applicable, a HSD

administrative hearing. See 8.308.15 and 8.352.2 NMAC for detailed information.

(4) The member may also contact the HSD office of inspector general after he or she has complied with Paragraph (2) and (3) above to report the provider's refusal to refund the member's co-payment as such action may result in a credible allegation of fraud.
[8.308.14.10 NMAC - N, 10/1/2017]

8.308.14.11 CO-PAYMENT AMOUNTS IN MANAGED CARE PROGRAMS: Medicaid co-payment amounts and the application of co-payments are determined by MAD. See 42 CFR 447.56, *limitations on premiums and cost sharing*, and 8.302.2 NMAC.
[8.308.14.11 NMAC - Rp, 10/1/2017]

HISTORY OF 8.308.14 NMAC:
[RESERVED]

History of Repealed Material:
8.308.14 NMAC, Cost Sharing, filed 12/17/2013 - Repealed effective 10/1/2017.

NMAC History:
8.308.14 NMAC, Cost Sharing, filed 12/17/2013 was replaced by 8.308.14 NMAC, CO-Payments effective 10/1/2017.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.430 NMAC, Sections 8, 16 through 18, effective 10/1/2017.

8.200.430.8 [MISSION: 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.]

[RESERVED]
[8.200.430.8 NMAC - N, 1/1/2014; A, 10/1/2017]

8.200.430.16 ELIGIBLE RECIPIENT FINANCIAL RESPONSIBILITIES:

A. A MAD provider agrees to accept the amount paid as payment in full with the exception of co-payment amounts required in certain MAP eligibility categories (42 CFR 447.15). Other than the co-payments, a provider cannot bill an eligible recipient for any unpaid portion of the bill (balance billing) or for a claim that is not paid because of a provider administrative error or failure of multiple providers to communicate eligibility information. A native American eligible recipient is exempt from co-payment requirements.

(1) An eligible recipient is responsible for any financial liability incurred if he or she fails to furnish current MAP eligibility identification before the receipt of a MAP service and as a result the provider fails to adhere to MAD reimbursement rules, such as a failure to request prior approval. If this omission occurs, the settlement of claims for services is between the eligible recipient and the MAP provider. An individual is financially responsible for services received if he or she was not eligible for MAD services on the date services are furnished.

(2) When a provider bills MAD and the claim is denied, the provider cannot bill the eligible recipient. Exceptions exist for denials caused by MAP ineligibility or by an eligible recipient's failure to furnish MAP identification at the time of service.

(3) If an eligible recipient fails to notify a provider that he or she has received services that are limited by time or amount, the eligible recipient is responsible to pay for services if, before furnishing the services, the provider makes reasonable efforts to verify whether the eligible recipient has already received services.

B. Failure of an eligible recipient to follow his or her privately held health insurance carrier's requirements: An eligible

recipient must be aware of the physician, pharmacy, hospital, and other providers who participate in his or her HMO or other managed care plan. An eligible recipient is responsible for payment for services if he or she uses a provider who is not a participant in his or her plan or if he or she receives any services without complying with the rules, policies, and procedures of his or her plan.

C. Other eligible recipient payment responsibilities: If all the following conditions are met before a MAD service is furnished, the eligible recipient can be billed directly by a MAD provider for services and is liable for payment:

(1) the eligible recipient is advised by a provider that the particular service is not covered by MAD or is advised by a provider that he or she is not a MAD provider;

(2) the eligible recipient is informed by a provider of the necessity, options, and charges for the services and the option of going to another provider who is a MAD provider; and

(3) the eligible recipient agrees in writing to have the service provided with full knowledge that he or she is financially responsible for the payment.

D. [Children's health insurance program (CHIP) and working disabled individuals (WDI) co-payments: It is the eligible recipient's responsibility to pay the co-payment to the MAD provider.

(1) Children's health insurance program (CHIP) co-payment requirement: Eligible recipients or members whose benefits are determined using criteria for CHIP are identified by their category of eligibility. The following co-payments apply to CHIP eligible recipients or members:

(a) \$2 per prescription applies to prescription and non-prescription drug items unless the co-payment for unnecessary drug utilization is assessed;

(b) \$5 per outpatient visit, including physician or other practitioner visits,

therapy sessions, and behavioral health service sessions;
 (c) \$5 per dental visit, unless all the services are preventive services;

(d) 25 per inpatient hospital admission unless the hospital is receiving the eligible recipient or member as a transfer from another hospital;

(e) \$3 per prescription applies for unnecessary use of a brand name drug, unless the drug item is a brand name psychotropic drug in which case the co-payment does not apply; and
 (f) \$8 for non-emergent use of the ED;

(2) Working disabled individual's copayment requirements (WDI): Eligible recipients or members whose benefits are determined using criteria for WDI are identified by their MAP category of eligibility. The following co-payments apply to WDI eligible recipients or members:

(a) \$3 per prescription applies to prescription and non-prescription drug items unless the co-payment for unnecessary drug utilization is assessed;

(b) \$7 per outpatient visit, including physician or other practitioner visits, therapy sessions, and behavioral health service sessions;

(c) \$7 per dental visit, unless all the services are preventive services;

(d) \$30 per inpatient hospital admission unless the hospital is receiving the eligible recipient or member as a transfer from another hospital;

(e) \$3 per prescription applies for unnecessary use of a brand name drug, unless the drug item is a brand name psychotropic drug in which case the co-payment does not apply; and
 (f) \$8 for non-emergent use of the ED;

E. Co-payment responsibilities: The provider is responsible for understanding and applying the rules for co-payment

including when to contact the payer to determine if a co-payment is applicable for the service for the specific eligible recipient or member.

(1) Co-payments are not applied when one or more of the following conditions are met:

(a) the service is a Medicare claim or Medicare advantage claim, or follows other insurer payment, so the payment is therefore toward a deductible, co-insurance, or co-payment determined by the primary payer;

(b) the eligible recipient or member is a native American;

(c) the service is rendered by an Indian health service (IHS), tribal 638, or urban Indian facility regardless of the race of the eligible recipient or member;

(d) the service is for an eligible recipient enrolled in hospice;

(e) the recipient is under age 21 and has only presumptive eligibility (PE) at the time of service;

(f) the maximum family out-of-pocket cost sharing limit has been reached;

(g) the service was rendered prior to any eligibility being established including when eligibility is retroactively established to the time period of the service;

(h) the eligible recipient or member is in foster care or has an adoption category of eligibility;

(i) the eligible recipient or member resides in a nursing facility or a facility for individuals with intellectual disabilities (ID), has a level of care determination or nursing facility care, or other residential care, or for community benefits, or for a home and community-based services waiver;

(j) the service is not for a MAP category of eligibility such as the department of health children's medical services

program;

(k)

the service is a provider preventable condition or is solely to treat a provider preventable condition; or

(2) the eligible recipient, member or service is exempt from co-payment as otherwise described in these rules.

(3)

Other than a co-payment for non-emergent use of the emergency department (ED) or for unnecessary use of a brand name drug, co-payments are not applied when the services are one of the following:

(a)

family planning services, procedures drugs, supplies, or devices;

(b)

preventive services (well child checks, vaccines, preventive dental cleanings/exams, periodic health exams) unless treatment is rendered; or

(c)

prenatal and postpartum care and deliveries, and prenatal drug items.

(4)

Unnecessary use of a brand named drug.

(a)

If in the prescriber's estimation, the alternative drug item available on the PDL is either less effective for treating the eligible recipient's condition, or would have more side effects or higher potential for adverse reactions, the co-payment is not applied.

(b)

If the prescriber has stated the brand name is medically necessary and therefore the claim is billed with a dispense as written indicator, the co-payment is not applied unless the reason for the brand being medically necessary is something other than the generic form is anticipated to have more side effects or adverse reactions, or would be less effective in treating the eligible recipient

(c)

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.

(5)

Unnecessary use of the ED: the unnecessary utilization of an ED is when an eligible recipient presents to an emergency room for service when the condition of the eligible recipient is not an emergency medical condition and the hospital determines the condition does not require emergency treatment after considering the medical presentation of the eligible recipient, the age of the eligible recipient, alternative providers that may be available in the community at the specific time of day, and other relevant factors. The co-payment is assessed when the eligible recipient is told that the condition does not require emergency treatment and the eligible recipient still chooses to continue with the treatment in the ED.

A hospital provider must determine the eligible recipient is using the ED for a non-emergent service and apply co-payments to non-emergent use of the ED according to the definition as stated in this paragraph.] Medicaid recipients may be responsible to pay co-payments as outlined in 8.302.2 NMAC.

[8.200.430.16 NMAC - Rp, 8.200.430.16 NMAC, 1/1/2014; A, 10/15/2014; A, 10/1/2017]

8.200.430.18 REPORTING

REQUIREMENTS: [An eligible recipient is required to report certain changes which might affect his or her eligibility. The following changes must be reported to ISD within 10 calendar days from the date the change occurred pursuant to 8.200.400 NMAC, 8.200.410 NMAC, and 8.200.420 NMAC.]

A medicaid eligible recipient is required to report certain changes which might affect his or her eligibility to ISD within 10 calendar days from the date the change occurred. A timely change that is reported within 10 calendar days that may result in a more beneficial medicaid eligibility category shall be

evaluated in the month the change occurred. An untimely change that is reported after 10 calendar days that may result in a more beneficial medicaid eligibility category shall be evaluated in the month the change was reported. A reported change that does not result in the same or a more beneficial medicaid category is considered an adverse action and is applied prospectively in accordance with 8.100.180.10 NMAC. See 8.100.110.9 NMAC for the various ways applicants and recipients can submit changes to the HSD. The following changes must be reported to ISD:

A. Living

arrangements or change of address:

Any change in where an eligible recipient lives or gets his or her mail must be reported.

B. Household size:

Any change in the household size must be reported. This includes the death of an individual included in the either or both the assistance unit and budget group.

C. Enumeration:

Any new social security number must be reported.

D. Income:

Except for continuous eligibility in 8.200.400 NMAC any increase or decrease in the amount of income or change in the source of income must be reported.

E. Resource:

Resources only apply to non-modified adjusted gross income (MAGI) medicaid categories. Any change in what an eligible recipient owns must be reported. This includes any property the eligible recipient owns or has interest in, cash on hand, money in banks or credit unions, stocks, bonds, life insurance policies or any other item of value.

[8.200.430.18 NMAC - Rp, 8.200.430.18 NMAC, 1/1/2014; A, 2/14/2014; 8.200.430.18 NMAC - Rn & A, 8.200.430.19 NMAC, 10/15/2014; A, 10/1/2017]

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Section 11, effective 9/14/2017.

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. One hundred percent federal poverty limits (FPL):

Size of budget group	FPL per month
1	[\$990] <u>\$1,005</u>
2	[\$1,335] <u>\$1,354</u>
3	[\$1,680] <u>\$1,702</u>
4	[\$2,025] <u>\$2,050</u>
5	[\$2,370] <u>\$2,399</u>
6	[\$2,715] <u>\$2,747</u>
7	[\$3,061] <u>\$3,095</u>
8	[\$3,408] <u>\$3,444</u>

Add ~~[\$347]~~ \$349 for each additional person in the budget group.

*Use only these two standards for the qualified medicare beneficiary (QMB) program.

B. One hundred twenty percent FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient	Amount
1 Individual	At least [\$990] <u>\$1,005</u> per month but no more than [\$1,188] <u>\$1,206</u> per month.
2 Couple	At least [\$1,335] <u>\$1,354</u> per month but no more than [\$1,602] <u>\$1,624</u> per month.

For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. One hundred thirty-three percent FPL:

Size of budget group	FPL per month
1	[\$1,317] <u>\$1,337</u>
2	[\$1,776] <u>\$1,800</u>
3	[\$2,235] <u>\$2,264</u>
4	[\$2,694] <u>\$2,727</u>
5	[\$3,153] <u>\$3,190</u>
6	[\$3,611] <u>\$3,654</u>
7	[\$4,071] <u>\$4,117</u>
8	[\$4,532] <u>\$4,580</u>

Add ~~[\$461]~~ \$463 for each additional person in the budget group.

D. One hundred thirty-five percent FPL: This income level is used only in the determination of the maximum income limit for a qualified individual 1 (QI1) applicant or eligible recipient. For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:

Applicant or eligible recipient	Amount
1 Individual	At least [\$1,188] <u>\$1,206</u> per month but no more than [\$1,337] <u>\$1,357</u> per month.
2 Couple	At least [\$1,602] <u>\$1,624</u> per month but no more than [\$1,803] <u>\$1,827</u> per month.

E. One hundred eighty-five percent FPL:

Size of budget group	FPL per month
1	[\$1,832] <u>\$1,860</u>
2	[\$2,470] <u>\$2,504</u>
3	[\$3,108] <u>\$3,149</u>
4	[\$3,747] <u>\$3,793</u>
5	[\$4,385] <u>\$4,437</u>
6	[\$5,023] <u>\$5,082</u>
7	[\$5,663] <u>\$5,726</u>
8	[\$6,304] <u>\$6,371</u>

Add [~~\$641~~] \$645 for each additional person in the budget group.

F. Two hundred percent FPL:

Size of budget group	FPL per month
1	[\$1,980] <u>\$2,010</u>
2	[\$2,670] <u>\$2,707</u>
3	[\$3,360] <u>\$3,404</u>
4	[\$4,050] <u>\$4,100</u>
5	[\$4,740] <u>\$4,797</u>
6	[\$5,430] <u>\$5,494</u>
7	[\$6,122] <u>\$6,190</u>
8	[\$6,815] <u>\$6,887</u>

Add [~~\$693~~] \$697 for each additional person in the budget group.

G. Two hundred thirty-five percent FPL:

Size of budget group	FPL per month
1	[\$2,327] <u>\$2,362</u>
2	[\$3,138] <u>\$3,181</u>
3	[\$3,948] <u>\$3,999</u>
4	[\$4,759] <u>\$4,818</u>
5	[\$5,570] <u>\$5,637</u>
6	[\$6,381] <u>\$6,455</u>
7	[\$7,193] <u>\$7,274</u>
8	[\$8,008] <u>\$8,092</u>

Add [~~\$815~~] \$818 for each additional person in the budget group.

H. Two hundred fifty percent FPL:

Size of budget group	FPL per month
1	[\$2,475] <u>\$2,513</u>
2	[\$3,338] <u>\$3,384</u>
3	[\$4,200] <u>\$4,255</u>
4	[\$5,063] <u>\$5,125</u>
5	[\$5,925] <u>\$5,996</u>
6	[\$6,788] <u>\$6,867</u>
7	[\$7,653] <u>\$7,738</u>
8	[\$8,519] <u>\$8,609</u>

Add [~~\$866~~] \$871 for each additional person in the budget group.
 [8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 8/28/2015; A/E, 4/1/2016; A/E, 9/14/2017]

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.291.430 NMAC, section 10, effective 9/14/2017.

8.291.430.10 FEDERAL POVERTY LEVEL (FPL): This part contains the monthly federal poverty level table for use in determining monthly income standards for MAP categories of eligibility outlined in 8.291.400.10 NMAC:

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	[\$990] <u>\$1,005</u>	[\$1,317] <u>\$1,337</u>	[\$1,367] <u>\$1,387</u>	[\$1,881] <u>\$1,910</u>	[\$2,376] <u>\$2,412</u>	[\$2,475] <u>\$2,513</u>	[\$2,970] <u>\$3,015</u>
2	[\$1,335] <u>\$1,354</u>	[\$1,776] <u>\$1,800</u>	[\$1,843] <u>\$1,868</u>	[\$2,537] <u>\$2,572</u>	[\$3,204] <u>\$3,248</u>	[\$3,338] <u>\$3,384</u>	[\$4,005] <u>\$4,060</u>
3	[\$1,680] <u>\$1,702</u>	[\$2,235] <u>\$2,264</u>	[\$2,319] <u>\$2,349</u>	[\$3,192] <u>\$3,234</u>	[\$4,032] <u>\$4,084</u>	[\$4,200] <u>\$4,255</u>	[\$5,040] <u>\$5,105</u>
4	[\$2,025] <u>\$2,050</u>	[\$2,694] <u>\$2,727</u>	[\$2,795] <u>\$2,829</u>	[\$3,848] <u>\$3,895</u>	[\$4,860] <u>\$4,920</u>	[\$5,063] <u>\$5,125</u>	[\$6,075] <u>\$6,150</u>

5	[\$2,370] \$2,399	[\$3,153] \$3,190	[\$3,271] \$3,310	[\$4,503] \$4,557	[\$5,688] \$5,756	[\$5,925] \$5,996	[\$7,110] \$7,195
6	[\$2,715] \$2,747	[\$3,611] \$3,654	[\$3,747] \$3,791	[\$5,159] \$5,219	[\$6,516] \$6,592	[\$6,788] \$6,867	[\$8,145] \$8,240
7	[\$3,061] \$3,095	[\$4,071] \$4,117	[\$4,224] \$4,272	[\$5,816] \$5,881	[\$7,346] \$7,428	[\$7,653] \$7,738	[\$9,183] \$9,285
8	[\$3,408] \$3,444	[\$4,532] \$4,580	[\$4,703] \$4,752	[\$6,475] \$6,543	[\$8,178] \$8,264	[\$8,519] \$8,609	[\$10,223] \$10,330
+1	[\$347] \$349	[\$461] \$463	[\$479] \$480	[\$659] \$662	[\$832] \$836	[\$866] \$871	[\$1,040] \$1,045

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 11/16/2015; A/E, 4/1/2016; A/E, 9/14/2017]

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.293.400 NMAC, Sections 8, 9, effective 10/1/2017.

8.293.400.8 ~~[MISSION: 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.]~~ **[RESERVED]**

[8.293.400.8 NMAC - Rp, 8.293.400.8 NMAC, 1/1/2014; A, 10/1/2017]

8.293.400.9 WHO CAN BE A RECIPIENT: To be eligible, a woman must meet the following eligibility requirements:

A. ~~[a woman who self attests to pregnancy]~~ Per 42 CFR 435.956(e) HSD accepts self-attestation of pregnancy unless HSD has reason to believe the information is questionable as defined in 8.100.130.12 NMAC.

B. a woman who meets all ACA eligibility requirements pursuant to 8.291.400 through 8.291.430 NMAC; and

C. the existence of creditable health insurance is not a disqualifying factor.

[8.293.400.9 NMAC - Rp, 8.293.400.9 NMAC, 1/1/2014; A, 10/1/2017]

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.294.400, Sections 8, 9, effective 10/1/2017.

8.294.400.8 ~~[MISSION: 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.]~~ **[RESERVED]**

[8.294.400.8 NMAC - Rp, 8.294.400.8 NMAC, 1/1/2014; A, 10/1/2017]

8.294.400.9 WHO CAN BE A RECIPIENT: To be eligible, a woman must meet the following eligibility requirements:

A. ~~[a woman who self attests to pregnancy]~~ Per 42 CFR 435.956(e) HSD accepts self-attestation of pregnancy unless HSD has reason to believe the information is questionable as defined in 8.100.130.12 NMAC.

B. a woman who meets all [ACA] affordable care act (ACA) eligibility requirements pursuant to 8.291.400 through 8.291.430 NMAC; and

C. the existence of creditable health insurance is not a disqualifying factor.

[8.294.400.9 NMAC - Rp, 8.294.400.9 NMAC, 1/1/2014; A, 10/1/2017]

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved, at its 5/16/2017 hearing, to repeal its rule 6.61.2 NMAC, Licensure in Elementary Education, Grades K-8 (filed 11/14/1998) and replace it with 6.61.2 NMAC, Licensure in Elementary Education, Grades K-8, (adopted on 9/11/2017) and effective 8/1/2018.

The New Mexico Public Education Department approved, at its 5/16/2017 hearing, to repeal its rule 6.61.3 NMAC, Licensure in Middle Level Education, Grades 5-9 (filed 9/30/1996) and replace it with 6.61.3 NMAC, Licensure in Middle Level Education, Grades 5-9, (adopted on 9/11/2017) and effective 8/1/2018.

The New Mexico Public Education Department approved, at its 5/16/2017 hearing, to repeal its rule 6.61.4 NMAC, Licensure in Secondary Education, Grades 7-12 (filed 11/14/1998) and replace it with 6.61.4 NMAC, Licensure in Secondary Education, Grades 7-12, (adopted on 9/11/2017) and effective 8/1/2018.

The New Mexico Public Education Department approved, at its 5/16/2017 hearing, to repeal its rule 6.61.5 NMAC, Licensure for Grades Pre K-12 (filed 11/14/1998) and replace it with 6.61.5 NMAC, Licensure for Grades Pre K-12, (adopted on 9/11/2017) and effective 8/1/2018.

The New Mexico Public Education Department approved, at its 5/16/2017 hearing, to repeal its rule 6.61.6 NMAC, Licensure in in Special Education Pre K-12 (filed 11/14/1998) and replace it with 6.61.6 NMAC, Licensure in Special Education Pre K-12, (adopted on 9/11/2017) and effective 8/1/2018.

The New Mexico Public Education Department approved, at its 5/16/2017 hearing, to repeal its rule 6.61.7 NMAC, Licensure in Secondary Vocational-Technical Education (filed 11/14/1998) and replace it with 6.61.7 NMAC, Licensure in Secondary Vocational-Technical Education,

(adopted on 9/11/2017) and effective 8/1/2018.

The New Mexico Public Education Department approved, at its 5/16/2017 hearing, to repeal its rule 6.61.8 NMAC, Licensure in Early Childhood Education, Birth - Grade Three (filed 4/30/2016) and replace it with 6.61.8 NMAC, Licensure in Early Childhood Education, Birth - Grade Three, (adopted on 9/11/2017) and effective 8/1/2018.

The New Mexico Public Education Department approved, at its 5/16/2017 hearing, to repeal its rule 6.61.10 NMAC, Teacher of Students with Blindness/Visual Impairment B-12 (filed 8/15/2003) and replace it with 6.61.10 NMAC, Teacher of Students with Blindness/Visual Impairment B-12, (adopted on 9/11/2017) and effective 8/1/2018.

The New Mexico Public Education Department approved, at its 5/16/2017 hearing, to repeal its rule 6.61.11 NMAC, Licensure in Early Childhood Education, Birth – Pre-K (filed 1/29/2010) and replace it with 6.61.11 NMAC, Licensure in Early Childhood Education, Birth – Pre-K, (adopted on 9/11/2017) and effective 8/1/2018.

The New Mexico Public Education Department approved, at its 8/1/2017 hearing, to repeal its rule 6.63.15 NMAC, Licensure for School Health Assistants, Grades Pre K-12 (filed 5/28/2004) and replace it with 6.63.15 NMAC, Licensure for School Health Assistants, Grades Pre K-12, (adopted on 8/25/2017) and effective 9/26/2017.

The New Mexico Public Education Department approved, at its 8/1/2017 hearing, to repeal its rule 6.63.16 NMAC, Licensure for School Licensed Practical Nurses, Grades Pre K-12 (filed 5/28/2004) and replace it with 6.63.16 NMAC, Licensure for School Licensed Practical Nurses, Grades Pre K-12, (adopted on 8/25/2017) and effective 9/26/2017.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS
PART 2 LICENSURE IN ELEMENTARY EDUCATION, GRADES K-8**

6.61.2.1 ISSUING AGENCY: Public Education Department (PED).
[6.61.2.1 NMAC - Rp, 6.61.2.1 NMAC, 8/1/2018]

6.61.2.2 SCOPE: Chapter 61, Part 2 governs licensure in elementary education, grades K-8, for those persons seeking such licensure.
[6.61.2.2 NMAC - Rp, 6.61.2.2 NMAC, 8/1/2018]

6.61.2.3 STATUTORY AUTHORITY: Sections 22-1-1, 22-1-1.1, 22-1-1.2, 22-2-1, 22-2-2, 22-10A-3, 22-10A-4, and 22-10A-6, NMSA 1978.
[6.61.2.3 NMAC - Rp, 6.61.2.3 NMAC, 8/1/2018]

6.61.2.4 DURATION: Permanent.
[6.61.2.4 NMAC - Rp, 6.61.2.4 NMAC, 8/1/2018]

6.61.2.5 EFFECTIVE DATE: August 1, 2018, unless a later date is cited in the history note at the end of a section.
[6.61.2.5 NMAC - Rp, 6.61.2.5 NMAC, 8/1/2018]

6.61.2.6 OBJECTIVE: This rule governs licensure requirements in elementary education for persons seeking such licensure.
[6.61.2.6 NMAC - Rp, 6.61.2.6 NMAC, 8/1/2018]

6.61.2.7 DEFINITIONS:
A. “A highly qualified beginning elementary teacher,” under this rule, means a teacher who is fully qualified for

teaching in grades K-8, who is new to the profession, who has pursued a standard route to licensure, and who:

- (1) meets all the requirements for elementary K-8 licensure required by Subsections A or B in Section 8 of this rule, and
- (2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and
- (3) has passed all applicable competency or teacher testing requirements for licensure in 6.60.5.8 NMAC (Competency Testing for Licensure).

B. “A highly qualified beginning middle or junior high school teacher holding elementary K-8 licensure,” under this rule, means a teacher who is fully qualified to teach the core academic subjects in a public middle or junior high school, who is new to the profession, who has pursued a standard route to licensure, and who:

- (1) meets all the requirements for elementary K-8 licensure required by Subsections A or B of Section 8 of this rule, and
- (2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and
- (3) has passed all applicable competency or teacher testing requirements for elementary K-8 licensure in 6.60.5.8 NMAC (Competency Testing for Licensure), and

(4) has passed the content knowledge test(s) of the New Mexico teacher assessments or comparable licensure tests from another state in each core academic subject the teacher teaches and in which the teacher is required to have a licensure endorsement; or has successfully completed an undergraduate academic major or coursework equivalent to an undergraduate major, or a graduate degree in each core academic subject the teacher teaches and in which the teacher is required to have a licensure endorsement.

C. “Core academic subjects” means English, language

arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes and pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

D. “Undergraduate academic major” under this rule, means twenty-four to thirty-six semester hours in a core academic subject area. [6.61.2.7 NMAC - Rp, 6.61.2.7 NMAC, 8/1/2018]

6.61.2.8 REQUIREMENTS:

A. Persons seeking licensure in elementary education pursuant to the provisions of this rule shall meet the requirements enumerated in Subsection A or Subsection B of this section.

(1) bachelor’s degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 2017, the following:

- (a) nine semester hours in communication
- (b) six semester hours in mathematics
- (c) eight semester hours in laboratory science
- (d) nine semester hours in social and behavioral science
- (e) nine semester hours in humanities and fine arts; and

(2) credits from a regionally accredited college or university which include thirty to thirty-six semester hours of professional education in an elementary education program approved by the PED, including completion of the PED’s approved functional areas and related competencies in professional education; and

(3) a mandatory student teaching component; and

(4) twenty-four to thirty-six semester hours in one teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas); individuals must also complete the PED’s approved functional areas and related competencies in the teaching field; and

(5) in addition to the requirements specified in Paragraphs (1), (3), (4), (6) and (7) of Subsection A of 6.61.2.8 NMAC, six hours in the teaching of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) pass all required portions of the NMTA or any successor teacher examination adopted by the PED; and

(7) if teaching in an elementary school, satisfy the requirements of a highly qualified beginning elementary teacher; and

(8) if teaching the core academic subjects in a middle or junior high school, satisfy the requirements of a highly qualified beginning middle or junior high school teacher holding elementary K-8 licensure; or

B. Possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type. [6.61.2.8 NMAC - Rp, 6.61.2.8 NMAC, 8/1/2018]

6.61.2.9 [RESERVED]
[6.61.2.9 NMAC - Rp, 6.61.2.9 NMAC, 8/1/2018]

6.61.2.10 REFERENCED MATERIAL: Competencies for entry level elementary teachers

A. Learner development:

(1) The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical

areas, and designs and implements developmentally appropriate and challenging learning experiences.

(2) The teacher shall:

(a) regularly assess individual and group performance in order to design and modify instruction to meet learners' needs in each area of development (cognitive, linguistic, social, emotional and physical) and scaffolds the next level of development;

(b) create developmentally appropriate instruction that takes into account individual learners' strengths, interests, and needs and that enables each learner to advance and accelerate their learning;

(c) collaborate with families, communities, colleagues, and other professionals to promote learner growth and development;

(d) understand how learning occurs, how learners construct knowledge, acquire skills, develop disciplined thinking processes and knows how to use instructional strategies that promote student learning;

(e) understand that each learner's cognitive, linguistic, social, emotional, and physical development influences learning and knows how to make instructional decisions that build on learners' strengths and needs;

(f) identify readiness for learning, and understands how development in any one area may affect performance in others;

(g) understand the role of language and culture in learning and knows how to modify instruction to make language comprehensible and instruction relevant, accessible, and challenging;

(h) respect learners' differing strengths and needs and is committed to using the information to further each learner's development;

(i) commit to using learners' strengths as a basis for growth, and their

misconceptions as opportunities for learning;

(j) take responsibility for promoting learners' growth and development; and

(k) value the input and contributions of families, colleagues, and other professionals in understanding and supporting each learner's development.

B. Learning differences:

(1) The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.

(2) The teacher shall:

(a) design, adapt, and deliver instruction to address each student's diverse learning strengths and needs and creates opportunities for students to demonstrate their learning in different ways;

(b) make appropriate and timely provisions (e.g., pacing for individual rates of growth, task demands, communication, assessment and response modes) for individual students with particular learning differences or needs;

(c) design instruction to build on learners' prior knowledge and experiences, allowing learners to accelerate as they demonstrate their understandings;

(d) bring multiple perspectives to the discussion of content, including attention to learners' personal, family, and community experiences and cultural norms;

(e) incorporate tools of language development into planning and instruction, including strategies for making content accessible to English language learners and for evaluating and supporting their development of English proficiency;

(f)

access resource, supports, and specialized assistance and services to meet particular learning differences or needs;

(g) understand and identify differences in approaches to learning and performance and knows how to design instruction that uses each learner's strengths to promote growth;

(h) understand students with exceptional needs, including those associated with disabilities and giftedness, and knows how to use strategies and resources to address these needs;

(i) know about second language acquisition processes and knows how to incorporate instructional strategies and resources to support language acquisition;

(j) understand that learners bring assets for learning based on their individual experiences, abilities, talents, prior learning, and peer and social group interactions, as well as language, culture, family and community values;

(k) know how to access information about the values of diverse cultures and communities and how to incorporate learners' experiences, cultures and community resources into instruction;

(l) believe that all learners can achieve at the high levels and persists in helping each learner reach their potential;

(m) respect learners as individuals with differing personal and family backgrounds and various skills, abilities, perspectives, talents and interests;

(n) make learners feel valued and helps them learn to value each other; and

(o) value diverse languages and dialects and seeks to integrate them into their instructional practice to engage students in learning.

C. Learning environments:

(1) The

teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation.

- (2) The teacher shall:
 - (a) collaborate with learners, families, and colleagues to build a safe, positive learning climate of openness, mutual respect, support, and inquiry;
 - (b) develop learning experiences that engage learners in collaborative and self-directed learning and that extend learner interaction with ideas and people locally and globally;
 - (c) collaborate with learners and colleagues to develop shared values and expectations for respectful interactions, rigorous academic discussions, and individual and group responsibility for quality work;
 - (d) manage the learning environment to actively and equitably engage learners by organizing allocating, and coordinating resources of time, space, and learners' attention;
 - (e) use a variety of methods to engage learners in evaluating the learning environment and collaborates with learners to make appropriate adjustments;
 - (f) communicate verbally and nonverbally in ways that demonstrate respect for and responsiveness to the cultural backgrounds and differing perspectives learners bring to the learning environment;
 - (g) promote responsible learner use of interactive technologies to extend the possibilities for learning locally and globally;
 - (h) intentionally build learner capacity to collaborate in face-to-face and virtual environments through applying effective interpersonal communication skills;
 - (i) understand the relationship between

motivation and engagement and knows how to design learning experiences using strategies that build learner self-direction and ownership of learning;

- (j) know how to help learners work productively and cooperatively with each other to achieve learning goals;
 - (k) know how to collaborate with learners to establish and monitor elements of a safe and productive learning environment including norms, expectations, routines, and organizational structure;
 - (l) understand how learner diversity can affect communication and knows how to communicate effectively in differing environments;
 - (m) know how to use the technologies and how to guide learners to apply them in appropriate, safe and effective ways;
 - (n) commit to working with learners, colleagues, families and communities to establish positive and supportive learning environments;
 - (o) value the role of learners in promoting each other's learning and recognizes the importance of peer relationships in establishing a climate of learning;
 - (p) commit to supporting learners as they participate in decision making, engage in exploration and invention, work collaboratively and independently, and engage in purposeful learning;
 - (q) seek to foster respectful communication among all members of the learning community; and
 - (r) be thoughtful and responsive listener and observer.
- D. Content knowledge:**
- (1) The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) they teach and creates learning experiences that make these aspects of the discipline accessible and meaningful to learners to assure mastery of the content.

- (2) The teacher shall:
 - (a) effectively use multiple representations and explanations that capture key ideas in the discipline, guide learners through learning progressions, and promote each learner's achievement of content standards;
 - (b) engage students in learning experiences in the discipline(s) that encourage learners to understand, question, and analyze ideas from diverse perspectives so that they master the content;
 - (c) engage learners in applying methods of inquiry and standards of evidence used in the discipline;
 - (d) stimulate learner reflection on prior content knowledge, links new concepts to familiar concepts, and makes connections to learners' new experiences;
 - (e) recognize learner misconceptions in a discipline that interfere with learning, and create experiences to build accurate conceptual understanding;
 - (f) evaluate and modifies instructional resources and curriculum materials for their comprehensiveness, accuracy for representing particular concepts in the discipline, and appropriateness for their learners;
 - (g) use supplementary resources and technologies effectively to ensure accessibility and relevance for all learners;
 - (h) create opportunities for students to learn, practice, and master academic language in their content;
 - (i) access school and district based resources to evaluate the learner's content knowledge in their primary language;
 - (j) understand major concepts, assumptions, debates, processes of inquiry, and ways of knowing that are central to the discipline(s) they teach;

(k) understand common misconceptions in learning the discipline and how to guide learners to accurate conceptual understanding;

(l) know and use academic language of the discipline and knows how to make it accessible to learners;

(m) know how to integrate culturally relevant content to build on learners' background knowledge;

(n) have a deep knowledge of student content standards and learning progression in the discipline(s) they teach;

(o) realize that content knowledge is not a fixed body of facts but a complex, culturally situated, and ever evolving. The teacher keeps abreast of new ideas and understandings in the field.

(p) appreciate multiple perspectives within the discipline and facilitates learners' critical analysis of these perspectives;

(q) recognize the potential bias in their presentation of the discipline and seeks to appropriately address problems of bias; and

(r) commit to work toward each learner's mastery of disciplinary content and skills.

E. Application of content:

(1) The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

(2) The teacher shall:

(a) develop and implement projects that guide learners in analyzing the complexities of an issue or question using perspectives from varied disciplines and cross-disciplinary skills(e.g., a water quality study that draws upon biology or chemistry to look at factual information and

social studies to examine policy implications);

(b) engage learners in applying content knowledge to real world problems through the lens of interdisciplinary themes (e.g., financial literacy, environmental literacy);

(c) facilitate learners' use of current tools and resources to maximize content learning in varied contexts;

(d) engage learners in questioning and challenging assumptions and approaches in order to foster innovation and problem solving in local and global contexts;

(e) develop learners' communication skills in disciplinary and interdisciplinary contexts by creating meaningful opportunities to employ a variety of forms of communication that address varied audiences and purposes;

(f) engage learners in generating and evaluating new ideas and novel approaches, seeking inventive solutions to problems, and developing original work;

(g) facilitate learners' ability to develop diverse social and cultural perspectives that expand their understanding of local and global issues and create novel approaches to solving problems;

(h) develop and implements supports for learner literacy development across content areas;

(i) understand the ways of knowing their discipline, how it relates to other disciplinary approaches to inquiry, and the strengths and limitations of each approach in addressing problems, issues and concerns;

(j) understand how current interdisciplinary themes (e.g., civic literacy, health literacy, global awareness) connect to the core subjects and knows how to weave those themes into meaningful learning experiences;

(k) understand the demands of acceding and managing information as well as how to evaluate issues of ethics and quality related to the information and its use;

(l) understand how to use digital and interactive technologies for efficiently and effectively achieving specific learning goals;

(m) understand critical thinking processes and knows how to help learners develop high level questioning skills to promote independent learning;

(n) understand communication modes and skills as vehicles for learning (e.g., information gathering and processing) across disciplines as well as vehicles for expressing learning;

(o) understand creative thinking processes and how to engage learners in producing original work;

(p) know where and how to access resources to build global awareness and understanding, and how to integrate them into the curriculum;

(q) constantly explore how to use disciplinary knowledge as a lens to address local and global issues;

(r) value knowledge outside their own content area and how such knowledge enhances student learning; and

(s) value flexible learning environments that encourage learner exploration, discovery, and expression across content areas.

F. Assessment:

(1) The teacher understands and uses multiple measures of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making.

(2) The teacher shall:

(a) balance the use of formative and summative assessment as appropriate to support, verify, and document

learning;

(b)

design assessments that match learning objectives with assessment methods and minimize sources of bias that can distort assessment results;

(c)

work independently and collaboratively to examine test and other performance data to understand each learner’s progress and to guide planning;

(d)

engage learners in understanding and identifying quality work and provides them with effective descriptive feedback to guide their progress toward that work;

(e)

engage learners in multiple ways of demonstrating knowledge and skill as part of the assessment process;

(f)

model and structure processes that guide learners in examining their own thinking and learning as well as the performance of others;

(g)

use multiple and appropriate types of assessment data to identify each student’s learning needs and to develop differentiated learning experiences;

(h)

prepare all learners for the demands of particular assessment formats and makes appropriate accommodations in assessments or testing conditions, especially for learners with disabilities and language learning needs;

(i)

continually seek appropriate ways to employ technology to support assessment practice both to engage learners more fully and to assess and address learner needs;

(j)

understand the differences between formative and summative applications of assessment and knows how and when to use each;

(k)

understand the range of types and multiple purposes of assessment and how to design, adapt, or select appropriate assessments to address specific learning goals and individual differences, and to minimize sources

of bias;

(l)

know how to analyze assessment data to understand patterns and gaps in learning, to guide planning and instruction, and to provide meaningful feedback to all learners;

(m)

know when and how to engage learners in analyzing their own assessment results and in helping set goals for their own learning;

(n)

understand the positive impact of effective descriptive feedback for learners and knows a variety of strategies for communicating this feedback;

(o)

know when and how to evaluate and report learner progress against standards;

(p)

understand how to prepare learners for assessments and how to make accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs;

(q)

commit to engaging learners actively in assessment processes and to developing each learner’s capacity to review and communicate about their own progress and learning;

(r)

take responsibility for aligning instruction and assessment with learning goals;

(s)

commit to providing timely and effective descriptive feedback to learners on their progress;

(t)

commit to using multiple types of assessment processes to support, verify, and document learning;

(u)

commit to making accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs; and

(v)

commit to the ethical use of various assessments and assessment data to identify learner strengths and needs to promote learner growth.

G. Planning for

instruction:

(1)

The teacher plans the instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

(2)

The teacher shall:

(a)

individually and collaboratively select and create learning experiences that are appropriate for curriculum goals and content standards, and are relevant to learners;

(b)

plan how to achieve each student’s learning goals, choosing appropriate strategies and accommodations, resources, and materials to differentiate instruction for individuals and groups of learners;

(c)

develop appropriate sequencing of learning experiences and provides multiple ways to demonstrate knowledge and skill;

(d)

plan for instruction based on formative and summative assessment data, prior learner knowledge, and learner interest;

(e)

plan collaboratively with professionals who have specialized expertise (e.g., special educators, related service providers, language and learning specialists, librarians, media specialists) to design and jointly deliver as appropriate learning experiences that meet unique learning needs;

(f)

evaluate plans in relation to short and long-range goals and systematically adjusts plans to meet each student’s learning needs and enhance learning;

(g)

understand content and content standards and how these are organized in the curriculum;

(h)

understand how integrating cross-disciplinary skills in instruction engages learners purposefully in

applying content knowledge;
(i) understand learning theory, human development, cultural diversity, and individual differences and how these impact ongoing planning;
(j) understand the strengths and needs of individual learners and how to plan instruction that is responsive to these strengths and needs;
(k) know a range of evidence-based instructional strategies, resources, and technological tools and how to use them effectively to plan instruction that meets diverse learning needs;
(l) know when and how to adjust plans based on assessment information and learner responses;
(m) know when and how to access resources and collaborate with others to support student learning (e.g., special educators, related service providers, language learner specialists, librarians, media specialists, community organizations);
(n) respect learners' diverse strengths and needs and is committed to using this information to plan effective instruction;
(o) value planning as a collegial activity that takes into consideration the input of learners, colleagues, families, and the larger community;
(p) take professional responsibility to use short and long-term planning as a means of assuring student learning; and
(q) believe that plans must always be open to adjustment and revision based on learner needs and changing circumstances.

H. Instructional strategies:
(1) The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful

ways.
(2) The teacher shall:
(a) use appropriate strategies and resources to adapt instruction to the needs of individuals and groups of learners;
(b) continuously monitor student learning, engages learners in assessing their progress, and adjusts instruction in response to student learning needs;
(c) collaborate with learners to design and implement relevant learning experiences, identify their strengths, and access family and community resources to develop their areas of interest;
(d) vary their role in the instructional process (e.g., instructor, facilitator, coach, audience) in relation to the content and purposes of instruction and the needs of learners;
(e) provide multiple models and representations of concepts and skills with opportunities for learners to demonstrate their knowledge through a variety of products and performance;
(f) engage all learners in developing higher order questioning skills and metacognitive processes;
(g) engage learners in using a range of learning skills and technology tools to access, interpret, evaluate, and apply information;
(h) use a variety of instructional strategies to support and expand learners' communication through speaking, listening, reading, writing, and other modes;
(i) ask questions to stimulate discussion that serves different purposes (e.g., probing for learner understanding, helping learners articulate their ideas and thinking processes, stimulating curiosity, and helping learners to question);
(j) understand the cognitive process

associated with various kinds of learning (e.g., critical and creative thinking, problem framing and problem solving, invention, memorization and recall) and how these processes can be stimulated;
(k) know how to apply a range of developmentally, culturally, and linguistically appropriate instructional strategies to achieve learning goals;
(l) know when and how to use appropriate strategies to differentiate instruction and engage all learners in complex thinking and meaningful tasks;
(m) understand how multiple forms of communication (oral, written, nonverbal, digital, visual) convey ideas, foster self-expression, and build relationships;
(n) know how to use a wide variety of resources, including human and technological, to engage students in learning;
(o) understand how content and skill development can be supported by media and technology and knows how to evaluate these resources for quality, accuracy, and effectiveness;
(p) commit to deepening awareness and understanding the strengths and needs of diverse learners when planning and adjusting instruction;
(q) value the variety of ways people communicate and encourage learners to develop and use multiple forms of communication;
(r) commit to exploring how the use of new and emerging technologies can support and promote student learning; and
(s) value flexibility and reciprocity in the teaching process as necessary for adapting instruction to learner responses, ideas, and needs.

I. Professional learning and ethical practice:
(1) The teacher engages in ongoing

professional learning and uses evidence to continually evaluate their practice, particularly the effects of their choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner.

(2) The teacher shall:

(a) engage in ongoing learning opportunities to develop knowledge and skills in order to provide learners with engaging curriculum and learning experiences based on local and state standards;

(b) engage in meaningful and appropriate professional learning experiences aligned with their own needs and the needs of the learners, school, and system;

(c) independently and in collaboration with colleagues use a variety of data (e.g., systematic observation, information about learners, research) to evaluate the outcomes of teaching and learning and to adapt planning and practice;

(d) actively seek professional community, and technological resources, within and outside the school, as supports for analysis, reflection and problem solving;

(e) reflect on their personal biases and accesses resources to deepen their own understanding of cultural, ethnic, gender, and learning differences to build stronger relationships and create more relevant learning experiences;

(f) advocate, model, and teach safe, legal, and ethical use of information and technology including proper documentation of sources and respect for others in the use of social media;

(g) understand and know how to use a variety of self-assessment and problem-solving strategies to analyze and reflect on their practice and to plan for adaptations and adjustments;

(h) know how to use learner data to

analyze practice and differentiate instruction accordingly;

(i) understand how personal identity, worldview, and prior experience affect perceptions and expectations, and recognize how they may bias behaviors and interactions with others;

(j) understand laws related to learners' rights and teacher responsibility (e.g., for educational equity, appropriate education for learners with disabilities, confidentiality, privacy, appropriate treatment of learners, reporting in situations related to possible child abuse);

(k) The teacher knows how to build and implement a plan for professional growth directly aligned with their needs as a growing professional using feedback from teacher evaluations and observations, data on learner performance, and school and system-wide priorities;

(l) take responsibility for student learning and uses on going analysis and reflection to improve planning and practice;

(m) commit to deepening understanding of their own frames of references (e.g., culture, gender, language, abilities, ways of knowing), the potential biases in these frames, and their impact on expectations for and relationships with learners and their families;

(n) see themselves as a learner, continuously seeking opportunities to draw upon current education policy and research as sources of analysis and reflection to improve practice; and

(o) understand expectations of the profession including codes of ethics, professional standards of practice, and relevant law and policy.

J. Leadership and collaboration:

(1) The teacher seeks appropriate leadership roles ad opportunities to tame

responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession.

(2) The teacher shall:

(a) take an active role on the instructional team, giving and receiving feedback on practice, examining learn work, analyzing data from multiple sources, and sharing responsibility for decision making and accountability for each students learning;

(b) work with other school professionals to plan and jointly facilitate learning on how to meet diverse needs of learners;

(c) engage collaboratively in the school-wide effort to build a shared vision and supportive culture, identify common goals, and monitor and evaluate progress toward those goals;

(d) work collaboratively with learners and their families to establish mutual expectations and ongoing communication to support learner development and achievement;

(e) working with school colleagues build ongoing connections with community resources to enhance student learning and wellbeing;

(f) engage in professional learning, contributes to the knowledge and skill of others, and works collaboratively to advance professional practice;

(g) use technological tools and a variety of communication strategies to build local and global learning communities that engage learners, families, and colleagues;

(h) use and generate meaningful research on education issues an policy;

(i) seek appropriate opportunities to model effective practice for colleagues, to lead professional learning activities, and to serve in other leadership roles;

(j) advocate to meet the needs of learners, to strengthen the learning environment, and to enact system change;

(k) take on leadership roles at the school, district, state, and national level and advocates for the school, the community, and the profession;

(l) understand schools as organizations within a historical, cultural, political, and social context and knows how to work with others across the system to support learners;

(m) understand that alignment of family, school, and community spheres of influence enhances student learning and that discontinuity in these spheres of influence interferes with learning;

(n) know how to work with other adults and develop skills in collaborative interaction appropriate for both face-to-face and virtual contexts;

(o) know how to contribute a common culture that supports high expectations for student learning;

(p) actively share responsibility for shaping and supporting the mission of their school as one of the advocacy for learners and accountability for their success;

(q) respect families' beliefs, norms, and expectations and seeks to work collaboratively with learners and families in setting and meeting challenging goals;

(r) take initiative to grow and develop with colleagues through interactions and enhance practice and support student learning;

(s) take responsibility for contributing to and advancing the profession; and

(t) embrace the challenge of continuous improvement and change.
[6.61.2.10 NMAC - Rp, 6.61.2.10 NMAC, 8/1/2018]

HISTORY OF 6.61.2 NMAC:

PRE-NMAC HISTORY: The material in this part was derived from that previously filed with the State Records Center and Archives under: SBE Regulation No. 67-1.1 Certification Requirements Five Year Elementary Certificate, filed August 28, 1978; SBE Regulation No. 71-28 Continuing Five Year Elementary Certificate, filed August 28, 1978; SBE Regulation No. 71-29 Professional Elementary Licensure, filed August 28, 1978; SBE Regulation No. 76-3 Four Year Standard Elementary Certificate filed March 26, 1976; SBE Regulation No. 78-19 Four Year Standard Elementary Certificate, filed September 29, 1978; SBE Regulation 78-19 Amendment No. 1 Four Year Standard Elementary Certificate, filed November 28, 1978; SBE Regulation No. 78-23 Certification Requirements for Ten Year Professional Elementary Licensure, filed November 29, 1998; SBE Regulation No. 81-7 Four Year Standard Elementary Certificate, filed September 23, 1981; SBE Regulation No. 86-8 Licensure in Elementary Education, Grades K-8, filed January 19, 1987; SBE Regulation 86-8 Amendment No. 1 Licensure in Elementary Education, Grades K-8, filed December 4, 1990; SBE Regulation No. 86-8 Amendment 2 Licensure in Elementary Education, Grades K-8, filed April 3, 1995.

History of Repealed Material:

6.61.2 NMAC, Licensure in Elementary Education, Grades K-8, filed 11/14/1998 - Repealed effective 8/1/2018.

Other History of 6.61.2 NMAC:

6.61.2 NMAC, Licensure in Elementary Education, Grades K-8, filed 11/14/1998, was repealed and replaced by 6.61.2 NMAC, Licensure in Elementary Education, Grades K-8, effective 8/1/2018.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS
PART 3 LICENSURE IN MIDDLE LEVEL EDUCATION, GRADES 5 - 9**

6.61.3.1 ISSUING

AGENCY: Public Education Department (PED)
[6.61.3.1 NMAC - Rp, 6.61.3.1 NMAC, 8/1/2018]

6.61.3.2 SCOPE: Chapter 61, Part 3, governs licensure in middle level education, grades 5 - 9 for those persons seeking such licensure.

[6.61.3.2 NMAC - Rp, 6.61.3.2 NMAC, 8/1/2018]

6.61.3.3 STATUTORY

AUTHORITY: Sections 22-2-1, 22-2-2 and 22-2-8.7 NMSA 1978.

[6.61.3.3 NMAC - Rp, 6.61.3.3 NMAC, 8/1/2018]

6.61.3.4 DURATION:

Permanent.
[6.61.3.4 NMAC - Rp, 6.61.3.4 NMAC, 8/1/2018]

6.61.3.5 EFFECTIVE

DATE: August 1, 2018.
[6.61.3.5 NMAC - Rp, 6.61.3.5 NMAC, 8/1/2018]

6.61.3.6 OBJECTIVE: This rule governs the requirements for New Mexico licensure for persons seeking licensure in middle level education, grades 5 - 9.

[6.61.3.6 NMAC - Rp, 6.61.3.6 NMAC, 8/1/2018]

6.61.3.7 DEFINITIONS:

A. "Advisory" - means a middle level arrangement intended to insure that each student is part of a small peer group with an adult advisor or mentor where communication within the group is open and non-threatening.

B. "Early

adolescence” - means the developmental period that encompasses ages 10 through 15, or grades 5 - 9.

C. “Integrative curriculum” - means a curriculum model which coordinates or blends the interests of the learner into a unified whole, utilizing a variety of disciplines for investigating a central question.

D. “Interdisciplinary curriculum” - means a curriculum model designed to incorporate knowledge from two or more academic, scientific, or artistic disciplines.

E. “License” - means the professional certificate or credential which is issued upon completion of specified requirements and which designates the grade level(s) at which the holder is authorized to teach or administer.

F. “Middle level” - means grades 5 - 9.

G. “National board for professional teaching standards” - means a nonprofit, nongovernmental organization which operates a voluntary assessment system to grant national teacher certification to persons who meet an established set of national standards.

H. “Young adolescent” - means a student in grades 5 - 9.

I. “Core academic subjects” means English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

J. “A highly qualified beginning middle level teacher” under this rule means a teacher who is fully qualified to teach the core academic subjects in grades 5-9, is new to the profession, has pursued a standard path to licensure, and:

(1) meets the requirements for middle level licensure in Subsections A or C of 6.61.3.8 NMAC;

(2) has no licensure requirements waived on an

emergency or temporary basis, or for any other reason; and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

[6.61.3.7 NMAC - Rp, 6.61.3.7 NMAC, 8/1/2018]

6.61.3.8

REQUIREMENTS:

A. Persons seeking a teaching license or licensure endorsements pursuant to the provisions of this rule shall meet the following requirements in Paragraph (1) of Subsection A of 6.61.3.8 NMAC, or Subsection B of 6.61.3.8 NMAC, or Subsection C of 6.61.3.8 NMAC.

(1) bachelor’s degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 2017, the following:

(a) nine semester hours in communication;

(b) six semester hours in mathematics;

(c) eight semester hours in laboratory science;

(d) nine semester hours in social and behavioral science; and

(e) nine semester hours in humanities and fine arts.

(2) 30 - 36 semester hours of professional education in a middle level education program approved by the PED, including completion of the PED’s New Mexico middle level teacher competencies and a mandatory student teaching experience; and

(3) 24 semester hours in at least one teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas), six semester hours of which must be in upper division courses; individuals must also complete the PED’s approved competencies in the teaching field; and

(4) in addition to the requirements specified in Subsection A, Paragraphs (1), (3) and

(5) of 6.61.3.8 NMAC, three hours in the teaching of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(5) passage of all applicable portions of the current PED-approved teacher test; and

(6) satisfy the requirements of a highly qualified beginning middle level teacher; or

B. persons holding a standard New Mexico license in K-8 elementary education, 7-12 secondary education pre K-12 specialty area education, or pre K-12 special education; and

(1) five years of documented, successful teaching experience at the middle school level during the ten-year period immediately preceding the date of application for middle level education licensure; and

(2) has demonstrated competency in the academic subjects the teacher teaches by:

(a) passing the content knowledge test(s) of the New Mexico teacher assessments or predecessor New Mexico teacher licensure examinations, or accepted comparable licensure tests from another state in each subject the teacher teaches; or

(b) successfully completing an undergraduate academic major (24-36 semester hours), six semester hours of which must be in upper division courses or coursework equivalent to an undergraduate major, or a graduate degree in each subject area the teacher teaches; or

C. possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type. [6.61.3.8 NMAC - Rp, 6.61.3.8 NMAC, 8/1/2018]

6.61.3.9

IMPLEMENTATION: Persons who meet these requirements may obtain a license or endorsements at a level established by the PED unless

otherwise barred by New Mexico statute or PED rule.
[6.61.3.9 NMAC - Rp, 6.61.3.9 NMAC, 8/1/2018]

6.61.3.10 REFERENCED

MATERIAL: The New Mexico middle level teacher competencies follow:

- A. Learner development:**
- (1) The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.
 - (2) The teacher shall:
 - (a) regularly assess individual and group performance in order to design and modify instruction to meet learners' needs in each area of development (cognitive, linguistic, social, emotional and physical) and scaffolds the next level of development;
 - (b) create developmentally appropriate instruction that takes into account individual learners' strengths, interests, and needs and that enables each learner to advance and accelerate their learning;
 - (c) collaborate with families, communities, colleagues, and other professionals to promote learner growth and development;
 - (d) understand how learning occurs—how learners construct knowledge, acquire skills, and develop disciplined thinking processes—and knows how to use instructional strategies that promote student learning;
 - (e) understand that each learner's cognitive, linguistic, social, emotional, and physical development influences learning and knows how to make instructional decisions that build on learners' strengths and needs;
 - (f)

identify readiness for learning, and understands how development in any one area may affect performance in others;

- (g) understand the role of language and culture in learning and knows how to modify instruction to make language comprehensible and instruction relevant, accessible, and challenging;
 - (h) respect learners' differing strengths and needs and is committed to using the information to further each learner's development;
 - (i) commit to using learners' strengths as a basis for growth, and their misconceptions as opportunities for learning;
 - (j) take responsibility for promoting learners' growth and development; and
 - (k) value the input and contributions of families, colleagues, and other professionals in understanding and supporting each learner's development.
- B. Learning differences:**
- (1) The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.
 - (2) The teacher shall:
 - (a) design, adapt, and deliver instruction to address each student's diverse learning strengths and needs and creates opportunities for students to demonstrate their learning in different ways;
 - (b) make appropriate and timely provisions (e.g., pacing for individual rates of growth, task demands, communication, assessment and response modes) for individual students with particular learning differences or needs;
 - (c) design instruction to build on learners'

prior knowledge and experiences, allowing learners to accelerate as they demonstrate their understandings;

- (d) bring multiple perspectives to the discussion of content, including attention to learners' personal, family, and community experiences and cultural norms;
- (e) incorporate tools of language development into planning and instruction, including strategies for making content accessible to English language learners and for evaluating and supporting their development of English proficiency;
- (f) access resource, supports, and specialized assistance and services to meet particular learning differences or needs;
- (g) understand and identify differences in approaches to learning and performance and knows how to design instruction that uses each learner's strengths to promote growth;
- (h) understand students with exceptional needs, including those associated with disabilities and giftedness, and knows how to use strategies and resources to address these needs;
- (i) know about second language acquisition processes and knows how to incorporate instructional strategies and resources to support language acquisition;
- (j) understand that learners bring assets for learning based on their individual experiences, abilities, talents, prior learning, and peer and social group interactions, as well as language, culture, family and community values;
- (k) know how to access information about the values of diverse cultures and communities and how to incorporate learners' experiences, cultures and community resources into instruction;
- (l) believe that all learners can achieve at the high levels and persists in helping

each learner reach their potential;

(m)

respect learners as individuals with differing personal and family backgrounds and various skills, abilities, perspectives, talents and interests;

(n)

make learners feel valued and helps them learn to value each other; and

(o)

value diverse languages and dialects and seeks to integrate them into their instructional practice to engage students in learning.

C. Learning

environments:

(1) The

teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation.

(2) The

teacher shall:

(a)

collaborate with learners, families, and colleagues to build a safe, positive learning climate of openness, mutual respect, support, and inquiry;

(b)

develop learning experiences that engage learners in collaborative and self-directed learning and that extend learner interaction with ideas and people locally and globally;

(c)

collaborate with learners and colleagues to develop shared values and expectations for respectful interactions, rigorous academic discussions, and individual and group responsibility for quality work;

(d)

manage the learning environment to actively and equitably engage learners by organizing allocating, and coordinating resources of time, space, and learners' attention;

(e)

use a variety of methods to engage learners in evaluating the learning environment and collaborates with learners to make appropriate adjustments;

(f)

communicate verbally and

nonverbally in ways that demonstrate respect for and responsiveness to the cultural backgrounds and differing perspectives learners bring to the learning environment;

(g)

promote responsible learner use of interactive technologies to extend the possibilities for learning locally and globally;

(h)

intentionally build learner capacity to collaborate in face-to-face and virtual environments through applying effective interpersonal communication skills;

(i)

understand the relationship between motivation and engagement and knows how to design learning experiences using strategies that build learner self-direction and ownership of learning;

(j)

know how to help learners work productively and cooperatively with each other to achieve learning goals;

(k)

know how to collaborate with learners to establish and monitor elements of a safe and productive learning environment including norms, expectations, routines, and organizational structure;

(l)

understand how learner diversity can affect communication and knows how to communicate effectively in differing environments;

(m)

know how to use the technologies and how to guide learners to apply them in appropriate, safe and effective ways;

(n)

commit to working with learners, colleagues, families and communities to establish positive and supportive learning environments;

(o)

value the role of learners in promoting each other's learning and recognizes the importance of peer relationships in establishing a climate of learning;

(p)

commit to supporting learners as they participate in decision making, engage in exploration and invention, work collaboratively and independently,

and engage in purposeful learning;

(q)

seek to foster respectful communication among all members of the learning community; and

(r)

be thoughtful and responsive listener and observer.

D. Content knowledge:

(1) The

teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) they teach and creates learning experiences that make these aspects of the discipline accessible and meaningful to learners to assure mastery of the content.

(2) The

teacher shall:

(a)

effectively use multiple representations and explanations that capture key ideas in the discipline, guide learners through learning progressions, and promote each learner's achievement of content standards;

(b)

engage students in learning experiences in the discipline(s) that encourage learners to understand, question, and analyze ideas from diverse perspectives so that they master the content;

(c)

engage learners in applying methods of inquiry and standards of evidence used in the discipline;

(d)

stimulate learner reflection on prior content knowledge, links new concepts to familiar concepts, and makes connections to learners' new experiences;

(e)

recognize learner misconceptions in a discipline that interfere with learning, and create experiences to build accurate conceptual understanding;

(f)

evaluate and modifies instructional resources and curriculum materials for their comprehensiveness, accuracy for representing particular concepts in the discipline, and appropriateness for their learners;

(g)

use supplementary resources and technologies effectively to ensure accessibility and relevance for all learners;

(h)

create opportunities for students to learn, practice, and master academic language in their content;

(i)

access school and district based resources to evaluate the learner’s content knowledge in their primary language;

(j)

understand major concepts, assumptions, debates, processes of inquiry, and ways of knowing that are central to the discipline(s) they teach;

(k)

understand common misconceptions in learning the discipline and how to guide learners to accurate conceptual understanding;

(l)

know and use academic language of the discipline and knows how to make it accessible to learners;

(m)

know how to integrate culturally relevant content to build on learners’ background knowledge;

(n)

have a deep knowledge of student content standards and learning progression in the discipline(s) they teach;

(o)

realize that content knowledge is not a fixed body of facts but a complex, culturally situated, and ever evolving. The teacher keeps abreast of new ideas and understandings in the field;

(p)

appreciate multiple perspectives within the discipline and facilitates learners’ critical analysis of these perspectives;

(q)

recognize the potential bias in their presentation of the discipline and seeks to appropriately address problems of bias; and

(r)

commit to work toward each learner’s mastery of disciplinary content and skills.

E. Application of content:

(1)

The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

(2) The teacher shall:

(a)

develop and implement projects that guide learners in analyzing the complexities of an issue or question using perspectives from varied disciplines and cross-disciplinary skills(e.g., a water quality study that draws upon biology or chemistry to look at factual information and social studies to examine policy implications);

(b)

engage learners in applying content knowledge to real world problems through the lens of interdisciplinary themes (e.g., financial literacy, environmental literacy);

(c)

facilitate learners’ use of current tools and resources to maximize content learning in varied contexts;

(d)

engage learners in questioning and challenging assumptions and approaches in order to foster innovation and problem solving in local and global contexts;

(e)

develop learners’ communication skills in disciplinary and interdisciplinary contexts by creating meaningful opportunities to employ a variety of forms of communication that address varied audiences and purposes;

(f)

engage learners in generating and evaluating new ideas and novel approaches, seeking inventive solutions to problems, and developing original work;

(g)

facilitate learners’ ability to develop diverse social and cultural perspectives that expand their understanding of local and global issues and create novel approaches to solving problems;

(h)

develop and implements supports for learner literacy development across content areas;

(i)

understand the ways of knowing their discipline, how it relates to other disciplinary approaches to inquiry, and the strengths and limitations of each approach in addressing problems, issues and concerns;

(j)

understand how current interdisciplinary themes (e.g., civic literacy, health literacy, global awareness) connect to the core subjects and knows how to weave those themes into meaningful learning experiences;

(k)

understand the demands of acceding and managing information as well as how to evaluate issues of ethics and quality related to the information and its use;

(l)

understand how to use digital and interactive technologies for efficiently and effectively achieving specific learning goals;

(m)

understand critical thinking processes and knows how to help learners develop high level questioning skills to promote independent learning;

(n)

understand communication modes and skills as vehicles for learning (e.g., information gathering and processing) across disciplines as well as vehicles for expressing learning;

(o)

understand creative thinking processes and how to engage learners in producing original work.

(p)

know where and how to access resources to build global awareness and understanding, and how to integrate them into the curriculum;

(q)

constantly explore how to use disciplinary knowledge as a lens to address local and global issues;

(r)

value knowledge outside their own content area and how such knowledge enhances student learning; and

(s)

value flexible learning environments that encourage learner exploration, discovery, and expression across content areas.

F. Assessment:

(1) The teacher understands and uses multiple measures of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher’s and learner’s decision making.

(2) The teacher shall:

(a) balance the use of formative and summative assessment as appropriate to support, verify, and document learning;

(b) design assessments that match learning objectives with assessment methods and minimize sources of bias that can distort assessment results.

(c) work independently and collaboratively to examine test and other performance data to understand each learner’s progress and to guide planning;

(d) engage learners in understanding and identifying quality work and provides them with effective descriptive feedback to guide their progress toward that work;

(e) engage learners in multiple ways of demonstrating knowledge and skill as part of the assessment process;

(f) model and structure processes that guide learners in examining their own thinking and learning as well as the performance of others;

(g) use multiple and appropriate types of assessment data to identify each student’s learning needs and to develop differentiated learning experiences;

(h) prepare all learners for the demands of particular assessment formats and makes appropriate accommodations in assessments or testing conditions, especially for learners with disabilities and language learning needs;

(i) continually seek appropriate ways to employ technology to support assessment practice both to engage learners more fully and to assess and address learner needs;

(j) understand the differences between formative and summative applications of assessment and knows how and when to use each;

(k) understand the range of types and multiple purposes of assessment and how to design, adapt, or select appropriate assessments to address specific learning goals and individual differences, and to minimize sources of bias;

(l) know how to analyze assessment data to understand patterns and gaps in learning, to guide planning and instruction, and to provide meaningful feedback to all learners;

(m) know when and how to engage learners in analyzing their own assessment results and in helping set goals for their own learning;

(n) understand the positive impact of effective descriptive feedback for learners and knows a variety of strategies for communicating this feedback;

(o) know when and how to evaluate and report learner progress against standards;

(p) understand how to prepare learners for assessments and how to make accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs;

(q) commit to engaging learners actively in assessment processes and to developing each learner’s capacity to review and communicate about their own progress and learning;

(r) take responsibility for aligning instruction and assessment with learning goals;

(s)

commit to providing timely and effective descriptive feedback to learners on their progress;

(t) commit to using multiple types of assessment processes to support, verify, and document learning;

(u) commit to making accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs; and

(v) commit to the ethical use of various assessments and assessment data to identify learner strengths and needs to promote learner growth.

G. Planning for instruction:

(1) The teacher plans the instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

(2) The teacher shall:

(a) individually and collaboratively select and create learning experiences that are appropriate for curriculum goals and content standards, and are relevant to learners;

(b) plan how to achieve each student’s learning goals, choosing appropriate strategies and accommodations, resources, and materials to differentiate instruction for individuals and groups of learners;

(c) develop appropriate sequencing of learning experiences and provides multiple ways to demonstrate knowledge and skill;

(d) plan for instruction based on formative and summative assessment data, prior learner knowledge, and learner interest;

(e) plan collaboratively with professionals who have specialized expertise (e.g., special educators, related service providers, language

and learning specialists, librarians, media specialists) to design and jointly deliver as appropriate learning experiences that meet unique learning needs;

(f)

evaluate plans in relation to short and long-range goals and systematically adjusts plans to meet each student’s learning needs and enhance learning;

(g)

understand content and content standards and how these are organized in the curriculum;

(h)

understand how integrating cross-disciplinary skills in instruction engages learners purposefully in applying content knowledge;

(i)

understand learning theory, human development, cultural diversity, and individual differences and how these impact ongoing planning;

(j)

understand the strengths and needs of individual learners and how to plan instruction that is responsive to these strengths and needs;

(k)

know a range of evidence-based instructional strategies, resources, and technological tools and how to use them effectively to plan instruction that meets diverse learning needs;

(l)

know when and how to adjust plans based on assessment information and learner responses;

(m)

know when and how to access resources and collaborate with others to support student learning (e.g., special educators, related service providers, language learner specialists, librarians, media specialists, community organizations);

(n)

respect learners’ diverse strengths and needs and is committed to using this information to plan effective instruction;

(o)

value planning as a collegial activity that takes into consideration the input of learners, colleagues, families, and the larger community;

(p)

take professional responsibility to use short and long-term planning as a means of assuring student learning; and

(q)

believe that plans must always be open to adjustment and revision based on learner needs and changing circumstances.

H. Instructional strategies:

(1) The

teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

(2) The

teacher shall:

(a)

use appropriate strategies and resources to adapt instruction to the needs of individuals and groups of learners;

(b)

continuously monitor student learning, engages learners in assessing their progress, and adjusts instruction in response to student learning needs;

(c)

collaborate with learners to design and implement relevant learning experiences, identify their strengths, and access family and community resources to develop their areas of interest.

(d)

vary their role in the instructional process (e.g., instructor, facilitator, coach, audience) in relation to the content and purposes of instruction and the needs of learners;

(e)

provide multiple models and representations of concepts and skills with opportunities for learners to demonstrate their knowledge through a variety of products and performance;

(f)

engage all learners in developing higher order questioning skills and metacognitive processes;

(g)

engage learners in using a range of learning skills and technology tools to

access, interpret, evaluate, and apply information;

(h)

use a variety of instructional strategies to support and expand learners’ communication through speaking, listening, reading, writing, and other modes;

(i)

ask questions to stimulate discussion that serves different purposes (e.g., probing for learner understanding, helping learners articulate their ideas and thinking processes, stimulating curiosity, and helping learners to question);

(j)

understand the cognitive process associated with various kinds of learning (e.g., critical and creative thinking, problem framing and problem solving, invention, memorization and recall) and how these processes can be stimulated;

(k)

know how to apply a range of developmentally, culturally, and linguistically appropriate instructional strategies to achieve learning goals;

(l)

know when and how to use appropriate strategies to differentiate instruction and engage all learners in complex thinking and meaningful tasks;

(m)

understand how multiple forms of communication (oral, written, nonverbal, digital, visual) convey ideas, foster self-expression, and build relationships;

(n)

know how to use a wide variety of resources, including human and technological, to engage students in learning;

(o)

understand how content and skill development can be supported by media and technology and knows how to evaluate these resources for quality, accuracy, and effectiveness;

(p)

commit to deepening awareness and understanding the strengths and needs of diverse learners when planning and adjusting instruction;

(q)

value the variety of ways people communicate and encourage learners to develop and use multiple forms of communication;

(r)

commit to exploring how the use of new and emerging technologies can support and promote student learning; and

(s)

value flexibility and reciprocity in the teaching process as necessary for adapting instruction to learner responses, ideas, and needs.

I. Professional

learning and ethical practice:

(1)

The teacher engages in ongoing professional learning and uses evidence to continually evaluate their practice, particularly the effects of their choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner.

(2) The

teacher shall:

(a)

engage in ongoing learning opportunities to develop knowledge and skills in order to provide learners with engaging curriculum and learning experiences based on local and state standards;

(b)

engage in meaningful and appropriate professional learning experiences aligned with their own needs and the needs of the learners, school, and system;

(c)

independently and in collaboration with colleagues use a variety of data (e.g., systematic observation, information about learners, research) to evaluate the outcomes of teaching and learning and to adapt planning and practice;

(d)

actively seek professional community, and technological resources, within and outside the school, as supports for analysis, reflection and problem solving;

(e)

reflect on their personal biases and accesses resources to deepen their

own understanding of cultural, ethnic, gender, and learning differences to build stronger relationships and create more relevant learning experiences;

(f)

advocate, model, and teach safe, legal, and ethical use of information and technology including proper documentation of sources and respect for others in the use of social media;

(g)

understand and know how to use a variety of self-assessment and problem-solving strategies to analyze and reflect on their practice and to plan for adaptations and adjustments;

(h)

know how to use learner data to analyze practice and differentiate instruction accordingly;

(i)

understand how personal identity, worldview, and prior experience affect perceptions and expectations, and recognize how they may bias behaviors and interactions with others;

(j)

understand laws related to learners' rights and teacher responsibility (e.g., for educational equity, appropriate education for learners with disabilities, confidentiality, privacy, appropriate treatment of learners, reporting in situations related to possible child abuse);

(k)

The teacher knows how to build and implement a plan for professional growth directly aligned with their needs as a growing professional using feedback from teacher evaluations and observations, data on learner performance, and school and system-wide priorities;

(l)

take responsibility for student learning and uses on going analysis and reflection to improve planning and practice;

(m)

commit to deepening understanding of their own frames of references (e.g., culture, gender, language, abilities, ways of knowing), the potential biases in these frames, and their impact on expectations for and relationships with learners and their

families;

(n)

see themselves as a learner, continuously seeking opportunities to draw upon current education policy and research as sources of analysis and reflection to improve practice; and

(o)

understand expectations of the profession including codes of ethics, professional standards of practice, and relevant law and policy.

J. Leadership and

collaboration:

(1)

The teacher seeks appropriate leadership roles ad opportunities to tame responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession.

(2) The

teacher shall:

(a)

take an active role on the instructional team, giving and receiving feedback on practice, examining learn work, analyzing data from multiple sources, and sharing responsibility for decision making and accountability for each students learning;

(b)

work with other school professionals to plan and jointly facilitate learning on how to meet diverse needs of learners;

(c)

engage collaboratively in the school-wide effort to build a shared vision and supportive culture, identify common goals, and monitor and evaluate progress toward those goals;

(d)

work collaboratively with learners and their families to establish mutual expectations and ongoing communication to support learner development and achievement;

(e)

working with school colleagues build ongoing connections with community resources to enhance student learning and wellbeing;

(f)

engage in professional learning,

contributes to the knowledge and skill of others, and works collaboratively to advance professional practice;

(g)

use technological tools and a variety of communication strategies to build local and global learning communities that engage learners, families, and colleagues;

(h)

use and generate meaningful research on education issues an policy;

(i)

seek appropriate opportunities to model effective practice for colleagues, to lead professional learning activities, and to serve in other leadership roles;

(j)

advocate to meet the needs of learners, to strengthen the learning environment, and to enact system change;

(k)

take on leadership roles at the school, district, state, and national level and advocates for the school, the community, and the profession;

(l)

understand schools as organizations within a historical, cultural, political, and social context and knows how to work with others across the system to support learners;

(m)

understand that alignment of family, school, and community spheres of influence enhances student learning and that discontinuity in these spheres of influence interferes with learning;

(n)

know how to work with other adults and develop skills in collaborative interaction appropriate for both face-to-face and virtual contexts;

(o)

know how to contribute a common culture that supports high expectations for student learning;

(p)

actively share responsibility for shaping and supporting the mission of their school as one of the advocacy for learners and accountability for their success;

(q)

respect families' beliefs, norms, and expectations and seeks to work

collaboratively with learners and families in setting and meeting challenging goals;

(r)

take initiative to grow and develop with colleagues through interactions and enhance practice and support student learning;

(s)

take responsibility for contributing to and advancing the profession; and

(t)

embrace the challenge of continuous improvement and change.

[6.61.3.10 NMAC - Rp, 6.61.3.10 NMAC, 8/1/2018]

HISTORY OF 6.61.3 NMAC:

6.61.3 NMAC, Licensure in Middle Level Education, Grades 5-9, filed 9-30-1996, was repealed and replaced by 6.61.3 NMAC, Licensure in Middle Level Education, Grades 5-9, effective 8/1/2018.

History of Repealed Material:

6.61.3 NMAC, Licensure in Middle Level Education, Grades 5-9, filed 9-30-1996 - Repealed effective 8/1/2018.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION

CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS

PART 4 LICENSURE IN SECONDARY EDUCATION, GRADES 7-12

6.61.4.1 ISSUING

AGENCY: Public Education Department (PED).

[6.61.4.1 NMAC - Rp, 6.61.4.1 NMAC, 8/1/2018]

6.61.4.2 SCOPE: Chapter

61, Part 4 governs licensure in secondary education, grades 7-12, for those persons seeking such licensure.

[6.61.4.2 NMAC - Rp, 6.61.4.2 NMAC, 8/1/2018]

6.61.4.3 STATUTORY

AUTHORITY: Sections 22-2-1, 22-2-2 and 22-10A-6, NMSA 1978.

[6.61.4.3 NMAC - Rp, 6.61.4.3 NMAC, 8/1/2018]

6.61.4.4 DURATION:

Permanent.

[6.61.4.4 NMAC - Rp, 6.61.4.4 NMAC, 8/1/2018]

6.61.4.5 EFFECTIVE

DATE: August 1, 2018, unless a later date is cited in the history note at the end of a section.

[6.61.4.5 NMAC - Rp, 6.61.4.5 NMAC, 8/1/2018]

6.61.4.6 OBJECTIVE:

This rule governs licensure requirements in secondary education for grades 7-12 for persons seeking such licensure. It waives the requirement of this licensure for persons already holding a valid state secondary license as of June 30, 1989.

[6.61.4.6 NMAC - Rp, 6.61.4.6 NMAC, 8/1/2018]

6.61.4.7 DEFINITIONS:

A. "Core academic

subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos.

B. "A highly qualified

beginning secondary teacher", under this rule, means a teacher who is fully qualified to teach the core academic subjects in grades 7-12, who is new to the profession, who has pursued a standard route to licensure and who:

(1) meets

the requirements for secondary 7-12 licensure in Subsections A or B of 6.61.4.8 NMAC, and

(2) has no

licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has

passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.
[6.61.4.7 NMAC - Rp, 6.61.4.7 NMAC, 08/01/2018]

6.61.4.8 REQUIREMENTS:

A. persons seeking licensure in secondary education pursuant to the provisions of this rule shall meet the requirements of Subsection A or Subsection B of 6.61.4.8 NMAC.

(1) bachelor’s degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 2017, the following:

(a) nine semester hours in communication;

(b) six semester hours in mathematics;

(c) eight semester hours in laboratory science;

(d) nine semester hours in social and behavioral science;

(e) nine semester hours in humanities and fine arts; and

(2) credits from a regionally accredited college or university which include 24 - 30 semester hours of professional education in a secondary education program approved by the (PED) including completion of the PED’s approved functional areas and related competencies in professional education; and including:

(3) a mandatory student teaching component; and

(4) 24 - 36 semester hours in at least one teaching field such as mathematics, science(s), language arts, reading, or from among history, geography, economics, civics and government (or other content related areas), twelve hours of which must be in upper division courses as defined by the college or university; individuals must also complete the PED approved functional areas and related competencies in the teaching field; and

(5) in addition to the requirements specified in Paragraphs (1), (3), (4), (6) and (7) of Subsection A, of 6.61.4.8 NMAC, three hours in the teaching of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) passage of all portions of the current PED approved teacher test; and

(7) satisfy the requirements of a highly qualified beginning secondary teacher; or

B. possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.
[6.61.4.8 NMAC - Rp, 6.61.4.8 NMAC, 8/1/2018]

6.61.4.9 [RESERVED]
[6.61.4.9 NMAC - Rp, 6.61.4.9 NMAC, 8/1/2018]

6.61.4.10 REFERENCED MATERIAL: Competencies for entry level secondary teachers.

A. Learner development:

(1) The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.

(2) The teacher shall:

(a) regularly assess individual and group performance in order to design and modify instruction to meet learners’ needs in each area of development (cognitive, linguistic, social, emotional and physical) and scaffolds the next level of development;

(b) create developmentally appropriate instruction that takes into account individual learners’ strengths, interests, and needs and that enables each learner to advance and accelerate

their learning;
(c) collaborate with families, communities, colleagues, and other professionals to promote learner growth and development;

(d) understand how learning occurs—how learners construct knowledge, acquire skills, and develop disciplined thinking processes—and knows how to use instructional strategies that promote student learning;

(e) understand that each learner’s cognitive, linguistic, social, emotional, and physical development influences learning and knows how to make instructional decisions that build on learners’ strengths and needs;

(f) identify readiness for learning, and understands how development in any one area may affect performance in others;

(g) understand the role of language and culture in learning and knows how to modify instruction to make language comprehensible and instruction relevant, accessible, and challenging;

(h) respect learners’ differing strengths and needs and is committed to using the information to further each learner’s development;

(i) commit to using learners’ strengths as a basis for growth, and their misconceptions as opportunities for learning;

(j) take responsibility for promoting learners’ growth and development; and

(k) value the input and contributions of families, colleagues, and other professionals in understanding and supporting each learner’s development.

B. Learning differences:

(1) The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that

enable each learner to meet high standards.

(2) The teacher shall:

(a) design, adapt, and deliver instruction to address each student’s diverse learning strengths and needs and creates opportunities for students to demonstrate their learning in different ways;

(b) make appropriate and timely provisions (e.g., pacing for individual rates of growth, task demands, communication, assessment and response modes) for individual students with particular learning differences or needs;

(c) design instruction to build on learners’ prior knowledge and experiences, allowing learners to accelerate as they demonstrate their understandings;

(d) bring multiple perspectives to the discussion of content, including attention to learners’ personal, family, and community experiences and cultural norms;

(e) incorporate tools of language development into planning and instruction, including strategies for making content accessible to English language learners and for evaluating and supporting their development of English proficiency;

(f) access resource, supports, and specialized assistance and services to meet particular learning differences or needs;

(g) understand and identify differences in approaches to learning and performance and knows how to design instruction that uses each learner’s strengths to promote growth;

(h) understand students with exceptional needs, including those associated with disabilities and giftedness, and knows how to use strategies and resources to address these needs;

(i) know about second language acquisition processes and knows how

to incorporate instructional strategies and resources to support language acquisition;

(j) understand that learners bring assets for learning based on their individual experiences, abilities, talents, prior learning, and peer and social group interactions, as well as language, culture, family and community values;

(k) know how to access information about the values of diverse cultures and communities and how to incorporate learners’ experiences, cultures and community resources into instruction;

(l) believe that all learners can achieve at the high levels and persists in helping each learner reach their potential;

(m) respect learners as individuals with differing personal and family backgrounds and various skills, abilities, perspectives, talents and interests;

(n) make learners feel valued and helps them learn to value each other; and

(o) value diverse languages and dialects and seeks to integrate them into their instructional practice to engage students in learning.

C. Learning environments:

(1) The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation.

(2) The teacher shall:

(a) collaborate with learners, families, and colleagues to build a safe, positive learning climate of openness, mutual respect, support, and inquiry;

(b) develop learning experiences that engage learners in collaborative and self-directed learning and that extend learner interaction with ideas and people locally and globally;

(c) collaborate with learners and colleagues to develop shared values and expectations for respectful interactions, rigorous academic discussions, and individual and group responsibility for quality work;

(d) manage the learning environment to actively and equitably engage learners by organizing allocating, and coordinating resources of time, space, and learners’ attention;

(e) use a variety of methods to engage learners in evaluating the learning environment and collaborates with learners to make appropriate adjustments;

(f) communicate verbally and nonverbally in ways that demonstrate respect for and responsiveness to the cultural backgrounds and differing perspectives learners bring to the learning environment;

(g) promote responsible learner use of interactive technologies to extend the possibilities for learning locally and globally;

(h) intentionally build learner capacity to collaborate in face-to-face and virtual environments through applying effective interpersonal communication skills;

(i) understand the relationship between motivation and engagement and knows how to design learning experiences using strategies that build learner self-direction and ownership of learning;

(j) know how to help learners work productively and cooperatively with each other to achieve learning goals;

(k) know how to collaborate with learners to establish and monitor elements of a safe and productive learning environment including norms, expectations, routines, and organizational structure;

(l) understand how learner diversity can affect communication and knows

how to communicate effectively in differing environments;

(m)

know how to use the technologies and how to guide learners to apply them in appropriate, safe and effective ways;

(n)

commit to working with learners, colleagues, families and communities to establish positive and supportive learning environments;

(o)

value the role of learners in promoting each other's learning and recognizes the importance of peer relationships in establishing a climate of learning;

(p)

commit to supporting learners as they participate in decision making, engage in exploration and invention, work collaboratively and independently, and engage in purposeful learning;

(q)

seek to foster respectful communication among all members of the learning community; and

(r)

be thoughtful and responsive listener and observer.

D. Content knowledge:

(1) The

teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) they teach and creates learning experiences that make these aspects of the discipline accessible and meaningful to learners to assure mastery of the content.

(2) The

teacher shall:

(a)

effectively use multiple representations and explanations that capture key ideas in the discipline, guide learners through learning progressions, and promote each learner's achievement of content standards;

(b)

engage students in learning experiences in the discipline(s) that encourage learners to understand, question, and analyze ideas from diverse perspectives so that they master the content;

(c)

engage learners in applying methods

of inquiry and standards of evidence used in the discipline;

(d)

stimulate learner reflection on prior content knowledge, links new concepts to familiar concepts, and makes connections to learners' new experiences;

(e)

recognize learner misconceptions in a discipline that interfere with learning, and create experiences to build accurate conceptual understanding;

(f)

evaluate and modifies instructional resources and curriculum materials for their comprehensiveness, accuracy for representing particular concepts in the discipline, and appropriateness for their learners;

(g)

use supplementary resources and technologies effectively to ensure accessibility and relevance for all learners;

(h)

create opportunities for students to learn, practice, and master academic language in their content;

(i)

access school and district based resources to evaluate the learner's content knowledge in their primary language;

(j)

understand major concepts, assumptions, debates, processes of inquiry, and ways of knowing that are central to the discipline(s) they teach;

(k)

understand common misconceptions in learning the discipline and how to guide learners to accurate conceptual understanding;

(l)

know and use academic language of the discipline and knows how to make it accessible to learners;

(m)

know how to integrate culturally relevant content to build on learners' background knowledge;

(n)

have a deep knowledge of student content standards and learning progression in the discipline(s) they teach;

(o)

realize that content knowledge is not a fixed body of facts but a complex, culturally situated, and ever evolving. The teacher keeps abreast of new ideas and understandings in the field;

(p)

appreciate multiple perspectives within the discipline and facilitates learners' critical analysis of these perspectives;

(q)

recognize the potential bias in their presentation of the discipline and seeks to appropriately address problems of bias; and

(r)

commit to work toward each learner's mastery of disciplinary content and skills.

E. Application of

content:

(1)

The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

(2) The

teacher shall:

(a)

develop and implement projects that guide learners in analyzing the complexities of an issue or question using perspectives from varied disciplines and cross-disciplinary skills(e.g., a water quality study that draws upon biology or chemistry to look at factual information and social studies to examine policy implications);

(b)

engage learners in applying content knowledge to real world problems through the lens of interdisciplinary themes (e.g., financial literacy, environmental literacy);

(c)

facilitate learners' use of current tools and resources to maximize content learning in varied contexts;

(d)

engage learners in questioning and challenging assumptions and approaches in order to foster innovation and problem solving in local and global contexts;

(e)

develop learners' communication skills in disciplinary and interdisciplinary contexts by creating meaningful opportunities to employ a variety of forms of communication that address varied audiences and purposes;

(f)

engage learners in generating and evaluating new ideas and novel approaches, seeking inventive solutions to problems, and developing original work;

(g)

facilitate learners' ability to develop diverse social and cultural perspectives that expand their understanding of local and global issues and create novel approaches to solving problems;

(h)

develop and implements supports for learner literacy development across content areas;

(i)

understand the ways of knowing their discipline, how it relates to other disciplinary approaches to inquiry, and the strengths and limitations of each approach in addressing problems, issues and concerns;

(j)

understand how current interdisciplinary themes (e.g., civic literacy, health literacy, global awareness) connect to the core subjects and knows how to weave those themes into meaningful learning experiences;

(k)

understand the demands of acceding and managing information as well as how to evaluate issues of ethics and quality related to the information and its use;

(l)

understand how to use digital and interactive technologies for efficiently and effectively achieving specific learning goals;

(m)

understand critical thinking processes and knows how to help learners develop high level questioning skills to promote independent learning;

(n)

understand communication modes and skills as vehicles for learning (e.g.,

information gathering and processing) across disciplines as well as vehicles for expressing learning;

(o)

understand creative thinking processes and how to engage learners in producing original work;

(p)

know where and how to access resources to build global awareness and understanding, and how to integrate them into the curriculum;

(q)

constantly explore how to use disciplinary knowledge as a lens to address local and global issues;

(r)

value knowledge outside their own content area and how such knowledge enhances student learning; and

(s)

value flexible learning environments that encourage learner exploration, discovery, and expression across content areas.

F. Assessment:

(1) The

teacher understands and uses multiple measures of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making.

(2) The

teacher shall:

(a)

balance the use of formative and summative assessment as appropriate to support, verify, and document learning;

(b)

design assessments that match learning objectives with assessment methods and minimize sources of bias that can distort assessment results;

(c)

work independently and collaboratively to examine test and other performance data to understand each learner's progress and to guide planning;

(d)

engage learners in understanding and identifying quality work and provides them with effective descriptive feedback to guide their progress toward that work;

(e)

engage learners in multiple ways of demonstrating knowledge and skill as part of the assessment process;

(f)

model and structure processes that guide learners in examining their own thinking and learning as well as the performance of others;

(g)

use multiple and appropriate types of assessment data to identify each student's learning needs and to develop differentiated learning experiences;

(h)

prepare all learners for the demands of particular assessment formats and makes appropriate accommodations in assessments or testing conditions, especially for learners with disabilities and language learning needs;

(i)

continually seek appropriate ways to employ technology to support assessment practice both to engage learners more fully and to assess and address learner needs;

(j)

understand the differences between formative and summative applications of assessment and knows how and when to use each;

(k)

understand the range of types and multiple purposes of assessment and how to design, adapt, or select appropriate assessments to address specific learning goals and individual differences, and to minimize sources of bias;

(l)

know how to analyze assessment data to understand patterns and gaps in learning, to guide planning and instruction, and to provide meaningful feedback to all learners;

(m)

know when and how to engage learners in analyzing their own assessment results and in helping set goals for their own learning;

(n)

understand the positive impact of effective descriptive feedback for learners and knows a variety of strategies for communicating this feedback;

(o)

know when and how to evaluate and report learner progress against standards;

(p)

understand how to prepare learners for assessments and how to make accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs;

(q)

commit to engaging learners actively in assessment processes and to developing each learner’s capacity to review and communicate about their own progress and learning;

(r)

take responsibility for aligning instruction and assessment with learning goals;

(s)

commit to providing timely and effective descriptive feedback to learners on their progress;

(t)

commit to using multiple types of assessment processes to support, verify, and document learning;

(u)

commit to making accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs; and

(v)

commit to the ethical use of various assessments and assessment data to identify learner strengths and needs to promote learner growth.

G. Planning for instruction:

(1) The

teacher plans the instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

(2) The

teacher shall:

(a)

individually and collaboratively select and create learning experiences that are appropriate for curriculum goals and content standards, and are relevant to learners;

(b)

plan how to achieve each student’s learning goals, choosing appropriate strategies and accommodations, resources, and materials to differentiate instruction for individuals and groups of learners;

(c)

develop appropriate sequencing of learning experiences and provides multiple ways to demonstrate knowledge and skill;

(d)

plan for instruction based on formative and summative assessment data, prior learner knowledge, and learner interest;

(e)

plan collaboratively with professionals who have specialized expertise (e.g., special educators, related service providers, language and learning specialists, librarians, media specialists) to design and jointly deliver as appropriate learning experiences that meet unique learning needs;

(f)

evaluate plans in relation to short and long-range goals and systematically adjusts plans to meet each student’s learning needs and enhance learning;

(g)

understand content and content standards and how these are organized in the curriculum;

(h)

understand how integrating cross-disciplinary skills in instruction engages learners purposefully in applying content knowledge;

(i)

understand learning theory, human development, cultural diversity, and individual differences and how these impact ongoing planning;

(j)

understand the strengths and needs of individual learners and how to plan instruction that is responsive to these strengths and needs;

(k)

know a range of evidence-based instructional strategies, resources, and technological tools and how to use them effectively to plan instruction that meets diverse learning needs;

(l)

know when and how to adjust plans

based on assessment information and learner responses;

(m)

know when and how to access resources and collaborate with others to support student learning (e.g., special educators, related service providers, language learner specialists, librarians, media specialists, community organizations);

(n)

respect learners’ diverse strengths and needs and is committed to using this information to plan effective instruction;

(o)

value planning as a collegial activity that takes into consideration the input of learners, colleagues, families, and the larger community;

(p)

take professional responsibility to use short and long-term planning as a means of assuring student learning; and

(q)

believe that plans must always be open to adjustment and revision based on learner needs and changing circumstances.

H. Instructional strategies:

(1) The

teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

(2) The

teacher shall:

(a)

use appropriate strategies and resources to adapt instruction to the needs of individuals and groups of learners;

(b)

continuously monitor student learning, engages learners in assessing their progress, and adjusts instruction in response to student learning needs;

(c)

collaborate with learners to design and implement relevant learning experiences, identify their strengths, and access family and community resources to develop their areas of

interest;

(d) vary their role in the instructional process (e.g., instructor, facilitator, coach, audience) in relation to the content and purposes of instruction and the needs of learners;

(e) provide multiple models and representations of concepts and skills with opportunities for learners to demonstrate their knowledge through a variety of products and performance;

(f) engage all learners in developing higher order questioning skills and metacognitive processes;

(g) engage learners in using a range of learning skills and technology tools to access, interpret, evaluate, and apply information;

(h) use a variety of instructional strategies to support and expand learners' communication through speaking, listening, reading, writing, and other modes;

(i) ask questions to stimulate discussion that serves different purposes (e.g., probing for learner understanding, helping learners articulate their ideas and thinking processes, stimulating curiosity, and helping learners to question);

(j) understand the cognitive process associated with various kinds of learning (e.g., critical and creative thinking, problem framing and problem solving, invention, memorization and recall) and how these processes can be stimulated;

(k) know how to apply a range of developmentally, culturally, and linguistically appropriate instructional strategies to achieve learning goals;

(l) know when and how to use appropriate strategies to differentiate instruction and engage all learners in complex thinking and meaningful tasks;

(m) understand how multiple forms

of communication (oral, written, nonverbal, digital, visual) convey ideas, foster self-expression, and build relationships;

(n) know how to use a wide variety of resources, including human and technological, to engage students in learning;

(o) understand how content and skill development can be supported by media and technology and knows how to evaluate these resources for quality, accuracy, and effectiveness;

(p) commit to deepening awareness and understanding the strengths and needs of diverse learners when planning and adjusting instruction;

(q) value the variety of ways people communicate and encourage learners to develop and use multiple forms of communication;

(r) commit to exploring how the use of new and emerging technologies can support and promote student learning; and

(s) value flexibility and reciprocity in the teaching process as necessary for adapting instruction to learner responses, ideas, and needs.

I. Professional learning and ethical practice:

(1) The teacher engages in ongoing professional learning and uses evidence to continually evaluate their practice, particularly the effects of their choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner.

(2) The teacher shall:

(a) engage in ongoing learning opportunities to develop knowledge and skills in order to provide learners with engaging curriculum and learning experiences based on local and state standards;

(b) engage in meaningful and appropriate

professional learning experiences aligned with their own needs and the needs of the learners, school, and system;

(c) independently and in collaboration with colleagues use a variety of data (e.g., systematic observation, information about learners, research) to evaluate the outcomes of teaching and learning and to adapt planning and practice;

(d) actively seek professional community, and technological resources, within and outside the school, as supports for analysis, reflection and problem solving;

(e) reflect on their personal biases and accesses resources to deepen their own understanding of cultural, ethnic, gender, and learning differences to build stronger relationships and create more relevant learning experiences;

(f) advocate, model, and teach safe, legal, and ethical use of information and technology including proper documentation of sources and respect for others in the use of social media;

(g) understand and know how to use a variety of self-assessment and problem-solving strategies to analyze and reflect on their practice and to plan for adaptations and adjustments;

(h) know how to use learner data to analyze practice and differentiate instruction accordingly;

(i) understand how personal identity, worldview, and prior experience affect perceptions and expectations, and recognize how they may bias behaviors and interactions with others;

(j) understand laws related to learners' rights and teacher responsibility (e.g., for educational equity, appropriate education for learners with disabilities, confidentiality, privacy, appropriate treatment of learners, reporting in situations related to possible child abuse);

(k)

The teacher knows how to build and implement a plan for professional growth directly aligned with their needs as a growing professional using feedback from teacher evaluations and observations, data on learner performance, and school and system-wide priorities;

(l)

take responsibility for student learning and uses on going analysis and reflection to improve planning and practice;

(m)

commit to deepening understanding of their own frames of references (e.g., culture, gender, language, abilities, ways of knowing), the potential biases in these frames, and their impact on expectations for and relationships with learners and their families;

(n)

see themselves as a learner, continuously seeking opportunities to draw upon current education policy and research as sources of analysis and reflection to improve practice; and

(o)

understand expectations of the profession including codes of ethics, professional standards of practice, and relevant law and policy.

J. Leadership and collaboration:

(1) The

teacher seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession.

(2) The

teacher shall:

(a)

take an active role on the instructional team, giving and receiving feedback on practice, examining learn work, analyzing data from multiple sources, and sharing responsibility for decision making and accountability for each students learning;

(b)

work with other school professionals to plan and jointly facilitate learning

on how to meet diverse needs of learners;

(c)

engage collaboratively in the school-wide effort to build a shared vision and supportive culture, identify common goals, and monitor and evaluate progress toward those goals;

(d)

work collaboratively with learners and their families to establish mutual expectations and ongoing communication to support learner development and achievement;

(e)

working with school colleagues build ongoing connections with community resources to enhance student learning and wellbeing;

(f)

engage in professional learning, contributes to the knowledge and skill of others, and works collaboratively to advance professional practice;

(g)

use technological tools and a variety of communication strategies to build local and global learning communities that engage learners, families, and colleagues;

(h)

use and generate meaningful research on education issues an policy;

(i)

seek appropriate opportunities to model effective practice for colleagues, to lead professional learning activities, and to serve in other leadership roles;

(j)

advocate to meet the needs of learners, to strengthen the learning environment, and to enact system change;

(k)

take on leadership roles at the school, district, state, and national level and advocates for the school, the community, and the profession;

(l)

understand schools as organizations within a historical, cultural, political, and social context and knows how to work with others across the system to support learners;

(m)

understand that alignment of family, school, and community spheres of

influence enhances student learning and that discontinuity in these spheres of influence interferes with learning;

(n)

know how to work with other adults and develop skills in collaborative interaction appropriate for both face-to-face and virtual contexts;

(o)

know how to contribute a common culture that supports high expectations for student learning;

(p)

actively share responsibility for shaping and supporting the mission of their school as one of the advocacy for learners and accountability for their success;

(q)

respect families' beliefs, norms, and expectations and seeks to work collaboratively with learners and families in setting and meeting challenging goals;

(r)

take initiative to grow and develop with colleagues through interactions and enhance practice and support student learning;

(s)

take responsibility for contributing to and advancing the profession; and

(t)

embrace the challenge of continuous improvement and change.

[6.61.4.10 NMAC - Rp, 6.61.4.10 NMAC, 8/1/2018]

HISTORY OF 6.61.4 NMAC:

PRE-NMAC HISTORY: The material in this part was derived from that previously filed with the State Records Center and Archives under: SBE Regulation No. 71-26 Continuing Five Year Secondary Certificate, filed August 28, 1978; SBE Regulation No. 72-3 Four Year Provisional Secondary Certificate, filed February 17, 1972; SBE Regulation No. 72-4 Five Year Secondary Certificate, filed February 17, 1972; SBE Regulation No. 76-4 Four Year Standard Secondary Certificate, filed March 26, 1976; SBE Regulation No. 78-20 Four Year Standard Secondary Certificate, filed November 28, 1978;

SBE Regulation No. 78-24 Ten Year Professional Secondary Licensure, filed November 28, 1978;
 SBE Regulation No. 86-9 Licensure in Secondary Education, Grades 7-12, filed January 19, 1987;
 SBE Regulation No. 86-10 Licensure in Secondary Education, filed February 20, 1987;
 SBE Regulation No. 87-4 Licensure in Secondary Education, Grades 7-12, filed June 18, 1987;
 SBE Regulation No. 87-4 Amendment No. 1 Licensure in Secondary Education, Grades 7-12, filed December 4, 1990;
 SBE Regulation No. 87-4 Amendment No. 2 Licensure in Secondary Education, Grades 7-12, filed April 3, 1995.

History of Repealed Material:

6.61.4 NMAC, Licensure in Secondary Education, Grades 7-12, filed 11/14/1998 - Repealed effective 8/1/2018.

Other History of 6.61.4 NMAC:

6.61.4 NMAC, Licensure in Secondary Education, Grades 7-12, filed 11/14/1998, was repealed and replaced by 6.61.4 NMAC, Licensure in Secondary Education, Grades 7-12, effective 8/1/2018.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
 CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS
 PART 5 LICENSURE FOR GRADES PRE K-12**

6.61.5.1 ISSUING AGENCY: Public Education Department (PED).
 [6.61.5.1 NMAC - Rp, 6.61.5.1 NMAC, 8/1/2018]

6.61.5.2 SCOPE: Chapter 61, Part 5, governs licensure in grades pre K-12, for those persons seeking such licensure.

[6.61.5.2 NMAC - Rp, 6.61.5.2 NMAC, 8/1/2018]

6.61.5.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2 and 22-10A-6, NMSA 1978.

[6.61.5.3 NMAC - Rp, 6.61.5.3 NMAC, 8/1/2018]

6.61.5.4 DURATION: Permanent.
 [6.61.5.4 NMAC - Rp, 6.61.5.4 NMAC, 8/1/2018]

6.61.5.5 EFFECTIVE DATE: August 1, 2018, unless a later date is cited at the end of a section.
 [6.61.5.5 NMAC - Rp, 6.61.5.5 NMAC, 8/1/2018]

6.61.5.6 OBJECTIVE: This rule governs licensure requirements in grades pre K-12 for those persons seeking such licensure.
 [6.61.5.6 NMAC - Rp, 6.61.5.6 NMAC, 8/1/2018]

6.61.5.7 DEFINITIONS:

A. "Core academic subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos.

B. "A highly qualified beginning pre K-12 teacher", under this rule, means a teacher who is fully qualified to teach the core academic subjects in grades pre K-12, who is new to the profession, who has pursued a standard route to licensure and who:

(1) meets the requirements for pre K-12 licensure in Subsections A or B in 6.61.5.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8

NMAC.

C. "Pre-kindergarten" means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1. [6.61.5.7 NMAC - Rp, 6.61.5.7 NMAC, 08/01/2018]

6.61.5.8 REQUIREMENTS:

A. persons seeking pre K-12 licensure pursuant to the provisions of this rule shall meet the requirements of Subsection A of 6.61.5.8 NMAC or Subsection B of 6.61.5.8 NMAC.

(1) bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 2017, the following:

(a) nine semester hours in communication;

(b) six semester hours in mathematics;

(c) eight semester hours in laboratory science;

(d) nine semester hours in social and behavioral science;

(e) nine semester hours in humanities and fine arts; and

(2) credits from a regionally accredited college or university which include 24 – 36 semester hours of professional education in an education program approved by the public education department (PED), including completion of the PED approved functional areas and related competencies in professional education for grades pre K-12; and including

(a) a mandatory student teaching component; and

(b) 24 to 36 semester hours in at least one teaching field such as mathematics, science(s), language arts, reading, or from among history, geography, economics, civics and government (or other content related areas), 12 hours of which must be in upper

division courses as defined by the college or university; individuals must also complete the PED approved functional areas and related competencies in the teaching field; and

(3) in addition to the requirements specified in Paragraphs (1), (2) and (4) of Subsection A of 6.61.5.8 NMAC, three hours in the teaching of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(4) passage of all portions of the New Mexico teacher assessments or any successor teacher examination adopted by the PED; and

(5) satisfy the requirements of a highly qualified beginning pre K-12 teacher; or

B. Possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type. [6.61.5.8 NMAC - Rp, 6.61.5.8 NMAC, 8/1/2018]

6.61.5.9 IMPLEMENTATION:

All persons holding a valid pre K-12 New Mexico license or endorsement on June 30, 1989 shall be entitled to pre K-12 licensure. Such licensure may be further continued pursuant to rule(s) as established by the PED. [6.61.5.9 NMAC - Rp, 6.61.5.9 NMAC, 8/1/2018]

6.61.5.10 REFERENCED MATERIAL:

Competencies for entry level pre K-12 teachers

A. Learner development:

(1) The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.

(2) The teacher shall:

(a) regularly assess individual and group performance in order to design and modify instruction to meet learners' needs in each area of development (cognitive, linguistic, social, emotional and physical) and scaffolds the next level of development;

(b) create developmentally appropriate instruction that takes into account individual learners' strengths, interests, and needs and that enables each learner to advance and accelerate their learning;

(c) collaborate with families, communities, colleagues, and other professionals to promote learner growth and development;

(d) understand how learning occurs - how learners construct knowledge, acquire skills, and develop disciplined thinking processes - and knows how to use instructional strategies that promote student learning;

(e) understand that each learner's cognitive, linguistic, social, emotional, and physical development influences learning and knows how to make instructional decisions that build on learners' strengths and needs;

(f) identify readiness for learning, and understands how development in any one area may affect performance in others;

(g) understand the role of language and culture in learning and knows how to modify instruction to make language comprehensible and instruction relevant, accessible, and challenging;

(h) respect learners' differing strengths and needs and is committed to using the information to further each learner's development;

(i) commit to using learners' strengths as a basis for growth, and their misconceptions as opportunities for learning;

(j) take responsibility for promoting learners' growth and development;

and

(k) value the input and contributions of families, colleagues, and other professionals in understanding and supporting each learner's development.

B. Learning differences:

(1) The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.

(2) The teacher shall:

(a) design, adapt, and deliver instruction to address each student's diverse learning strengths and needs and creates opportunities for students to demonstrate their learning in different ways;

(b) make appropriate and timely provisions (e.g., pacing for individual rates of growth, task demands, communication, assessment and response modes) for individual students with particular learning differences or needs;

(c) design instruction to build on learners' prior knowledge and experiences, allowing learners to accelerate as they demonstrate their understandings;

(d) bring multiple perspectives to the discussion of content, including attention to learners' personal, family, and community experiences and cultural norms;

(e) incorporate tools of language development into planning and instruction, including strategies for making content accessible to English language learners and for evaluating and supporting their development of English proficiency;

(f) access resource, supports, and specialized assistance and services to meet particular learning differences or needs;

(g)

understand and identify differences in approaches to learning and performance and knows how to design instruction that uses each learner’s strengths to promote growth;

(h)

understand students with exceptional needs, including those associated with disabilities and giftedness, and knows how to use strategies and resources to address these needs;

(i)

know about second language acquisition processes and knows how to incorporate instructional strategies and resources to support language acquisition;

(j)

understand that learners bring assets for learning based on their individual experiences, abilities, talents, prior learning, and peer and social group interactions, as well as language, culture, family and community values;

(k)

know how to access information about the values of diverse cultures and communities and how to incorporate learners’ experiences, cultures and community resources into instruction;

(l)

believe that all learners can achieve at the high levels and persists in helping each learner reach their potential;

(m)

respect learners as individuals with differing personal and family backgrounds and various skills, abilities, perspectives, talents and interests;

(n)

make learners feel valued and helps them learn to value each other; and

(o)

value diverse languages and dialects and seeks to integrate them into their instructional practice to engage students in learning.

C. Learning environments:

(1) The

teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and

self-motivation.

(2) The

teacher shall:

(a)

collaborate with learners, families, and colleagues to build a safe, positive learning climate of openness, mutual respect, support, and inquiry;

(b)

develop learning experiences that engage learners in collaborative and self-directed learning and that extend learner interaction with ideas and people locally and globally;

(c)

collaborate with learners and colleagues to develop shared values and expectations for respectful interactions, rigorous academic discussions, and individual and group responsibility for quality work;

(d)

manage the learning environment to actively and equitably engage learners by organizing allocating, and coordinating resources of time, space, and learners’ attention;

(e)

use a variety of methods to engage learners in evaluating the learning environment and collaborates with learners to make appropriate adjustments;

(f)

communicate verbally and nonverbally in ways that demonstrate respect for and responsiveness to the cultural backgrounds and differing perspectives learners bring to the learning environment;

(g)

promote responsible learner use of interactive technologies to extend the possibilities for learning locally and globally;

(h)

intentionally build learner capacity to collaborate in face-to-face and virtual environments through applying effective interpersonal communication skills;

(i)

understand the relationship between motivation and engagement and knows how to design learning experiences using strategies that build learner self-direction and ownership of learning;

(j)

know how to help learners work productively and cooperatively with each other to achieve learning goals;

(k)

know how to collaborate with learners to establish and monitor elements of a safe and productive learning environment including norms, expectations, routines, and organizational structure;

(l)

understand how learner diversity can affect communication and knows how to communicate effectively in differing environments;

(m)

know how to use the technologies and how to guide learners to apply them in appropriate, safe and effective ways;

(n)

commit to working with learners, colleagues, families and communities to establish positive and supportive learning environments;

(o)

value the role of learners in promoting each other’s learning and recognizes the importance of peer relationships in establishing a climate of learning;

(p)

commit to supporting learners as they participate in decision making, engage in exploration and invention, work collaboratively and independently, and engage in purposeful learning;

(q)

seek to foster respectful communication among all members of the learning community; and

(r)

be thoughtful and responsive listener and observer.

D. Content knowledge:

(1) The

teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) they teach and creates learning experiences that make these aspects of the discipline accessible and meaningful to learners to assure mastery of the content.

(2) The

teacher shall:

(a)

effectively use multiple representations and explanations that

capture key ideas in the discipline, guide learners through learning progressions, and promote each learner’s achievement of content standards;

(b)

engage students in learning experiences in the discipline(s) that encourage learners to understand, question, and analyze ideas from diverse perspectives so that they master the content;

(c)

engage learners in applying methods of inquiry and standards of evidence used in the discipline;

(d)

stimulate learner reflection on prior content knowledge, links new concepts to familiar concepts, and makes connections to learners’ new experiences;

(e)

recognize learner misconceptions in a discipline that interfere with learning, and create experiences to build accurate conceptual understanding;

(f)

evaluate and modifies instructional resources and curriculum materials for their comprehensiveness, accuracy for representing particular concepts in the discipline, and appropriateness for their learners;

(g)

use supplementary resources and technologies effectively to ensure accessibility and relevance for all learners;

(h)

create opportunities for students to learn, practice, and master academic language in their content;

(i)

access school and district based resources to evaluate the learner’s content knowledge in their primary language;

(j)

understand major concepts, assumptions, debates, processes of inquiry, and ways of knowing that are central to the discipline(s) they teach;

(k)

understand common misconceptions in learning the discipline and how to guide learners to accurate conceptual understanding;

(l)

know and use academic language of the discipline and knows how to make it accessible to learners;

(m)

know how to integrate culturally relevant content to build on learners’ background knowledge;

(n)

have a deep knowledge of student content standards and learning progression in the discipline(s) they teach;

(o)

realize that content knowledge is not a fixed body of facts but a complex, culturally situated, and ever evolving. The teacher keeps abreast of new ideas and understandings in the field;

(p)

appreciate multiple perspectives within the discipline and facilitates learners’ critical analysis of these perspectives; and

(q)

recognize the potential bias in their presentation of the discipline and seeks to appropriately address problems of bias.

(r)

commit to work toward each learner’s mastery of disciplinary content and skills.

E. Application of

content:

(1)

The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

(2) The

teacher shall:

(a)

develop and implement projects that guide learners in analyzing the complexities of an issue or question using perspectives from varied disciplines and cross-disciplinary skills(e.g., a water quality study that draws upon biology or chemistry to look at factual information and social studies to examine policy implications);

(b)

engage learners in applying content knowledge to real world problems

through the lens of interdisciplinary themes (e.g., financial literacy, environmental literacy);

(c)

facilitate learners’ use of current tools and resources to maximize content learning in varied contexts;

(d)

engage learners in questioning and challenging assumptions and approaches in order to foster innovation and problem solving in local and global contexts;

(e)

develop learners’ communication skills in disciplinary and interdisciplinary contexts by creating meaningful opportunities to employ a variety of forms of communication that address varied audiences and purposes;

(f)

engage learners in generating and evaluating new ideas and novel approaches, seeking inventive solutions to problems, and developing original work;

(g)

facilitate learners’ ability to develop diverse social and cultural perspectives that expand their understanding of local and global issues and create novel approaches to solving problems;

(h)

develop and implements supports for learner literacy development across content areas;

(i)

understand the ways of knowing their discipline, how it relates to other disciplinary approaches to inquiry, and the strengths and limitations of each approach in addressing problems, issues and concerns;

(j)

understand how current interdisciplinary themes (e.g., civic literacy, health literacy, global awareness) connect to the core subjects and knows how to weave those themes into meaningful learning experiences;

(k)

understand the demands of acceding and managing information as well as how to evaluate issues of ethics and quality related to the information and

its use;

(l)

understand how to use digital and interactive technologies for efficiently and effectively achieving specific learning goals;

(m)

understand critical thinking processes and knows how to help learners develop high level questioning skills to promote independent learning;

(n)

understand communication modes and skills as vehicles for learning (e.g., information gathering and processing) across disciplines as well as vehicles for expressing learning;

(o)

understand creative thinking processes and how to engage learners in producing original work;

(p)

know where and how to access resources to build global awareness and understanding, and how to integrate them into the curriculum;

(q)

constantly explore how to use disciplinary knowledge as a lens to address local and global issues;

(r)

value knowledge outside their own content area and how such knowledge enhances student learning; and

(s)

value flexible learning environments that encourage learner exploration, discovery, and expression across content areas.

F. Assessment:

(1) The teacher understands and uses multiple measures of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making.

(2) The teacher shall:

(a)

balance the use of formative and summative assessment as appropriate to support, verify, and document learning;

(b)

design assessments that match learning objectives with assessment methods and minimize sources of bias

that can distort assessment results;

(c)

work independently and collaboratively to examine test and other performance data to understand each learner's progress and to guide planning;

(d)

engage learners in understanding and identifying quality work and provides them with effective descriptive feedback to guide their progress toward that work;

(e)

engage learners in multiple ways of demonstrating knowledge and skill as part of the assessment process;

(f)

model and structure processes that guide learners in examining their own thinking and learning as well as the performance of others;

(g)

use multiple and appropriate types of assessment data to identify each student's learning needs and to develop differentiated learning experiences;

(h)

prepare all learners for the demands of particular assessment formats and makes appropriate accommodations in assessments or testing conditions, especially for learners with disabilities and language learning needs;

(i)

continually seek appropriate ways to employ technology to support assessment practice both to engage learners more fully and to assess and address learner needs;

(j)

understand the differences between formative and summative applications of assessment and knows how and when to use each;

(k)

understand the range of types and multiple purposes of assessment and how to design, adapt, or select appropriate assessments to address specific learning goals and individual differences, and to minimize sources of bias;

(l)

know how to analyze assessment data to understand patterns and gaps in learning, to guide planning and

instruction, and to provide meaningful feedback to all learners;

(m)

know when and how to engage learners in analyzing their own assessment results and in helping set goals for their own learning;

(n)

understand the positive impact of effective descriptive feedback for learners and knows a variety of strategies for communicating this feedback;

(o)

know when and how to evaluate and report learner progress against standards;

(p)

understand how to prepare learners for assessments and how to make accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs;

(q)

commit to engaging learners actively in assessment processes and to developing each learner's capacity to review and communicate about their own progress and learning;

(r)

take responsibility for aligning instruction and assessment with learning goals;

(s)

commit to providing timely and effective descriptive feedback to learners on their progress;

(t)

commit to using multiple types of assessment processes to support, verify, and document learning;

(u)

commit to making accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs; and

(v)

commit to the ethical use of various assessments and assessment data to identify learner strengths and needs to promote learner growth.

G. Planning for instruction:

(1) The teacher plans the instruction that supports every student in meeting rigorous learning goals by drawing

upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

(2) The teacher shall:

(a) individually and collaboratively select and create learning experiences that are appropriate for curriculum goals and content standards, and are relevant to learners;

(b) plan how to achieve each student's learning goals, choosing appropriate strategies and accommodations, resources, and materials to differentiate instruction for individuals and groups of learners;

(c) develop appropriate sequencing of learning experiences and provides multiple ways to demonstrate knowledge and skill;

(d) plan for instruction based on formative and summative assessment data, prior learner knowledge, and learner interest;

(e) plan collaboratively with professionals who have specialized expertise (e.g., special educators, related service providers, language and learning specialists, librarians, media specialists) to design and jointly deliver as appropriate learning experiences that meet unique learning needs;

(f) evaluate plans in relation to short and long-range goals and systematically adjusts plans to meet each student's learning needs and enhance learning;

(g) understand content and content standards and how these are organized in the curriculum;

(h) understand how integrating cross-disciplinary skills in instruction engages learners purposefully in applying content knowledge;

(i) understand learning theory, human development, cultural diversity, and individual differences and how these

impact ongoing planning;

(j) understand the strengths and needs of individual learners and how to plan instruction that is responsive to these strengths and needs;

(k) know a range of evidence-based instructional strategies, resources, and technological tools and how to use them effectively to plan instruction that meets diverse learning needs;

(l) know when and how to adjust plans based on assessment information and learner responses;

(m) know when and how to access resources and collaborate with others to support student learning (e.g., special educators, related service providers, language learner specialists, librarians, media specialists, community organizations);

(n) respect learners' diverse strengths and needs and is committed to using this information to plan effective instruction;

(o) value planning as a collegial activity that takes into consideration the input of learners, colleagues, families, and the larger community;

(p) take professional responsibility to use short and long-term planning as a means of assuring student learning; and

(q) believe that plans must always be open to adjustment and revision based on learner needs and changing circumstances.

H. Instructional strategies:

(1) The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

(2) The teacher shall:

(a) use appropriate strategies and

resources to adapt instruction to the needs of individuals and groups of learners;

(b) continuously monitor student learning, engages learners in assessing their progress, and adjusts instruction in response to student learning needs;

(c) collaborate with learners to design and implement relevant learning experiences, identify their strengths, and access family and community resources to develop their areas of interest;

(d) vary their role in the instructional process (e.g., instructor, facilitator, coach, audience) in relation to the content and purposes of instruction and the needs of learners;

(e) provide multiple models and representations of concepts and skills with opportunities for learners to demonstrate their knowledge through a variety of products and performance;

(f) engage all learners in developing higher order questioning skills and metacognitive processes;

(g) engage learners in using a range of learning skills and technology tools to access, interpret, evaluate, and apply information;

(h) use a variety of instructional strategies to support and expand learners' communication through speaking, listening, reading, writing, and other modes;

(i) ask questions to stimulate discussion that serves different purposes (e.g., probing for learner understanding, helping learners articulate their ideas and thinking processes, stimulating curiosity, and helping learners to question);

(j) understand the cognitive process associated with various kinds of learning (e.g., critical and creative thinking, problem framing and problem solving, invention, memorization and recall) and how

these processes can be stimulated;
(k)
 know how to apply a range of developmentally, culturally, and linguistically appropriate instructional strategies to achieve learning goals;
(l)
 know when and how to use appropriate strategies to differentiate instruction and engage all learners in complex thinking and meaningful tasks;
(m)
 understand how multiple forms of communication (oral, written, nonverbal, digital, visual) convey ideas, foster self-expression, and build relationships;
(n)
 know how to use a wide variety of resources, including human and technological, to engage students in learning;
(o)
 understand how content and skill development can be supported by media and technology and knows how to evaluate these resources for quality, accuracy, and effectiveness;
(p)
 commit to deepening awareness and understanding the strengths and needs of diverse learners when planning and adjusting instruction;
(q)
 value the variety of ways people communicate and encourage learners to develop and use multiple forms of communication;
(r)
 commit to exploring how the use of new and emerging technologies can support and promote student learning; and
(s)
 value flexibility and reciprocity in the teaching process as necessary for adapting instruction to learner responses, ideas, and needs.

I. Professional learning and ethical practice:
(1)
 The teacher engages in ongoing professional learning and uses evidence to continually evaluate their practice, particularly the effects of their choices and actions on others (learners, families, other

professionals, and the community), and adapts practice to meet the needs of each learner.
(2) The teacher shall:
(a)
 engage in ongoing learning opportunities to develop knowledge and skills in order to provide learners with engaging curriculum and learning experiences based on local and state standards;
(b)
 engage in meaningful and appropriate professional learning experiences aligned with their own needs and the needs of the learners, school, and system;
(c)
 independently and in collaboration with colleagues use a variety of data (e.g., systematic observation, information about learners, research) to evaluate the outcomes of teaching and learning and to adapt planning and practice;
(d)
 actively seek professional community, and technological resources, within and outside the school, as supports for analysis, reflection and problem solving;
(e)
 reflect on their personal biases and accesses resources to deepen their own understanding of cultural, ethnic, gender, and learning differences to build stronger relationships and create more relevant learning experiences;
(f)
 advocate, model, and teach safe, legal, and ethical use of information and technology including proper documentation of sources and respect for others in the use of social media;
(g)
 understand and know how to use a variety of self-assessment and problem-solving strategies to analyze and reflect on their practice and to plan for adaptations and adjustments;
(h)
 know how to use learner data to analyze practice and differentiate instruction accordingly;
(i)
 understand how personal identity, worldview, and prior experience

affect perceptions and expectations, and recognize how they may bias behaviors and interactions with others;
(j)
 understand laws related to learners' rights and teacher responsibility (e.g., for educational equity, appropriate education for learners with disabilities, confidentiality, privacy, appropriate treatment of learners, reporting in situations related to possible child abuse);
(k)
 The teacher knows how to build and implement a plan for professional growth directly aligned with their needs as a growing professional using feedback from teacher evaluations and observations, data on learner performance, and school and system-wide priorities;
(l)
 take responsibility for student learning and uses on going analysis and reflection to improve planning and practice;
(m)
 commit to deepening understanding of their own frames of references (e.g., culture, gender, language, abilities, ways of knowing), the potential biases in these frames, and their impact on expectations for and relationships with learners and their families;
(n)
 see themselves as a learner, continuously seeking opportunities to draw upon current education policy and research as sources of analysis and reflection to improve practice; and
(o)
 understand expectations of the profession including codes of ethics, professional standards of practice, and relevant law and policy.

J. Leadership and collaboration:
(1) The teacher seeks appropriate leadership roles ad opportunities to tame responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the

profession.

(2) The teacher shall:

(a) take an active role on the instructional team, giving and receiving feedback on practice, examining learn work, analyzing data from multiple sources, and sharing responsibility for decision making and accountability for each students learning;

(b) work with other school professionals to plan and jointly facilitate learning on how to meet diverse needs of learners;

(c) engage collaboratively in the school-wide effort to build a shared vision and supportive culture, identify common goals, and monitor and evaluate progress toward those goals;

(d) work collaboratively with learners and their families to establish mutual expectations and ongoing communication to support learner development and achievement;

(e) working with school colleagues build ongoing connections with community resources to enhance student learning and wellbeing;

(f) engage in professional learning, contributes to the knowledge and skill of others, and works collaboratively to advance professional practice;

(g) use technological tools and a variety of communication strategies to build local and global learning communities that engage learners, families, and colleagues;

(h) use and generate meaningful research on education issues an policy;

(i) seek appropriate opportunities to model effective practice for colleagues, to lead professional learning activities, and to serve in other leadership roles;

(j) advocate to meet the needs of learners, to strengthen the learning environment, and to enact system change;

(k) take on leadership roles at the school, district, state, and national level and advocates for the school, the community, and the profession;

(l) understand schools as organizations within a historical, cultural, political, and social context and knows how to work with others across the system to support learners;

(m) understand that alignment of family, school, and community spheres of influence enhances student learning and that discontinuity in these spheres of influence interferes with learning;

(n) know how to work with other adults and develop skills in collaborative interaction appropriate for both face-to-face and virtual contexts;

(o) know how to contribute a common culture that supports high expectations for student learning;

(p) actively share responsibility for shaping and supporting the mission of their school as one of the advocacy for learners and accountability for their success;

(q) respect families' beliefs, norms, and expectations and seeks to work collaboratively with learners and families in setting and meeting challenging goals;

(r) take initiative to grow and develop with colleagues through interactions and enhance practice and support student learning;

(s) take responsibility for contributing to and advancing the profession; and

(t) embrace the challenge of continuous improvement and change.
[6.61.5.10 NMAC - Rp, 6.61.5.10 NMAC, 8/1/2018]

HISTORY OF 6.61.5 NMAC:
PRE-NMAC HISTORY: The material in this part was derived from that originally filed with the state records center and archives under: SBE Regulation No. 87-12, Licensure

for Grades Kindergarten through 12, filed April 13, 1988; SBE Regulation No. 87-12, Amendment No. 1 Licensure for Grades Kindergarten through 12, filed December 4, 1990; SBE Regulation No 87-12, Amendment No. 2. Licensure for Grades Kindergarten through 12, filed April 3, 1995.

History of Repealed Material:
6.61.5 NMAC, Licensure for Grades Pre K-12, filed 11/14/1998 - Repealed effective 8/1/2018.

Other History of 6.61.5 NMAC:
6.61.5 NMAC, Licensure for Grades Pre K-12, filed 11/14/1998, was repealed and replaced by 6.61.5 NMAC, Licensure for Grades Pre K-12, effective 8/1/2018.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 61 SCHOOL PERSONNEL-SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS
PART 6 LICENSURE IN SPECIAL EDUCATION PRE K-12

6.61.6.1 ISSUING AGENCY: Public Education Department (PED).
[6.61.6.1 NMAC - Rp, 6.61.6.1 NMAC, 8/1/2018]

6.61.6.2 SCOPE: Chapter 61, Part 6 governs licensure in special education, grades pre K-12, for those persons seeking such licensure.
[6.61.6.2 NMAC - Rp, 6.61.6.2 NMAC, 8/1/2018]

6.61.6.3 STATUTORY AUTHORITY: Sections 22-1-1, 22-1-1.1, 22-1-1.2, 22-2-1, 22-2-2, 22-10A-3, 22-10A-4, and 22-10A-6 NMSA 1978.
[6.61.6.3 NMAC - Rp, 6.61.6.3 NMAC, 8/1/2018]

6.61.6.4 DURATION:

Permanent.
[6.61.6.4 NMAC - Rp, 6.61.6.4 NMAC, 8/1/2018]

6.61.6.5 EFFECTIVE DATE: August 1, 2018, unless a later date is cited in the history note at the end of a section.

[6.61.6.5 NMAC - Rp, 6.61.6.5 NMAC, 8/1/2018]

6.61.6.6 OBJECTIVE: This rule governs licensure requirements in special education for those persons seeking such licensure.

[6.61.6.6 NMAC - Rp, 6.61.6.6 NMAC, 8/1/2018]

6.61.6.7 DEFINITIONS:

A. “Core academic subjects” means English, language arts, reading, mathematics, science, the arts, including music and visual arts, social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes and pueblos.

B. “A highly qualified beginning pre K-12 special education teacher” under this rule means a teacher who is new to the profession, has pursued a standard route to licensure and is fully qualified to teach special education students by either providing access for those students to a regular education classroom where instruction in the core academic subjects is delivered by a highly qualified regular education teacher, or being fully qualified to teach each core academic subject the special education teacher teaches, or being fully qualified to teach either language arts, mathematics or science and becoming fully qualified to teach any other core academic subjects which the teacher teaches within two years after the date of initial employment, and who:

(1) meets the requirements for pre K-12 special education licensure in Subsections A or B in 6.61.6.8 NMAC;

(2) has no licensure requirements waived on an

emergency or temporary basis, or for any other reason; and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

C. “Pre-kindergarten” means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1.

[6.61.6.7 NMAC - Rp, 6.61.6.7 NMAC, 8/1/2018]

6.61.6.8 REQUIREMENTS:

A. Persons seeking licensure in special education pursuant to the provisions of this rule shall meet all the requirements enumerated in Subsections A or B of this section.

(1) bachelor’s degree from a regionally accredited college or university and including, for those licensees or applicants first entering a college or university beginning in the fall of 2017, the following:

(a) nine semester hours in communication

(b) six semester hours in mathematics

(c) eight semester hours in laboratory science

(d) nine semester hours in social and behavioral science

(e) nine semester hours in humanities and fine arts; and

(2) credits from a regionally accredited college or university which include: 30 semester hours of professional education in a special education program approved by the public education department (“PED”) (“department”), including completion of the department’s approved functional areas and related competencies; and including

(3) a mandatory student teaching component and at the option of the college or university, a practicum component; and

(4) 24 semester hours in one of the following teaching fields: mathematics, science(s), language arts, reading, and social

studies (or other content related areas); and

(5) in addition to the requirements specified in Subsection A of this section, six hours of reading in subject matter content for those licensees or applicants who first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) passage of all required portions of the current New Mexico teacher test or any successor teacher test adopted by the department; and

(7) satisfy the requirements of a highly qualified beginning pre K-12 special education teacher; or

B. possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.
[6.61.6.8 NMAC - Rp, 6.61.6.8 NMAC, 8/1/2018]

6.61.6.9 IMPLEMENTATION:

All persons holding a valid endorsement in special education areas (excluding educational diagnosticians, speech pathologists, and related services personnel who do not currently hold special education licensure) on June 30, 1987, shall be entitled to licensure in special education. Such licensure may be further continued pursuant to regulation(s) as established by the department.

[6.61.6.9 NMAC - Rp, 6.61.6.9 NMAC, 8/1/2018]

6.61.6.10 REFERENCED MATERIAL:

Competencies for entry level special education teachers

A. Learner development:

(1) The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.

(2) The

teacher shall:

- (a) regularly assess individual and group performance in order to design and modify instruction to meet learners' needs in each area of development (cognitive, linguistic, social, emotional and physical) and scaffolds the next level of development;
- (b) create developmentally appropriate instruction that takes into account individual learners' strengths, interests, and needs and that enables each learner to advance and accelerate their learning;
- (c) collaborate with families, communities, colleagues, and other professionals to promote learner growth and development;
- (d) understand how learning occurs—how learners construct knowledge, acquire skills, and develop disciplined thinking processes—and knows how to use instructional strategies that promote student learning;
- (e) understand that each learner's cognitive, linguistic, social, emotional, and physical development influences learning and knows how to make instructional decisions that build on learners' strengths and needs;
- (f) identify readiness for learning, and understands how development in any one area may affect performance in others;
- (g) understand the role of language and culture in learning and knows how to modify instruction to make language comprehensible and instruction relevant, accessible, and challenging;
- (h) respect learners' differing strengths and needs and is committed to using the information to further each learner's development;
- (i) commit to using learners' strengths as a basis for growth, and their misconceptions as opportunities for learning;
- (j) take responsibility for promoting

- learners' growth and development; and
 - (k) value the input and contributions of families, colleagues, and other professionals in understanding and supporting each learner's development.
- B. Learning differences:**
- (1) The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.
 - (2) The teacher shall:
 - (a) design, adapt, and deliver instruction to address each student's diverse learning strengths and needs and creates opportunities for students to demonstrate their learning in different ways;
 - (b) make appropriate and timely provisions (e.g., pacing for individual rates of growth, task demands, communication, assessment and response modes) for individual students with particular learning differences or needs;
 - (c) design instruction to build on learners' prior knowledge and experiences, allowing learners to accelerate as they demonstrate their understandings;
 - (d) bring multiple perspectives to the discussion of content, including attention to learners' personal, family, and community experiences and cultural norms;
 - (e) incorporate tools of language development into planning and instruction, including strategies for making content accessible to English language learners and for evaluating and supporting their development of English proficiency;
 - (f) access resource, supports, and specialized assistance and services to meet particular learning differences or needs;

- (g) understand and identify differences in approaches to learning and performance and knows how to design instruction that uses each learner's strengths to promote growth;
 - (h) understand students with exceptional needs, including those associated with disabilities and giftedness, and knows how to use strategies and resources to address these needs;
 - (i) know about second language acquisition processes and knows how to incorporate instructional strategies and resources to support language acquisition;
 - (j) understand that learners bring assets for learning based on their individual experiences, abilities, talents, prior learning, and peer and social group interactions, as well as language, culture, family and community values;
 - (k) know how to access information about the values of diverse cultures and communities and how to incorporate learners' experiences, cultures and community resources into instruction;
 - (l) believe that all learners can achieve at the high levels and persists in helping each learner reach their potential;
 - (m) respect learners as individuals with differing personal and family backgrounds and various skills, abilities, perspectives, talents and interests; and
 - (n) make learners feel valued and helps them learn to value each other;
 - (o) value diverse languages and dialects and seeks to integrate them into their instructional practice to engage students in learning.
- C. Learning environments:**
- (1) The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction,

active engagement in learning, and self-motivation.

- (2) The teacher shall:
 - (a) collaborate with learners, families, and colleagues to build a safe, positive learning climate of openness, mutual respect, support, and inquiry;
 - (b) develop learning experiences that engage learners in collaborative and self-directed learning and that extend learner interaction with ideas and people locally and globally;
 - (c) collaborate with learners and colleagues to develop shared values and expectations for respectful interactions, rigorous academic discussions, and individual and group responsibility for quality work;
 - (d) manage the learning environment to actively and equitably engage learners by organizing allocating, and coordinating resources of time, space, and learners' attention;
 - (e) use a variety of methods to engage learners in evaluating the learning environment and collaborates with learners to make appropriate adjustments;
 - (f) communicate verbally and nonverbally in ways that demonstrate respect for and responsiveness to the cultural backgrounds and differing perspectives learners bring to the learning environment;
 - (g) promote responsible learner use of interactive technologies to extend the possibilities for learning locally and globally;
 - (h) intentionally build learner capacity to collaborate in face-to-face and virtual environments through applying effective interpersonal communication skills;
 - (i) understand the relationship between motivation and engagement and knows how to design learning experiences using strategies that build learner self-direction and ownership

of learning;

- (j) know how to help learners work productively and cooperatively with each other to achieve learning goals;
- (k) know how to collaborate with learners to establish and monitor elements of a safe and productive learning environment including norms, expectations, routines, and organizational structure;
- (l) understand how learner diversity can affect communication and knows how to communicate effectively in differing environments;
- (m) know how to use the technologies and how to guide learners to apply them in appropriate, safe and effective ways;
- (n) commit to working with learners, colleagues, families and communities to establish positive and supportive learning environments;
- (o) value the role of learners in promoting each other's learning and recognizes the importance of peer relationships in establishing a climate of learning;
- (p) commit to supporting learners as they participate in decision making, engage in exploration and invention, work collaboratively and independently, and engage in purposeful learning;
- (q) seek to foster respectful communication among all members of the learning community; and
- (r) be thoughtful and responsive listener and observer.

D. Content knowledge:

- (1) The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) they teach and creates learning experiences that make these aspects of the discipline accessible and meaningful to learners to assure mastery of the content.
- (2) The teacher shall:
 - (a) effectively use multiple

representations and explanations that capture key ideas in the discipline, guide learners through learning progressions, and promote each learner's achievement of content standards;

- (b) engage students in learning experiences in the discipline(s) that encourage learners to understand, question, and analyze ideas from diverse perspectives so that they master the content;
- (c) engage learners in applying methods of inquiry and standards of evidence used in the discipline;
- (d) stimulate learner reflection on prior content knowledge, links new concepts to familiar concepts, and makes connections to learners' new experiences;
- (e) recognize learner misconceptions in a discipline that interfere with learning, and create experiences to build accurate conceptual understanding;
- (f) evaluate and modifies instructional resources and curriculum materials for their comprehensiveness, accuracy for representing particular concepts in the discipline, and appropriateness for their learners;
- (g) use supplementary resources and technologies effectively to ensure accessibility and relevance for all learners;
- (h) create opportunities for students to learn, practice, and master academic language in their content;
- (i) access school and district based resources to evaluate the learner's content knowledge in their primary language;
- (j) understand major concepts, assumptions, debates, processes of inquiry, and ways of knowing that are central to the discipline(s) they teach;
- (k) understand common misconceptions in learning the discipline and how to guide learners to accurate conceptual

understanding;

(l)

know and use academic language of the discipline and knows how to make it accessible to learners;

(m)

know how to integrate culturally relevant content to build on learners' background knowledge;

(n)

have a deep knowledge of student content standards and learning progression in the discipline(s) they teach;

(o)

realize that content knowledge is not a fixed body of facts but a complex, culturally situated, and ever evolving. The teacher keeps abreast of new ideas and understandings in the field;

(p)

appreciate multiple perspectives within the discipline and facilitates learners' critical analysis of these perspectives;

(q)

recognize the potential bias in their presentation of the discipline and seeks to appropriately address problems of bias; and

(r)

commit to work toward each learner's mastery of disciplinary content and skills.

E. Application of content:

(1)

The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

(2)

The teacher shall:

(a)

develop and implement projects that guide learners in analyzing the complexities of an issue or question using perspectives from varied disciplines and cross-disciplinary skills(e.g., a water quality study that draws upon biology or chemistry to look at factual information and social studies to examine policy implications);

(b)

engage learners in applying content

knowledge to real world problems through the lens of interdisciplinary themes (e.g., financial literacy, environmental literacy);

(c)

facilitate learners' use of current tools and resources to maximize content learning in varied contexts;

(d)

engage learners in questioning and challenging assumptions and approaches in order to foster innovation and problem solving in local and global contexts;

(e)

develop learners' communication skills in disciplinary and interdisciplinary contexts by creating meaningful opportunities to employ a variety of forms of communication that address varied audiences and purposes;

(f)

engage learners in generating and evaluating new ideas and novel approaches, seeking inventive solutions to problems, and developing original work;

(g)

facilitate learners' ability to develop diverse social and cultural perspectives that expand their understanding of local and global issues and create novel approaches to solving problems;

(h)

develop and implements supports for learner literacy development across content areas;

(i)

understand the ways of knowing their discipline, how it relates to other disciplinary approaches to inquiry, and the strengths and limitations of each approach in addressing problems, issues and concerns;

(j)

understand how current interdisciplinary themes (e.g., civic literacy, health literacy, global awareness) connect to the core subjects and knows how to weave those themes into meaningful learning experiences;

(k)

understand the demands of acceding and managing information as well as how to evaluate issues of ethics and

quality related to the information and its use;

(l)

understand how to use digital and interactive technologies for efficiently and effectively achieving specific learning goals;

(m)

understand critical thinking processes and knows how to help learners develop high level questioning skills to promote independent learning;

(n)

understand communication modes and skills as vehicles for learning (e.g., information gathering and processing) across disciplines as well as vehicles for expressing learning;

(o)

understand creative thinking processes and how to engage learners in producing original work;

(p)

know where and how to access resources to build global awareness and understanding, and how to integrate them into the curriculum;

(q)

constantly explore how to use disciplinary knowledge as a lens to address local and global issues;

(r)

value knowledge outside their own content area and how such knowledge enhances student learning; and

(s)

value flexible learning environments that encourage learner exploration, discovery, and expression across content areas.

F. Assessment:

(1)

The teacher understands and uses multiple measures of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making.

(2)

The teacher shall:

(a)

balance the use of formative and summative assessment as appropriate to support, verify, and document learning;

(b)

design assessments that match learning objectives with assessment

methods and minimize sources of bias that can distort assessment results;
(c)

work independently and collaboratively to examine test and other performance data to understand each learner’s progress and to guide planning;
(d)

engage learners in understanding and identifying quality work and provides them with effective descriptive feedback to guide their progress toward that work;
(e)

engage learners in multiple ways of demonstrating knowledge and skill as part of the assessment process;
(f)

model and structure processes that guide learners in examining their own thinking and learning as well as the performance of others;
(g)

use multiple and appropriate types of assessment data to identify each student’s learning needs and to develop differentiated learning experiences;
(h)

prepare all learners for the demands of particular assessment formats and makes appropriate accommodations in assessments or testing conditions, especially for learners with disabilities and language learning needs;
(i)

continually seek appropriate ways to employ technology to support assessment practice both to engage learners more fully and to assess and address learner needs;
(j)

understand the differences between formative and summative applications of assessment and knows how and when to use each;
(k)

understand the range of types and multiple purposes of assessment and how to design, adapt, or select appropriate assessments to address specific learning goals and individual differences, and to minimize sources of bias;
(l)

know how to analyze assessment data to understand patterns and gaps

in learning, to guide planning and instruction, and to provide meaningful feedback to all learners;
(m)

know when and how to engage learners in analyzing their own assessment results and in helping set goals for their own learning;
(n)

understand the positive impact of effective descriptive feedback for learners and knows a variety of strategies for communicating this feedback;
(o)

know when and how to evaluate and report learner progress against standards;
(p)

understand how to prepare learners for assessments and how to make accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs;
(q)

commit to engaging learners actively in assessment processes and to developing each learner’s capacity to review and communicate about their own progress and learning;
(r)

take responsibility for aligning instruction and assessment with learning goals;
(s)

commit to providing timely and effective descriptive feedback to learners on their progress;
(t)

commit to using multiple types of assessment processes to support, verify, and document learning;
(u)

commit to making accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs; and
(v)

commit to the ethical use of various assessments and assessment data to identify learner strengths and needs to promote learner growth.

G. Planning for instruction:
(1) The teacher plans the instruction that supports every student in meeting

rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.
(2) The teacher shall:
(a) individually and collaboratively select and create learning experiences that are appropriate for curriculum goals and content standards, and are relevant to learners;
(b) plan how to achieve each student’s learning goals, choosing appropriate strategies and accommodations, resources, and materials to differentiate instruction for individuals and groups of learners;
(c) develop appropriate sequencing of learning experiences and provides multiple ways to demonstrate knowledge and skill;
(d) plan for instruction based on formative and summative assessment data, prior learner knowledge, and learner interest;
(e) plan collaboratively with professionals who have specialized expertise (e.g., special educators, related service providers, language and learning specialists, librarians, media specialists) to design and jointly deliver as appropriate learning experiences that meet unique learning needs;
(f) evaluate plans in relation to short and long-range goals and systematically adjusts plans to meet each student’s learning needs and enhance learning;
(g) understand content and content standards and how these are organized in the curriculum;
(h) understand how integrating cross-disciplinary skills in instruction engages learners purposefully in applying content knowledge;
(i) understand learning theory, human development, cultural diversity, and

individual differences and how these impact ongoing planning;

(j)

understand the strengths and needs of individual learners and how to plan instruction that is responsive to these strengths and needs;

(k)

know a range of evidence-based instructional strategies, resources, and technological tools and how to use them effectively to plan instruction that meets diverse learning needs;

(l)

know when and how to adjust plans based on assessment information and learner responses;

(m)

know when and how to access resources and collaborate with others to support student learning (e.g., special educators, related service providers, language learner specialists, librarians, media specialists, community organizations);

(n)

respect learners' diverse strengths and needs and is committed to using this information to plan effective instruction;

(o)

value planning as a collegial activity that takes into consideration the input of learners, colleagues, families, and the larger community;

(p)

take professional responsibility to use short and long-term planning as a means of assuring student learning; and

(q)

believe that plans must always be open to adjustment and revision based on learner needs and changing circumstances.

H. Instructional strategies:

(1) The

teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

(2) The

teacher shall:

(a)

use appropriate strategies and resources to adapt instruction to the needs of individuals and groups of learners;

(b)

continuously monitor student learning, engages learners in assessing their progress, and adjusts instruction in response to student learning needs;

(c)

collaborate with learners to design and implement relevant learning experiences, identify their strengths, and access family and community resources to develop their areas of interest;

(d)

vary their role in the instructional process (e.g., instructor, facilitator, coach, audience) in relation to the content and purposes of instruction and the needs of learners;

(e)

provide multiple models and representations of concepts and skills with opportunities for learners to demonstrate their knowledge through a variety of products and performance;

(f)

engage all learners in developing higher order questioning skills and metacognitive processes;

(g)

engage learners in using a range of learning skills and technology tools to access, interpret, evaluate, and apply information;

(h)

use a variety of instructional strategies to support and expand learners' communication through speaking, listening, reading, writing, and other modes;

(i)

ask questions to stimulate discussion that serves different purposes (e.g., probing for learner understanding, helping learners articulate their ideas and thinking processes, stimulating curiosity, and helping learners to question);

(j)

understand the cognitive process associated with various kinds of learning (e.g., critical and creative thinking, problem framing and problem solving, invention,

memorization and recall) and how these processes can be stimulated;

(k)

know how to apply a range of developmentally, culturally, and linguistically appropriate instructional strategies to achieve learning goals;

(l)

know when and how to use appropriate strategies to differentiate instruction and engage all learners in complex thinking and meaningful tasks;

(m)

understand how multiple forms of communication (oral, written, nonverbal, digital, visual) convey ideas, foster self-expression, and build relationships;

(n)

know how to use a wide variety of resources, including human and technological, to engage students in learning;

(o)

understand how content and skill development can be supported by media and technology and knows how to evaluate these resources for quality, accuracy, and effectiveness;

(p)

commit to deepening awareness and understanding the strengths and needs of diverse learners when planning and adjusting instruction;

(q)

value the variety of ways people communicate and encourage learners to develop and use multiple forms of communication;

(r)

commit to exploring how the use of new and emerging technologies can support and promote student learning; and

(s)

value flexibility and reciprocity in the teaching process as necessary for adapting instruction to learner responses, ideas, and needs.

I. Professional learning and ethical practice:

(1)

The teacher engages in ongoing professional learning and uses evidence to continually evaluate their practice, particularly the effects of their choices and actions

on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner.

- (2) The teacher shall:
 - (a) engage in ongoing learning opportunities to develop knowledge and skills in order to provide learners with engaging curriculum and learning experiences based on local and state standards;
 - (b) engage in meaningful and appropriate professional learning experiences aligned with their own needs and the needs of the learners, school, and system;
 - (c) independently and in collaboration with colleagues use a variety of data (e.g., systematic observation, information about learners, research) to evaluate the outcomes of teaching and learning and to adapt planning and practice;
 - (d) actively seek professional community, and technological resources, within and outside the school, as supports for analysis, reflection and problem solving;
 - (e) reflect on their personal biases and accesses resources to deepen their own understanding of cultural, ethnic, gender, and learning differences to build stronger relationships and create more relevant learning experiences;
 - (f) advocate, model, and teach safe, legal, and ethical use of information and technology including proper documentation of sources and respect for others in the use of social media;
 - (g) understand and know how to use a variety of self-assessment and problem-solving strategies to analyze and reflect on their practice and to plan for adaptations and adjustments;
 - (h) know how to use learner data to analyze practice and differentiate instruction accordingly;
 - (i) understand how personal identity,

- worldview, and prior experience affect perceptions and expectations, and recognize how they may bias behaviors and interactions with others;
 - (j) understand laws related to learners' rights and teacher responsibility (e.g., for educational equity, appropriate education for learners with disabilities, confidentiality, privacy, appropriate treatment of learners, reporting in situations related to possible child abuse);
 - (k) The teacher knows how to build and implement a plan for professional growth directly aligned with their needs as a growing professional using feedback from teacher evaluations and observations, data on learner performance, and school and system-wide priorities;
 - (l) take responsibility for student learning and uses on going analysis and reflection to improve planning and practice;
 - (m) commit to deepening understanding of their own frames of references (e.g., culture, gender, language, abilities, ways of knowing), the potential biases in these frames, and their impact on expectations for and relationships with learners and their families;
 - (n) see themselves as a learner, continuously seeking opportunities to draw upon current education policy and research as sources of analysis and reflection to improve practice; and
 - (o) understand expectations of the profession including codes of ethics, professional standards of practice, and relevant law and policy.
- J. Leadership and collaboration:**
- (1) The teacher seeks appropriate leadership roles ad opportunities to tame responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure

- learner growth, and to advance the profession.
- (2) The teacher shall:
 - (a) take an active role on the instructional team, giving and receiving feedback on practice, examining learn work, analyzing data from multiple sources, and sharing responsibility for decision making and accountability for each students learning;
 - (b) work with other school professionals to plan and jointly facilitate learning on how to meet diverse needs of learners;
 - (c) engage collaboratively in the school-wide effort to build a shared vision and supportive culture, identify common goals, and monitor and evaluate progress toward those goals;
 - (d) work collaboratively with learners and their families to establish mutual expectations and ongoing communication to support learner development and achievement;
 - (e) working with school colleagues build ongoing connections with community resources to enhance student learning and wellbeing;
 - (f) engage in professional learning, contributes to the knowledge and skill of others, and works collaboratively to advance professional practice;
 - (g) use technological tools and a variety of communication strategies to build local and global learning communities that engage learners, families, and colleagues;
 - (h) use and generate meaningful research on education issues an policy;
 - (i) seek appropriate opportunities to model effective practice for colleagues, to lead professional learning activities, and to serve in other leadership roles;
 - (j) advocate to meet the needs of learners, to strengthen the learning environment, and to enact system

change;

(k) take on leadership roles at the school, district, state, and national level and advocates for the school, the community, and the profession;

(l) understand schools as organizations within a historical, cultural, political, and social context and knows how to work with others across the system to support learners;

(m) understand that alignment of family, school, and community spheres of influence enhances student learning and that discontinuity in these spheres of influence interferes with learning;

(n) know how to work with other adults and develop skills in collaborative interaction appropriate for both face-to-face and virtual contexts;

(o) know how to contribute a common culture that supports high expectations for student learning;

(p) actively share responsibility for shaping and supporting the mission of their school as one of the advocacy for learners and accountability for their success;

(q) respect families' beliefs, norms, and expectations and seeks to work collaboratively with learners and families in setting and meeting challenging goals;

(r) take initiative to grow and develop with colleagues through interactions and enhance practice and support student learning;

(s) take responsibility for contributing to and advancing the profession; and

(t) embrace the challenge of continuous improvement and change.
[6.61.6.10 NMAC - Rp, 6.61.6.10 NMAC, 8/1/2018]

HISTORY OF 6.61.6 NMAC:
PRE-NMAC HISTORY: The material in this part was derived from that previously filed with the State Records and Archives Center under:

SBE Regulation No. 74-2 Governing New Mexico General Certification in Special Education, filed February 26, 1974;

SBE Regulation No. 74-3 Governing New Mexico Professional Certification in Interrelated Areas of Special Education, filed February 26, 1974;

SBE Regulation No. 74-4 Governing New Mexico Professional Certification in a Categorical Area of Special Education, filed February 26, 1974;

SBE Regulation No. 77-7 Governing New Mexico Special Education Endorsement, filed September 13, 1977; SBE Regulation No. 77-11 Governing New Mexico General Certification in Special Education, filed October 25, 1977;

SBE Regulation No. 78-15 New Mexico Certification Requirements for Special Education Endorsement, filed September 6, 1978;

SBE Regulation No. 79-6 New Mexico Certification Requirements for Special Education Endorsement, filed May 21, 1979;

SBE Regulation 84-2 Governing New Mexico Certification Requirements for Special Education Endorsement, filed March 19, 1984;

SBE Regulation No. 86-4, Licensure in Special Education, K-12, filed July 28, 1986.

History of Repealed Material:

6.61.6 NMAC, Licensure in Special Education Pre K-12, filed 11/14/1998 - Repealed effective 8/1/2018.

Other History of 6.61.6 NMAC:

6.61.6 NMAC, Licensure in Special Education Pre K-12, filed 11/14/1998, was repealed and replaced by 6.61.6 NMAC, Licensure in Special Education Pre K-12, effective 8/1/2018.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS
PART 7 LICENSURE IN SECONDARY VOCATIONAL-TECHNICAL EDUCATION**

6.61.7.1 ISSUING AGENCY: Public Education Department.
[6.61.7.1 NMAC - Rp, 6.61.7.1 NMAC, 08/01/2018]

6.61.7.2 SCOPE: Chapter 61, Part 7 governs licensure in secondary vocational-technical education for those persons seeking such licensure.
[6.61.7.2 NMAC - Rp, 6.61.7.2 NMAC, 08/01/2018]

6.61.7.3 STATUTORY AUTHORITY: Sections 22-2-1 NMSA 1978, 22-2-2 NMSA 1978 and Subsection E of Section 22-10A-6 NMSA 1978.
[6.61.7.3 NMAC - Rp, 6.61.7.3 NMAC, 08/01/2018]

6.61.7.4 DURATION: Permanent
[6.61.7.4 NMAC - Rp, 6.61.7.4 NMAC, 08/01/2018]

6.61.7.5 EFFECTIVE DATE: August 1, 2018, unless a later date is cited in the history note at the end of a section.
[6.61.7.5 NMAC - Rp, 6.61.7.5 NMAC, 08/01/2018]

6.61.7.6 OBJECTIVE: This rule governs licensure requirements in secondary vocational-technical education for those persons seeking such licensure. It exempts those persons already holding a valid state vocational-technical education license as of June 30, 1989, from the requirements of this licensure.
[6.61.7.6 NMAC - Rp, 6.61.7.6 NMAC, 08/01/2018]

6.61.7.7 DEFINITIONS:

[RESERVED]

[6.61.7.7 NMAC - Rp, 6.61.7.7 NMAC, 08/01/2018]

6.61.7.8 REQUIREMENTS:

A. Persons seeking licensure in secondary vocational-technical education pursuant to the provisions of this rule shall meet the requirements of Paragraphs (1),(2),(3) or (4) of Subsection A of 6.61.7.8 NMAC and Subsection B of 6.61.7.8 NMAC.

(1) bachelor’s degree which includes 32 credit hours of vocational-technical training related to the occupational area; or

(2) associate degree plus two years work experience related to the occupational area; or

(3) certificate plus three years work experience related to the occupational area; or

(4) high school diploma/(GED) plus five years work experience related to the occupational area; and

B. Satisfactory demonstration of the competencies as approved by the public education department (“PED”) for vocational-technical teachers within three years of the date of employment. The applicant must meet this requirement through Paragraphs (1) and (2) or (3) of Subsection B of 6.61.7.8 NMAC.

(1) credits from a regionally accredited institution which include 15 semester hours of professional education which must address the PED’s secondary vocational-technical competencies in accordance with 6.61.7.10 NMAC; and

(2) a supervised classroom internship/ student teaching experience which may be completed at a regionally accredited college or university or under the supervision of a local school district or private school; or

(3) a school district or private school may develop and implement a professional development plan (PDP) in lieu of the required 15 semester hours of

professional education and supervised student teaching experience, which on approval of the PED, shall be used to meet licensure requirements; when appropriate and feasible, more than one school district/private school may jointly prepare a PDP for PED approval; the PDP must address the PED’s secondary vocational-technical competencies in accordance with 6.61.7.10 NMAC.

[6.61.7.8 NMAC - Rp, 6.61.7.8 NMAC, 08/01/2018]

6.61.7.9 IMPLEMENTATION:

All persons holding a valid New Mexico license in vocational-technical education on June 30, 1989, shall be entitled to licensure in vocational-technical education. Such licensure may be further continued pursuant to rule(s) as established by the PED.

[6.61.7.9 NMAC - Rp, 6.61.7.9 NMAC, 08/01/2018]

6.61.7.10 REFERENCED

MATERIAL: Competencies for secondary vocational-technical teachers

A. Learner development:

(1) The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.

(2) The teacher shall:

(a) regularly assess individual and group performance in order to design and modify instruction to meet learners’ needs in each area of development (cognitive, linguistic, social, emotional and physical) and scaffolds the next level of development;

(b) create developmentally appropriate instruction that takes into account individual learners’ strengths, interests, and needs and that enables each learner to advance and accelerate

their learning;

(c) collaborate with families, communities, colleagues, and other professionals to promote learner growth and development;

(d) understand how learning occurs— how learners construct knowledge, acquire skills, and develop disciplined thinking processes—and knows how to use instructional strategies that promote student learning;

(e) understand that each learner’s cognitive, linguistic, social, emotional, and physical development influences learning and knows how to make instructional decisions that build on learners’ strengths and needs;

(f) identify readiness for learning, and understands how development in any one area may affect performance in others;

(g) understand the role of language and culture in learning and knows how to modify instruction to make language comprehensible and instruction relevant, accessible, and challenging;

(h) respect learners’ differing strengths and needs and is committed to using the information to further each learner’s development;

(i) commit to using learners’ strengths as a basis for growth, and their misconceptions as opportunities for learning;

(j) take responsibility for promoting learners’ growth and development; and

(k) value the input and contributions of families, colleagues, and other professionals in understanding and supporting each learner’s development.

B. Learning differences:

(1) The teacher uses understanding of individual differences and diverse cultures and communities to ensure

inclusive learning environments that enable each learner to meet high standards.

- (2) The teacher shall:
 - (a) design, adapt, and deliver instruction to address each student’s diverse learning strengths and needs and creates opportunities for students to demonstrate their learning in different ways;
 - (b) make appropriate and timely provisions (e.g., pacing for individual rates of growth, task demands, communication, assessment and response modes) for individual students with particular learning differences or needs;
 - (c) design instruction to build on learners’ prior knowledge and experiences, allowing learners to accelerate as they demonstrate their understandings;
 - (d) bring multiple perspectives to the discussion of content, including attention to learners’ personal, family, and community experiences and cultural norms;
 - (e) incorporate tools of language development into planning and instruction, including strategies for making content accessible to English language learners and for evaluating and supporting their development of English proficiency;
 - (f) access resource, supports, and specialized assistance and services to meet particular learning differences or needs;
 - (g) understand and identify differences in approaches to learning and performance and knows how to design instruction that uses each learner’s strengths to promote growth;
 - (h) understand students with exceptional needs, including those associated with disabilities and giftedness, and knows how to use strategies and resources to address these needs;
 - (i) know about second language

acquisition processes and knows how to incorporate instructional strategies and resources to support language acquisition;

- (j) understand that learners bring assets for learning based on their individual experiences, abilities, talents, prior learning, and peer and social group interactions, as well as language, culture, family and community values;
 - (k) know how to access information about the values of diverse cultures and communities and how to incorporate learners’ experiences, cultures and community resources into instruction;
 - (l) believe that all learners can achieve at the high levels and persists in helping each learner reach their potential;
 - (m) respect learners as individuals with differing personal and family backgrounds and various skills, abilities, perspectives, talents and interests;
 - (n) make learners feel valued and helps them learn to value each other; and
 - (o) value diverse languages and dialects and seeks to integrate them into their instructional practice to engage students in learning.
- C. Learning environments:
- (1) The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation.
 - (2) The teacher shall:
 - (a) collaborate with learners, families, and colleagues to build a safe, positive learning climate of openness, mutual respect, support, and inquiry;
 - (b) develop learning experiences that engage learners in collaborative and self-directed learning and that extend learner interaction with ideas and

- people locally and globally;
- (c) collaborate with learners and colleagues to develop shared values and expectations for respectful interactions, rigorous academic discussions, and individual and group responsibility for quality work;
- (d) manage the learning environment to actively and equitably engage learners by organizing allocating, and coordinating resources of time, space, and learners’ attention;
- (e) use a variety of methods to engage learners in evaluating the learning environment and collaborates with learners to make appropriate adjustments;
- (f) communicate verbally and nonverbally in ways that demonstrate respect for and responsiveness to the cultural backgrounds and differing perspectives learners bring to the learning environment;
- (g) promote responsible learner use of interactive technologies to extend the possibilities for learning locally and globally;
- (h) intentionally build learner capacity to collaborate in face-to-face and virtual environments through applying effective interpersonal communication skills;
- (i) understand the relationship between motivation and engagement and knows how to design learning experiences using strategies that build learner self-direction and ownership of learning;
- (j) know how to help learners work productively and cooperatively with each other to achieve learning goals;
- (k) know how to collaborate with learners to establish and monitor elements of a safe and productive learning environment including norms, expectations, routines, and organizational structure;
- (l) understand how learner diversity can

affect communication and knows how to communicate effectively in differing environments;

(m)

know how to use the technologies and how to guide learners to apply them in appropriate, safe and effective ways;

(n)

commit to working with learners, colleagues, families and communities to establish positive and supportive learning environments;

(o)

value the role of learners in promoting each other's learning and recognizes the importance of peer relationships in establishing a climate of learning;

(p)

commit to supporting learners as they participate in decision making, engage in exploration and invention, work collaboratively and independently, and engage in purposeful learning;

(q)

seek to foster respectful communication among all members of the learning community; and

(r)

be thoughtful and responsive listener and observer.

D. Content knowledge:

(1) The

teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) they teach and creates learning experiences that make these aspects of the discipline accessible and meaningful to learners to assure mastery of the content.

(2) The

teacher shall:

(a)

effectively use multiple representations and explanations that capture key ideas in the discipline, guide learners through learning progressions, and promote each learner's achievement of content standards;

(b)

engage students in learning experiences in the discipline(s) that encourage learners to understand, question, and analyze ideas from diverse perspectives so that they master the content;

(c)

engage learners in applying methods of inquiry and standards of evidence used in the discipline;

(d)

stimulate learner reflection on prior content knowledge, links new concepts to familiar concepts, and makes connections to learners' new experiences;

(e)

recognize learner misconceptions in a discipline that interfere with learning, and create experiences to build accurate conceptual understanding;

(f)

evaluate and modifies instructional resources and curriculum materials for their comprehensiveness, accuracy for representing particular concepts in the discipline, and appropriateness for their learners;

(g)

use supplementary resources and technologies effectively to ensure accessibility and relevance for all learners;

(h)

create opportunities for students to learn, practice, and master academic language in their content;

(i)

access school and district based resources to evaluate the learner's content knowledge in their primary language;

(j)

understand major concepts, assumptions, debates, processes of inquiry, and ways of knowing that are central to the discipline(s) they teach;

(k)

understand common misconceptions in learning the discipline and how to guide learners to accurate conceptual understanding;

(l)

know and use academic language of the discipline and knows how to make it accessible to learners;

(m)

know how to integrate culturally relevant content to build on learners' background knowledge;

(n)

have a deep knowledge of student content standards and learning progression in the discipline(s) they teach;

(o)

realize that content knowledge is not a fixed body of facts but a complex, culturally situated, and ever evolving. The teacher keeps abreast of new ideas and understandings in the field;

(p)

appreciate multiple perspectives within the discipline and facilitates learners' critical analysis of these perspectives;

(q)

recognize the potential bias in their presentation of the discipline and seeks to appropriately address problems of bias; and

(r)

commit to work toward each learner's mastery of disciplinary content and skills.

E. Application of

content:

(1)

The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

(2) The

teacher shall:

(a)

develop and implement projects that guide learners in analyzing the complexities of an issue or question using perspectives from varied disciplines and cross-disciplinary skills(e.g., a water quality study that draws upon biology or chemistry to look at factual information and social studies to examine policy implications);

(b)

engage learners in applying content knowledge to real world problems through the lens of interdisciplinary themes (e.g., financial literacy, environmental literacy);

(c)

facilitate learners' use of current tools and resources to maximize content learning in varied contexts;

(d)

engage learners in questioning and challenging assumptions and approaches in order to foster innovation and problem solving in local and global contexts;

(e) develop learners' communication skills in disciplinary and interdisciplinary contexts by creating meaningful opportunities to employ a variety of forms of communication that address varied audiences and purposes;

(f) engage learners in generating and evaluating new ideas and novel approaches, seeking inventive solutions to problems, and developing original work;

(g) facilitate learners' ability to develop diverse social and cultural perspectives that expand their understanding of local and global issues and create novel approaches to solving problems;

(h) develop and implements supports for learner literacy development across content areas;

(i) understand the ways of knowing their discipline, how it relates to other disciplinary approaches to inquiry, and the strengths and limitations of each approach in addressing problems, issues and concerns;

(j) understand how current interdisciplinary themes (e.g., civic literacy, health literacy, global awareness) connect to the core subjects and knows how to weave those themes into meaningful learning experiences;

(k) understand the demands of acceding and managing information as well as how to evaluate issues of ethics and quality related to the information and its use;

(l) understand how to use digital and interactive technologies for efficiently and effectively achieving specific learning goals;

(m) understand critical thinking processes and knows how to help learners develop high level questioning skills to promote independent learning;

(n) understand communication modes and

skills as vehicles for learning (e.g., information gathering and processing) across disciplines as well as vehicles for expressing learning;

(o) understand creative thinking processes and how to engage learners in producing original work;

(p) know where and how to access resources to build global awareness and understanding, and how to integrate them into the curriculum;

(q) constantly explore how to use disciplinary knowledge as a lens to address local and global issues;

(r) value knowledge outside their own content area and how such knowledge enhances student learning; and

(s) value flexible learning environments that encourage learner exploration, discovery, and expression across content areas.

F. Assessment:

(1) The teacher understands and uses multiple measures of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making.

(2) The teacher shall:

(a) balance the use of formative and summative assessment as appropriate to support, verify, and document learning;

(b) design assessments that match learning objectives with assessment methods and minimize sources of bias that can distort assessment results;

(c) work independently and collaboratively to examine test and other performance data to understand each learner's progress and to guide planning;

(d) engage learners in understanding and identifying quality work and provides them with effective descriptive feedback to guide their progress toward that work;

(e) engage learners in multiple ways of demonstrating knowledge and skill as part of the assessment process;

(f) model and structure processes that guide learners in examining their own thinking and learning as well as the performance of others;

(g) use multiple and appropriate types of assessment data to identify each student's learning needs and to develop differentiated learning experiences;

(h) prepare all learners for the demands of particular assessment formats and makes appropriate accommodations in assessments or testing conditions, especially for learners with disabilities and language learning needs;

(i) continually seek appropriate ways to employ technology to support assessment practice both to engage learners more fully and to assess and address learner needs;

(j) understand the differences between formative and summative applications of assessment and knows how and when to use each;

(k) understand the range of types and multiple purposes of assessment and how to design, adapt, or select appropriate assessments to address specific learning goals and individual differences, and to minimize sources of bias;

(l) know how to analyze assessment data to understand patterns and gaps in learning, to guide planning and instruction, and to provide meaningful feedback to all learners;

(m) know when and how to engage learners in analyzing their own assessment results and in helping set goals for their own learning;

(n) understand the positive impact of effective descriptive feedback for learners and knows a variety of strategies for communicating this feedback;

(o) know when and how to evaluate and report learner progress against standards;

(p) understand how to prepare learners for assessments and how to make accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs;

(q) commit to engaging learners actively in assessment processes and to developing each learner’s capacity to review and communicate about their own progress and learning;

(r) take responsibility for aligning instruction and assessment with learning goals;

(s) commit to providing timely and effective descriptive feedback to learners on their progress;

(t) commit to using multiple types of assessment processes to support, verify, and document learning;

(u) commit to making accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs; and

(v) commit to the ethical use of various assessments and assessment data to identify learner strengths and needs to promote learner growth.

G. Planning for instruction:

(1) The teacher plans the instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

(2) The teacher shall:

(a) individually and collaboratively select and create learning experiences that are appropriate for curriculum goals and content standards, and are relevant to learners;

(b) plan how to achieve each student’s learning goals, choosing appropriate strategies and accommodations, resources, and materials to differentiate instruction for individuals and groups of learners;

(c) develop appropriate sequencing of learning experiences and provides multiple ways to demonstrate knowledge and skill;

(d) plan for instruction based on formative and summative assessment data, prior learner knowledge, and learner interest;

(e) plan collaboratively with professionals who have specialized expertise (e.g., special educators, related service providers, language and learning specialists, librarians, media specialists) to design and jointly deliver as appropriate learning experiences that meet unique learning needs;

(f) evaluate plans in relation to short and long-range goals and systematically adjusts plans to meet each student’s learning needs and enhance learning;

(g) understand content and content standards and how these are organized in the curriculum;

(h) understand how integrating cross-disciplinary skills in instruction engages learners purposefully in applying content knowledge;

(i) understand learning theory, human development, cultural diversity, and individual differences and how these impact ongoing planning;

(j) understand the strengths and needs of individual learners and how to plan instruction that is responsive to these strengths and needs;

(k) know a range of evidence-based instructional strategies, resources, and technological tools and how to use them effectively to plan instruction that meets diverse learning needs;

(l)

know when and how to adjust plans based on assessment information and learner responses;

(m) know when and how to access resources and collaborate with others to support student learning (e.g., special educators, related service providers, language learner specialists, librarians, media specialists, community organizations);

(n) respect learners’ diverse strengths and needs and is committed to using this information to plan effective instruction;

(o) value planning as a collegial activity that takes into consideration the input of learners, colleagues, families, and the larger community;

(p) take professional responsibility to use short and long-term planning as a means of assuring student learning; and

(q) believe that plans must always be open to adjustment and revision based on learner needs and changing circumstances.

H. Instructional strategies:

(1) The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

(2) The teacher shall:

(a) use appropriate strategies and resources to adapt instruction to the needs of individuals and groups of learners;

(b) continuously monitor student learning, engages learners in assessing their progress, and adjusts instruction in response to student learning needs;

(c) collaborate with learners to design and implement relevant learning experiences, identify their strengths, and access family and community

resources to develop their areas of interest;

(d)

vary their role in the instructional process (e.g., instructor, facilitator, coach, audience) in relation to the content and purposes of instruction and the needs of learners;

(e)

provide multiple models and representations of concepts and skills with opportunities for learners to demonstrate their knowledge through a variety of products and performance;

(f)

engage all learners in developing higher order questioning skills and metacognitive processes;

(g)

engage learners in using a range of learning skills and technology tools to access, interpret, evaluate, and apply information;

(h)

use a variety of instructional strategies to support and expand learners' communication through speaking, listening, reading, writing, and other modes;

(i)

ask questions to stimulate discussion that serves different purposes (e.g., probing for learner understanding, helping learners articulate their ideas and thinking processes, stimulating curiosity, and helping learners to question);

(j)

understand the cognitive process associated with various kinds of learning (e.g., critical and creative thinking, problem framing and problem solving, invention, memorization and recall) and how these processes can be stimulated;

(k)

know how to apply a range of developmentally, culturally, and linguistically appropriate instructional strategies to achieve learning goals;

(l)

know when and how to use appropriate strategies to differentiate instruction and engage all learners in complex thinking and meaningful tasks;

(m)

understand how multiple forms of communication (oral, written, nonverbal, digital, visual) convey ideas, foster self-expression, and build relationships;

(n)

know how to use a wide variety of resources, including human and technological, to engage students in learning;

(o)

understand how content and skill development can be supported by media and technology and knows how to evaluate these resources for quality, accuracy, and effectiveness;

(p)

commit to deepening awareness and understanding the strengths and needs of diverse learners when planning and adjusting instruction;

(q)

value the variety of ways people communicate and encourage learners to develop and use multiple forms of communication;

(r)

commit to exploring how the use of new and emerging technologies can support and promote student learning; and

(s)

value flexibility and reciprocity in the teaching process as necessary for adapting instruction to learner responses, ideas, and needs.

I. Professional

learning and ethical practice:

(1)

The teacher engages in ongoing professional learning and uses evidence to continually evaluate their practice, particularly the effects of their choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner.

(2) The

teacher shall:

(a)

engage in ongoing learning opportunities to develop knowledge and skills in order to provide learners with engaging curriculum and learning experiences based on local and state standards;

(b)

engage in meaningful and appropriate professional learning experiences aligned with their own needs and the needs of the learners, school, and system;

(c)

independently and in collaboration with colleagues use a variety of data (e.g., systematic observation, information about learners, research) to evaluate the outcomes of teaching and learning and to adapt planning and practice;

(d)

actively seek professional community, and technological resources, within and outside the school, as supports for analysis, reflection and problem solving;

(e)

reflect on their personal biases and accesses resources to deepen their own understanding of cultural, ethnic, gender, and learning differences to build stronger relationships and create more relevant learning experiences;

(f)

advocate, model, and teach safe, legal, and ethical use of information and technology including proper documentation of sources and respect for others in the use of social media;

(g)

understand and know how to use a variety of self-assessment and problem-solving strategies to analyze and reflect on their practice and to plan for adaptations and adjustments;

(h)

know how to use learner data to analyze practice and differentiate instruction accordingly;

(i)

understand how personal identity, worldview, and prior experience affect perceptions and expectations, and recognize how they may bias behaviors and interactions with others;

(j)

understand laws related to learners' rights and teacher responsibility (e.g., for educational equity, appropriate education for learners with disabilities, confidentiality, privacy, appropriate treatment of learners, reporting in situations related to possible child abuse);

(k) The teacher knows how to build and implement a plan for professional growth directly aligned with their needs as a growing professional using feedback from teacher evaluations and observations, data on learner performance, and school and system-wide priorities;

(l) take responsibility for student learning and uses on going analysis and reflection to improve planning and practice;

(m) commit to deepening understanding of their own frames of references (e.g., culture, gender, language, abilities, ways of knowing), the potential biases in these frames, and their impact on expectations for and relationships with learners and their families;

(n) see themselves as a learner, continuously seeking opportunities to draw upon current education policy and research as sources of analysis and reflection to improve practice; and

(o) understand expectations of the profession including codes of ethics, professional standards of practice, and relevant law and policy.

J. Leadership and collaboration:

(1) The teacher seeks appropriate leadership roles ad opportunities to tame responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession.

(2) The teacher shall:

(a) take an active role on the instructional team, giving and receiving feedback on practice, examining learn work, analyzing data from multiple sources, and sharing responsibility for decision making and accountability for each students learning;

(b) work with other school professionals

to plan and jointly facilitate learning on how to meet diverse needs of learners;

(c) engage collaboratively in the school-wide effort to build a shared vision and supportive culture, identify common goals, and monitor and evaluate progress toward those goals;

(d) work collaboratively with learners and their families to establish mutual expectations and ongoing communication to support learner development and achievement;

(e) working with school colleagues build ongoing connections with community resources to enhance student learning and wellbeing;

(f) engage in professional learning, contributes to the knowledge and skill of others, and works collaboratively to advance professional practice;

(g) use technological tools and a variety of communication strategies to build local and global learning communities that engage learners, families, and colleagues;

(h) use and generate meaningful research on education issues an policy;

(i) seek appropriate opportunities to model effective practice for colleagues, to lead professional learning activities, and to serve in other leadership roles;

(j) advocate to meet the needs of learners, to strengthen the learning environment, and to enact system change;

(k) take on leadership roles at the school, district, state, and national level and advocates for the school, the community, and the profession;

(l) understand schools as organizations within a historical, cultural, political, and social context and knows how to work with others across the system to support learners;

(m) understand that alignment of family,

school, and community spheres of influence enhances student learning and that discontinuity in these spheres of influence interferes with learning;

(n) know how to work with other adults and develop skills in collaborative interaction appropriate for both face-to-face and virtual contexts;

(o) know how to contribute a common culture that supports high expectations for student learning;

(p) actively share responsibility for shaping and supporting the mission of their school as one of the advocacy for learners and accountability for their success;

(q) respect families' beliefs, norms, and expectations and seeks to work collaboratively with learners and families in setting and meeting challenging goals;

(r) take initiative to grow and develop with colleagues through interactions and enhance practice and support student learning;

(s) take responsibility for contributing to and advancing the profession; and

(t) embrace the challenge of continuous improvement and change.

[6.61.7.10 NMAC - Rp, 6.61.7.10 NMAC, 08/01/2018]

HISTORY OF 6.61.7 NMAC:

PRE-NMAC HISTORY: The material in this part was derived from that previously filed with the State Records Center and Archives under: SBE Regulation No. 77-9 Four Year Standard Secondary Certificate with a Vocational Teaching Area Endorsement, filed September 22, 1997; SBE Regulation No. 77-10 Vocational-Technical Education Certificate, filed September 22, 1977; SBE Regulation No. 78-5 Vocational-Technical Education Certificate with an Area Endorsement, filed May 1, 1978; SBE Regulation No. 78-5 Amendment 1 Vocational-Technical Education

Certificate with an Area Endorsement, filed June 27, 1988;
SBE Regulation No. 88-5 Licensure in Secondary Vocational-Technical Education, filed April 13, 1988.

History of Repealed Material:
6.61.7 NMAC, Licensure in Secondary Vocational-Technical Education, filed 11/14/1998 - Repealed effective 08/01/2018.

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6.61.7 NMAC, Licensure in Secondary Vocational-Technical Education, filed 11/14/1998, was repealed and replaced by 6.61.7 NMAC, Licensure in Secondary Vocational-Technical Education, effective 8/1/2018.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS
PART 8 LICENSURE IN EARLY CHILDHOOD EDUCATION, BIRTH - GRADE THREE**

6.61.8.1 ISSUING AGENCY: Public Education Department (PED).
[6.61.8.1 NMAC - Rp, 6.61.8.1 NMAC, 8/1/2018]

6.61.8.2 SCOPE: All persons seeking licensure in early childhood education, birth - grade three.
[6.61.8.2 NMAC - Rp, 6.61.8.2 NMAC, 8/1/2018]

6.61.8.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2 and 22-10A-6, NMSA 1978.
[6.61.8.3 NMAC - Rp, 6.61.8.3 NMAC, 8/1/2018]

6.61.8.4 DURATION: Permanent.
[6.61.8.4 NMAC - Rp, 6.61.8.4

NMAC, 8/1/2018]

6.61.8.5 EFFECTIVE DATE: August 1, 2018, unless a later date is cited at the end of a section.
[6.61.8.5 NMAC - Rp, 6.61.8.5 NMAC, 8/1/2018]

6.61.8.6 OBJECTIVE:
This rule establishes licensure requirements for those seeking to work in early childhood education, that is, with children from birth to grade three whether they are developing either typically or atypically.
[6.61.8.6 NMAC - Rp, 6.61.8.6 NMAC, 8/1/2018]

6.61.8.7 DEFINITIONS:
A. "Adaptive living skills" means the development in several skill areas such as: (1) living skills: eating, dressing, and toileting; (2) independence/safety skills: crossing the street properly and avoiding dangerous situations such as hot stoves and hot water; and (3) environmental adaptation skills: adapting behavior as a function of the limitations or demands of the particular environment, such as being quiet in a library or hospital and walking, not running, inside school hallways. Adaptive behavior means the effectiveness or degree with which the child meets the standards of personal independence and social responsibility expected of comparable age and cultural groups.

B. "Alternative means of communication" means other forms of communication, particularly non-vocal; such as the use of sign language with and without speech; communication boards; or other technological aids such as computers and speech output devices.

C. "Anti-bias" means actively confronting, transcending, and eliminating personal and institutional barriers based on race, sex, or ability.

D. "At risk" means the following as it applies to children birth through age two: A biological or medical risk is the presence of early medical conditions which are known

to produce developmental delays in some children. An environmental risk is the presence of physical, social, or economic factors in the environment which pose a substantial threat to development as indicated by a discrepancy between chronological age, after correction for prematurity, and developmental age in two or more areas of development as documented by the evaluation process. A determination of environmental risk shall be made by an interagency team and shall not be based upon behavior related to cultural or language differences.

E. "Individual education program" (IEP) means a plan that describes the delivery of services to a child with a disability, age three - 21. The plan serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to decide jointly what the child's needs are, what services will be provided to meet those needs, what the anticipated outcomes may be, and how the child's progress towards meeting the projected outcomes will be evaluated.

F. "Individualized family service plan" (IFSP) means a plan that describes the delivery of services to a child with a developmental delay or at risk for a developmental delay, birth through two years of age, and the child's family. Components of the plan include a statement describing the child's level of functioning in developmental areas; major outcomes including criteria, procedures, and timelines to determine the degree of progress and revision of the plan; specific services needed to achieve outcomes, other services needed by the child and family, name of service coordinator, a transition plan, and an optional statement of family concerns, priorities and resources.

G. "Integrated curriculum" means an approach to curriculum that recognizes that content areas in instruction are naturally interrelated, as they are in real life experiences. In the resulting integrated curriculum, learning is regarded as a process rather than

a collection of facts. Learning about math, science, social studies, health, and other content areas are all connected through meaningful activities.

H. “Intervention strategies” means various techniques utilized in teaching a child a particular skill such as physical or verbal prompts and cues, visual aids, modeling, imitation, repetition, task analysis, environmental or stimulus prompts and cues. These strategies are attempts to facilitate learning when the presentation of information or the arrangement of an environment is insufficient in assisting the developmental learning process. The proper design of intervention strategies requires careful observation, individualization and data keeping. The goal of this approach is to systematically fade the particular technique utilized as the child demonstrates abilities to practice, initiate, and generalize the skill.

I. “Variations across cultures/cultural diversity” means the curriculum, environment, and learning materials are reflective of distinct groups that may differ from one another physically, socially, and culturally.

J. “A highly qualified beginning early childhood teacher”, under this rule, means a teacher who is fully qualified for teaching children from birth through grade three, who is new to the profession, who has pursued a standard route to licensure, and who:

(1) meets the requirements for early childhood birth-three licensure in Subsections A or B of 6.61.8.8 NMAC; and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

[6.61.8.7 NMAC - Rp, 6.61.8.7 NMAC, 8/1/2018]

6.61.8.8 REQUIREMENTS:

All persons who perform instructional services in early childhood education (i.e., birth - grade three) in public schools or in state-supported schools, must hold a valid standard license in early childhood development issued by the PED. A candidate who applies for licensure in early childhood education on or after July 1, 2015 must meet the requirements for either birth - pre-K as stated in 6.61.11 NMAC, or pre-K-grade three as stated in 6.61.12 NMAC:

A. Persons seeking licensure in early childhood education pursuant to the provisions of this rule shall meet the following requirements:

(1) possess a bachelor’s degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 2017, the following:

(a) nine semester hours in communication;

(b) six semester hours in mathematics;

(c) eight semester hours in laboratory science;

(d) nine semester hours in social and behavioral science;s

(e) nine semester hours in humanities and fine arts; and

(2) earn credits from a regionally accredited college or university which include: 36-42 semester hours of professional education in an early childhood education program approved by the PED, including completion of the PED’s approved early childhood education competencies; and

(3) earn 18 to 30 semester hours of practicum and supervised field experiences beginning in the first 18 semester hours of instruction in professional early childhood education to include a mandatory student teaching component in early childhood education for one of the following age ranges: B-three, three-five, or five-eight with children who are developing either typically or

atypically; and

(a) 150 contact hours of practicum or supervised field experience at a developmental stage(s) other than the stage selected for student teaching set forth in Paragraph (3) above; or

(b) evidence of three years of documented, verified, satisfactory work experiences with at least two of the age ranges set forth in Paragraph (3) of Subsection A of 6.61.8.8 NMAC above at a center accredited by the national academy of early childhood programs, a postsecondary laboratory early care and education setting, or an early childhood program accredited by the PED; and

(4) in addition to the requirements specified in Paragraphs (1), (3) and (5) of Subsection A of 6.61.8.8 NMAC, six hours in the teaching of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(5) pass all required portions of the New Mexico teacher assessment (NMTA) or any successor teacher examination adopted by the PED; and

(6) if new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a title I targeted assistance program or a title I school-wide, satisfies the requirements of a highly qualified beginning early childhood teacher.

B. Possess valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type. [6.61.8.8 NMAC - Rp, 6.61.8.8 NMAC, 8/1/2018]

6.61.8.9 IMPLEMENTATION:

All persons holding a current license in early childhood, birth - grade three prior to July 1, 2015 may advance or renew that license by meeting requirements stated in 6.60.6 NMAC. All persons whose license in early childhood, birth - grade three

expired on or after June 30, 2015 must apply as an initial applicant and meet requirements stated in 6.61.11 NMAC, or 6.61.12 NMAC. [6.61.8.9 NMAC - Rp, 6.61.8.9 NMAC, 8/1/2018]

6.61.8.10 REFERENCED MATERIAL: COMPETENCIES FOR EARLY CHILDHOOD EDUCATION:

A. Child growth, development and learning: Foundations for all learning are established during early childhood. Biological-physical, social, cultural, emotional, cognitive, and language domains are inherently intertwined in growth and development. Early childhood professionals must understand this process of development and the adult’s role in supporting each child’s growth, development, and learning.

(1) Incorporate understanding of developmental stages, processes, and theories of growth, development, and learning into developmentally appropriate practice.

(2) Demonstrate knowledge of the interaction between maturation and environmental factors that influence physical, social, emotional, cognitive, and cultural domains in the healthy development of each child.

(3) Demonstrate knowledge of the significance of individual differences in development and learning. Demonstrate knowledge of how certain differences may be associated with rate of development and developmental patterns associated with developmental delays and specific disabilities.

(4) Demonstrate knowledge of the similarities between children who are developing typically and those with special needs.

(5) Provide a variety of activities that facilitate development of the whole child in the following areas: physical/motor, social/emotional, language/cognitive, and adaptive/living skills.

(6) Apply knowledge of cultural and linguistic diversity and the significance of socio-cultural and political contexts for development and learning and recognize that children are best understood in the contexts of family, culture and society.

(7) Demonstrate knowledge of the many functions that language serves in the cognitive, social, and emotional aspects of development in the formative years.

(8) Demonstrate knowledge of the developmental sequence of language and literacy, including the influence of culture and home factors.

(9) Demonstrate knowledge of how children acquire and use verbal, non-verbal, and alternative means of communication.

(10) Demonstrate knowledge of the relationship among emotions, behaviors, and communication skills to assist children in identifying and expressing their feelings in appropriate ways.

(11) Use appropriate guidance to support the development of self-regulatory capacities in young children.

B. Health, safety and nutrition: Early childhood professionals promote physical and mental health and appropriate nutrition and provide an emotionally and physically safe environment for young children in partnership with their families. Sound health, safety, and nutritional practices provide the foundation for development and learning. Good nutrition is appropriate and important to the total development of young children and their families. Meals and snacks encourage good nutrition and eating habits. A safe environment prevents and reduces injuries for young children who are only beginning to recognize dangerous situations.

(1) Recognize and respond to each child’s physical health, intellectual and emotional well-being, and nutritional and safety

needs.

(2) Appropriately plan, maintain, and facilitate the use of the indoor and outdoor learning environments to promote each child’s physical and emotional well-being.

(3) Use appropriate health appraisal and management procedures and makes referrals when necessary.

(4) Recognize signs of emotional distress, child abuse, and neglect in young children and use procedures appropriate to the situation, such as initiating discussions with families, referring to appropriate professionals, and, in cases of suspected abuse or neglect, reporting to designated authorities.

(5) Establish an environment that provides opportunities and reinforcement for children’s practice of healthy behaviors that promote appropriate nutrition and physical and psychological well-being.

(6) Provide a consistent daily schedule for rest/sleep, as developmentally appropriate.

(7) Implement health care and educational activities for children and families based on health and nutritional information that is responsive to diverse cultures.

(8) Assist young children and their families, as individually appropriate, in developing decision-making and interpersonal skills that enable them to make healthy choices and establish health-promoting behaviors.

C. Family and community collaboration: Early childhood professionals are committed to family-centered practices. They maintain an open, friendly, and cooperative relationship with each child’s family, encouraging family involvement, and supporting the child’s relationship with his or her family. The diverse cultures and languages representative of families in New Mexico’s communities are honored.

(1) Seek and maintain a collaborative relationship with parents, guardians, families,

community agencies, and other professionals to meet the needs each child.

(2) Create and maintain a safe and welcoming environment for families and community members.

(3) Establish frequent contact with parents and guardians through a variety of communication strategies, including communication in the home language of each child to provide ongoing, relevant information to families about child growth, development, and learning.

(4) Demonstrate knowledge of and respect for variations across cultures, in terms of family strengths, expectations, values, and child-rearing practices.

(5) Demonstrate understanding of the complexity and dynamics of family systems.

(6) Demonstrate understanding of the effects of family stress on the behavior of children and other family members.

(7) Demonstrate the ability to incorporate the families' desires/goals for their children into classroom and intervention strategies.

(8) Develop partnerships with family members to promote early literacy in the home.

(9) Involve families and community members in contributing to the learning environment.

(10) Establish partnerships with community members in promoting literacy.

(11) Demonstrate ability to communicate to families the program's policies, procedures, and those procedural safeguards that are mandated by state and federal regulations.

D. Developmentally appropriate content: Early childhood professionals demonstrate knowledge of child development and learning, as well as content knowledge, both in terms of academic disciplines and

interdisciplinary integration. Their approach to curriculum content emerges from multiple sources, such as play and exploration, and is appropriate for the ages and developmental levels of the children with whom they work. Content includes, but is not limited to, the arts, literacy, mathematics, physical education, health, social studies, science, and technology. Children's initial experiences with these content areas form the foundation for later understanding and success.

(1) Demonstrate knowledge of relevant content for young children and developmentally appropriate ways of integrating content into teaching and learning experiences for children from birth through age eight.

(2) Demonstrate the integration of knowledge of how young children develop and learn with knowledge of the concepts, inquiry tools, and structure of content areas appropriate for different developmental levels.

(3) Demonstrate knowledge of what is important in each content area, why it is of value, and how it links with earlier and later understandings within and across areas.

(4) Demonstrate knowledge of the reading and writing components of literacy at each developmental level.

(5) Develop, implement, and evaluate an integrated curriculum that focuses on children's development and interests, using their language, home experiences and cultural values.

(6) Adapt content to meet the needs of each child, including the development of individualized family service plans (IFSP) and individualized education plans (IEP) for children with special needs through the team process with families and other team members.

(7) Provides and uses anti-bias materials/literature and experiences in all content areas of the curriculum.

E. Learning environment and curriculum

implementation: Teaching and learning with young children is a complex process embedded in relationships. These teaching and learning relationships provide the scaffold for jointly constructing meanings about self, others, and the world. Early childhood professionals use their child development knowledge, their knowledge of developmentally appropriate practices, and their content knowledge to design, implement, and evaluate experiences that promote optimal development and learning for all children from birth through age eight. In addition, their use of observations is grounded in a thorough understanding of children's families, cultures, and communities. Early childhood professionals encourage young children's problem solving, critical thinking, and academic and social competence within a supportive and challenging learning environment. These challenging teaching and learning experiences build children's confidence in themselves as competent learners.

(1) Demonstrate knowledge of varying program models and learning environments that meet the individual needs of all young children, including those with special needs.

(2) Create environments that encourage active involvement, initiative, responsibility, and a growing sense of autonomy through the selection and use of materials and equipment that are suitable to individual learning, developmental levels, special needs, and the language and cultures in New Mexico.

(3) Demonstrate knowledge and skill in the use of developmentally appropriate guidance techniques and strategies that provide opportunities to assist children in developing positive thoughts and feelings about themselves and others through cooperative interaction with peers and adults.

(4) Create and manage learning environments that provide individual and cooperative

opportunities for children to construct their own knowledge through various strategies that include decision-making, problem-solving, and inquiry experiences.

(5)

Demonstrate understanding that each child’s creative expression is unique and can be encouraged through diverse ways, including creative play.

(6) Plan

blocks of interrupted time for children to persist at self-chosen activities, both indoors and out.

(7)

Demonstrate understanding of the influence of the physical setting, schedule, routines, and transitions on children and use these experiences to promote children’s development and learning.

(8) Use

and explain the rationale for developmentally appropriate methods that include play, small group projects, open-ended questioning, group discussion, problem solving, cooperative learning, and inquiry experiences to help young children develop intellectual curiosity, solve problems, and make decisions.

(9) Create and manage a literacy-rich environment that is responsive to each child’s unique path of development.

(10) Use

a variety of language strategies during adult-child and child-child interactions and facilitate dialogue of expressive language and thought.

(11)

Demonstrate a variety of developmentally appropriate instructional strategies that facilitate the development of literacy skills.

(12)

Demonstrate knowledge of developmentally appropriate uses of technology, including assistive technology.

(13)

Demonstrate the ability to work collaboratively with educational assistants, volunteers, and others to individualize the curriculum and to meet program goals.

(14)

Demonstrate effective written and oral

communication skills when working with children, families, and early care, education, and family support professionals.

F. Assessment of

children and evaluation of programs:

Early childhood professionals must develop knowledge of diverse assessment approaches, including observational skills. They use appropriate ongoing documentation and report information to families and professionals. Appropriate early childhood assessment is responsive to cultural and linguistic differences. It includes information from multiple sources, e.g., observations, checklists, interviews, and both formal and informal standardized measures in diverse settings for making educational decisions about children.

The assessment data gathered from multiple sources that has a major impact on children should be made by a team of family members, teachers, and other professionals. In addition, early childhood professionals engage in systematic, ongoing evaluation of their programs.

(1)

Demonstrate knowledge of assessment and evaluation practices that are valid and appropriate.

(2)

Demonstrate knowledge of maintaining appropriate records of children’s development and behavior that safeguard confidentiality and privacy.

(3)

Demonstrate knowledge of the educator’s role as a participating member of the assessment process as described and mandated by state and federal regulations for Individual family service plans (IFSP) and individual education plans (IEP).

(4)

Demonstrate understanding of the influences of environmental factors, cultural/linguistic differences, and diverse ways of learning on assessment outcomes.

(5) Involve

the family and, as appropriate, other team members in assessing the child’s development, strengths, and needs in order to set goals for the child.

(6) Share

assessment results as appropriate with families in clear, supportive ways.

(7) Involve all

stakeholders in program evaluations.

(8)

Demonstrate knowledge of a variety of techniques and procedures to evaluate and modify program goals for young children and their families.

(9) Develop

and use formative and summative program evaluation to ensure comprehensive quality of the total environment for children, families, and the community.

(10) Use both

self and collaborative evaluations as part of ongoing program evaluations.

G. Professionalism:

Professionalism is built upon individual integrity, responsibility, and ethical practices that demonstrate a profound respect for all children and their families. Early childhood professionals embrace a multicultural perspective that is responsive to individuals in culturally diverse communities in New Mexico.

Professionals make decisions based upon knowledge of early childhood theories and practices that recognize diversity of ability, developmental level, and family characteristics. Early childhood professionals advocate for excellence in early childhood programs and participate in one-going professional development to enhance their knowledge and skills.

(1)

Consistently adheres to professional codes of ethics and conduct.

(2)

Demonstrate knowledge of federal, state, and local regulations regarding programs and services for children birth through eight years of age.

(3)

Demonstrate understanding of conditions of children, families, and professionals; current issues and trends; legal issues; and legislation and other public policies affecting children, families, and programs for young children and the early childhood profession.

(4) Articulate

a personal philosophy of appropriate

early care and education that responds to practices that support inclusion and cultural and linguistic diversity through actions and attitudes.

(5)

Demonstrate critical reflection of one's own professional and educational practices from community, state, national, and global perspectives.

(6)

Demonstrate understanding of the early childhood profession, its multiple, historical, philosophical and social foundations, and how these foundations influence current thought and practice.

(7)

Demonstrate a commitment to advocacy for excellence in programs and services for young children and their families.

(8)

Demonstrate knowledge of other professions that provide related services for young children and their families.

(9) Participate

in professional organizations and in ongoing professional development to enhance knowledge and skills in working with young children and adults.

(10)

Demonstrate knowledge of basic principles of administration, organization, and operation of early childhood programs, including supervision of staff and volunteers. [6.61.8.10 NMAC - Rp, 6.61.8.10 NMAC, 8/1/2018]

HISTORY OF 6.61.8 NMAC:

PRE-NMAC HISTORY: The material in this part was derived from that previously filed with the State Records Center and Archives under: SBE Regulation No. 63-1 New Mexico Certification Regulations Kindergarten Plan I Five Year Kindergarten Certificate, and Plan II Four Year Provisional Elementary Certificate with a Kindergarten Endorsement, filed August 28, 1978; SBE Regulation No. 78-11 Certification Requirements for Five Year Kindergarten Certificate, filed September 6, 1978; SBE

Regulation No. 78-11.1 Certification Requirements for Five Year Kindergarten Certificate, filed October 20, 1978; SBE Regulation No. 78-11.1 Amendment No. 1 Certificate for Requirement for Five Year Kindergarten Certificate, filed December 8, 1978; SBE Regulation No. 86-5 Supersession of Regulations Pertaining to Kindergarten Licensure and Endorsement And Provision for Continuation of Certain Licenses Granted Pursuant to Said Regulations, filed July 28, 1986; SBE Regulation No. 93-17, Licensure in Early Childhood Education Birth - Grade 3, filed July 20, 1993; SBE Regulation No. 93-17 Amendment 1 Licensure in Early Childhood Education Birth - Grade 3, filed April 3, 1995.

History of Repealed Material:

6.61.8 NMAC, Licensure in Early Childhood Education, Birth - Grade 3, amendment and renumber filed 3/16/2001 - Duration expired 6/30/2014.

6.61.8 NMAC, Licensure in Early Childhood Education, Birth - Grade 3, filed 4/30/2016 - Repealed effective 8-1-2018.

Other History of 6.61.8 NMAC:

6.61.8 NMAC, Licensure in Early Childhood Education, Birth - Grade 3, filed 4/30/2016, was repealed and replaced by 6.61.8 NMAC, Licensure in Early Childhood Education, Birth - Grade 3, effective 8/1/2018.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS
PART 10 TEACHERS OF STUDENTS WITH BLINDNESS/ VISUAL IMPAIRMENT B-12**

6.61.10.1 ISSUING AGENCY:

Public Education Department (PED).

[6.61.10.1 NMAC - Rp, 6.61.10.1

NMAC, 8/1/2018]

6.61.10.2 SCOPE: Chapter 61, Part 10 governs licensure of teachers of students with blindness and visual impairment, birth through grade 12, for those persons seeking such licensure.

[6.61.10.2 NMAC - Rp, 6.61.10.2 NMAC, 8/1/2018]

6.61.10.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2 and 22-10A-6, NMSA 1978.

[6.61.10.3 NMAC - Rp, 6.61.10.3 NMAC, 8/1/2018]

6.61.10.4 DURATION:

Permanent

[6.61.10.4 NMAC - Rp, 6.61.10.4 NMAC, 8/1/2018]

6.61.10.5 EFFECTIVE DATE:

August 1, 2018, unless a later date is cited in the history note at the end of a section.

[6.61.10.5 NMAC - Rp, 6.61.10.5 NMAC, 8/1/2018]

6.61.10.6 OBJECTIVE: This rule governs licensure requirements in teaching of students with blindness and visual impairment, birth through grade 12, for persons seeking such licensure.

[6.61.10.6 NMAC - Rp, 6.61.10.6 NMAC, 8/1/2018]

6.61.10.7 DEFINITIONS:

A. "Assistive

technology" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

B. "Aural literacy

skills" means listening skills that must be developed for students who have an impaired visual system. These skills provide a solid foundation for learning, reading, mobility clues, social conversation, and interpretation of a variety of auditory signals received from the environment. These skills begin to develop in infancy and need to

be sequentially and deliberately expanded during the school years. Listening becomes particularly important in secondary and post-secondary schools, when Braille or print reading assignments become long and laborious.

C. “Braille” means a system of reading and writing that uses dot codes that are embossed on paper, developed by Louis Braille around 1829.

D. “Braillewriter” means a machine used to produce embossed Braille symbols.

E. “Career education” means a curriculum designed to teach individuals the skills and knowledge necessary in the world of work. This instruction may include field trips into the community to explore work opportunities and job requirements that would be gained by others with normal vision through incidental learning.

F. “Compensatory skills” means any technique, habit, or activity that must be developed to overcome a severe visual impairment; e.g., daily living skills, social and emotional skills.

G. “Continuum of services” means a full range of educational placements arranged in a stair step fashion, where one level of service leads directly to the next one.

H. “Daily living skills” means skills that enable a visually impaired student to live independently.

I. “Educational placement” means the location or type of classroom program (for example, resource room) arranged for a child’s education; the setting in which a student receives educational services.

J. “Functional vision” means the presence of enough usable vision, giving the student the ability to use sight as a primary channel for learning. This term also means the total act of seeing and how the student uses sight to function educationally.

K. “Functionally blind” means a student whose primary channels for learning are

tactual and auditory.

L. “Least restrictive environment” (LRE) means the environment, on the scale of a full continuum of services, where the student is given the maximum opportunity to learn.

M. “Mobility” means the ability to navigate from one’s present fixed position to one’s desired position in another part of the environment.

N. “Nemeth” means a system for reading and writing mathematical symbols based on the six-cell Braille cell and developed by Dr. Abraham Nemeth.

O. “Orientation” means the process of using the remained senses in establishing one’s position and relationship to all other significant objects in the environment.

P. “Residual vision” means the amount and degree of functional vision that one retains despite a visual handicap.

Q. “Social interaction skills” means that persons with normal vision most often learn social interaction skills social skills incidentally. The visual cues are not available for students with poor or no vision. These skills must be taught from infancy to adulthood in order for persons with visual impairment to gain the necessary skills.

R. “Tactual skills” means tactual awareness must be developed in infancy and need to be sequentially and deliberately expanded during the school years. These skills will become an effective method of literacy as well provide a method to gain information. This skill will have a major impact on concept development and future learning.

S. “Visual efficiency” means how well a person can use sight.

T. “Visual impairments” is overall term that refers to all levels of vision loss. [6.61.10.7 NMAC - Rp, 6.61.10.7 NMAC, 8/1/2018]

6.61.10.8 REQUIREMENTS:

A. Persons seeking

licensure to teach students with blindness and visual impairment pursuant to the provisions of this rule shall meet the requirements of Subsection A of 6.61.10.8 NMAC.

(1) Bachelor’s degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 2017, the following:

(a) nine semester hours in communication;

(b) six semester hours in mathematics;

(c) eight semester hours in laboratory science;

(d) nine semester hours in social and behavioral science;

(e) nine semester hours in humanities and fine arts; and

(2) credits from a regionally accredited college or university which include 24 - 36 semester hours of professional education in a program of studies that prepares candidates to teach blind and visually impaired students, including completion of the PED’s approved functional areas and related competencies in professional education; and

(3) a mandatory student teaching or practicum component; and

(4) 24 - 36 semester hours in one teaching field such as mathematics, science(s), language arts, reading, or from among history, geography, economics, civics and government (or other social studies content related areas). Individuals must also complete the PED’s approved functional areas and related competencies in the teaching field; and

(5) in addition to the requirements specified in Paragraphs (1), (3), (4) and (6) of Subsection A of 6.61.10.8 NMAC, six hours of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) passage of all required portions of the New Mexico teacher assessments (NMTA) or any successor teacher examination adopted by the PED.

B. Possess a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type. [6.61.10.8 NMAC - Rp, 6.61.10.8 NMAC, 8/1/2018]

6.61.10.9 REFERENCED

MATERIAL: Competencies for entry level teachers of blind and visual impairment.

A. Philosophical, historical, and legal foundations of special education for students with visual impairment. The teacher demonstrates his/her understanding of the unique role of the teacher of students with blindness/visual impairment including those with multiple impairment, through the knowledge of philosophical, historical, and legal foundations of special education for students with visual impairment.

(1) Teacher understands federal entitlements (e.g., American printing house for the Blind quota funds).

(2) Teacher understands historical foundations for education of children with visual impairments, including the array of service options.

(3) Teacher understands current educational definitions of students with visual disabilities, including identification criteria, labeling issues, and current incident and prevalence figures.

B. Characteristics of the learner with blindness/visual impairment including those with multiple impairments to be addressed by the teacher:

(1) Teacher demonstrates an understanding of the unique learning needs of the child/student with blindness/visual impairment, including those with multiple impairment, through implementation showing knowledge of the unique characteristics of loss or impairment of vision;

(2) Teacher understands normal development of the human visual system;

(3) Teacher understands basic terminology related to the structure and function of human visual system;

(4) Teacher understands basic terminology related to diseases and disorders of the human visual system;

(5) Teacher understands development of secondary senses (hearing, touch, taste, smell) when the primary sense is impaired;

(6) Teacher understands the effects of a visual impairment on early development (motor system, cognition, social/emotional interactions, self-help, language);

(7) Teacher understands the effects of a visual impairment on social behaviors and independence;

(8) Teacher understands the effects of a visual impairment on language and communication;

(9) Teacher understands the effects of a visual impairment on the individual's family and the reciprocal impact on the individual's self-esteem;

(10) Teacher understands the psychosocial aspects of a visual impairment;

(11) Teacher understands effects of medications on the visual system;

(12) Teacher understands the impact of additional exceptionalities on students with visual impairments.

C. Implications of diagnosis, assessment and evaluation. The teacher effectively utilizes assessment techniques and procedures by understanding the implications of loss or impairment of vision.

(1) Teacher understands the impact of visual disorders on learning and experience.

(2) Teacher understands specialized terminology used in assessing individuals with visual impairments, both as it relates

to the visual system and in areas of importance.

(3) Teacher understands ethical considerations and legal provisions, regulations, and guidelines (federal, state/provincial, and local) related to assessment of students with visual impairments (including the legal versus functional definitions of blindness and low vision.)

(4) Teacher understands specialized policies regarding referral and placement procedures for students with visual impairments.

(5) Teacher understands procedures used for screening, pre-referral, referral, and classifications of students with visual impairments, including vision screening methods, functional vision evaluation, and learning media assessment.

(6) Teacher understands alternative assessment techniques for students who are blind or have low vision.

(7) Teacher understands appropriate interpretation and application of scores obtained as a result of assessing individuals with visual impairments.

(8) Teacher understands relationships among assessment, IEP development, and placement as they affect vision-related services.

D. Instructional content and practice. The teacher demonstrates the skills required to plan for and teach students with blindness/visual impairment, including those with multiple impairments, by understanding current instructional content and practices.

(1) Teacher understands methods for the development of special auditory, tactual, and modified visual communication skills for students with visual impairments, including:

(a) Braille reading and writing;

(b) handwriting for students with low vision and signature writing for

students who are blind;
 (c)
 listening skills and compensatory auditory skills;
 (d)
 typing and keyboarding skills;
 (e)
 the use of unique technology for individuals with visual impairments;
 (f)
 the use of alternatives to nonverbal communication.
 (2) Teacher understands methods to acquire disability-unique academic skills, including, but not exclusive to:
 (a)
 the use of an abacus;
 (b)
 the use of a talking calculator;
 (c)
 tactile graphics (including maps, charts, tables, etc.);
 (d)
 adapted science equipment
 (3) Teacher understands methods for the development of basic concepts needed by young students who do not learn visually.
 (4) Teacher understands methods for the development of visual efficiency, including instruction in the use of print adaptations, optical devices, and non-optical devices.
 (5) Teacher understands methods to develop alternative reasoning and decision-making skills in students with visual impairments.
 (6) Teacher understands methods to develop alternative organization and study skills for students with visual impairments.
 (7) Teacher understands methods to prepare students with visual impairments for structured pre-cane orientation and mobility assessment and instruction.
 (8) Teacher understands methods to develop tactual perceptual skills for students who are or will be primarily tactual learners.
 (9) Teacher understands methods to teach human

sexuality to students who have visual impairments, using tactual models that are anatomically accurate.
 (10) Teacher understands methods to develop adapted physical and recreation skills for individuals who have visual impairments.
 (11) Teacher understands methods to develop social and daily living skills that are normally learned or reinforced by visual means.
 (12) Teacher understands strategies for developing career awareness in and providing vocational counseling for students with visual impairments.
 (13) Teacher understands strategies for promoting self-advocacy in individuals with visual impairments.
 (14) Teacher understands functional life skills instruction relevant to independent, community, and personal living and employment for individuals with visual impairments including:
 (a) methods for accessing printed public information;
 (b) methods for accessing public transportation;
 (c) methods for accessing community resources;
 (d) methods for acquiring practical skills (e.g., keeping personal records, time management, personal banking, emergency procedures).
 (15) Teacher understands sources of specialized materials for students with visual impairments.
 (16) Teacher understands techniques for modifying instructional methods and materials for students with visual impairments, and assisting classroom teachers in implementing these modifications.
 E. Planning and managing the teaching/learning environment.
 (1) The teacher demonstrates the ability to plan and managing the teaching/

learning environment.
 (2) Teacher understands a variety of input and output enhancements to computer technology that address the specific access needs of students with visual impairments in a variety of environments.
 (3) Teacher understands model programs, including career-vocational and transition, which have been effective for students with visual impairments.
 F. Managing student behavior and social skills. The teacher is able to manage student behavior and social interaction skills of students with loss or impairment of vision.
 (1) Teacher understands teacher attitudes and behaviors that affect the behaviors of students with visual impairments.
 (2) Teacher creates an atmosphere conducive to the promotion of positive student involvement and self-concept.
 G. Communication and collaborative partnerships. The teacher promotes communication and collaborative partnerships.
 (1) Teacher understands strategies for assisting parents and other professionals in planning appropriate transitions for students who have visual impairments.
 (2) Teacher understands sources of unique services, networks, and organizations for students with visual impairments.
 (3) Teacher understands roles of paraprofessionals who work directly with students who have visual impairments (e.g., sighted readers, transcribers, aids) or who provide special materials to them.
 (4) Teacher understands the need for role models who have visual impairments, and who are successful.
 H. Professionalism and ethical practices. The teacher demonstrates professionalism and ethical practices.
 (1) Teacher understands the consumer and professional organizations,

publications, and journals relevant to the field of visual impairment.

(2) Teacher

adheres to the code of ethics for teachers of students with visual impairments.

[6.61.10.9 NMAC - Rp, 6.61.10.9 NMAC, 8/1/2018]

History of 6.61.10 NMAC:

6.61.10 NMAC, Teachers of Students with Blindness/Visual Impairment B-12, filed 8/15/2003, was repealed and replaced by 6.61.10 NMAC, Teachers of Students with Blindness/Visual Impairment B-12, effective 8/1/2018.

History of Repealed Material:

6.61.10 NMAC, Teachers of Students with Blindness/Visual Impairment B-12, filed 8/15/2003 - Repealed effective 8/1/2018.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS
PART 11 LICENSURE IN EARLY CHILDHOOD EDUCATION, BIRTH - PRE-K**

6.61.11.1 ISSUING

AGENCY: Public Education Department (PED).

[6.61.11.1 NMAC - Rp, 6.61.11.1 NMAC, 8/1/2018]

6.61.11.2 SCOPE:

All persons seeking licensure in early childhood education, birth - pre-K.

[6.61.11.2 NMAC - Rp, 6.61.11.2 NMAC, 8/1/2018]

6.61.11.3 STATUTORY

AUTHORITY: Sections 22-2-1, 22-2-2 and 22-2-8.7, NMSA 1978.

[6.61.11.3 NMAC - Rp, 6.61.11.3 NMAC, 8/1/2018]

6.61.11.4 DURATION:

Permanent

[6.61.11.4 NMAC - Rp, 6.61.11.4 NMAC, 8/1/2018]

6.61.11.5 EFFECTIVE

DATE: August 1, 2018, unless a later date is cited in the history note at the end of a section.

[6.61.11.5 NMAC - Rp, 6.61.11.5 NMAC, 8/1/2018]

6.61.11.6 OBJECTIVE:

This rule establishes licensure requirements for those seeking to work in early childhood education, that is, with children from birth to age four years, whether they are developing either typically or atypically.

[6.61.11.6 NMAC - Rp, 6.61.11.6 NMAC, 8/1/2018]

6.61.11.7 DEFINITIONS:

A. "Adaptive living skills" means the development in several skill areas such as (1) living skills: eating, dressing, and toileting; (2) independence/safety skills: avoiding dangerous situations; and (3) environmental adaptation skills: adapting behavior as a function of the limitations or demands of the particular environment. Adaptive behavior means the effectiveness or degree with which the child meets the standards of personal independence and social responsibility expected of comparable age and cultural groups.

B. "Alternative means of communication" means other forms of communication, particularly non-vocal; such as the use of sign language with and without speech; communication boards; or other technological aids such as computers and speech output devices.

C. "Anti-bias" means actively confronting, transcending, and eliminating personal and institutional barriers based on race, ethnicity, language, gender sexual orientation, or ability.

D. "At risk" means the following as it applies to children birth to two years of age: A biological or medical risk is the presence of early medical conditions, which are known to produce developmental delays in some children. An

environmental risk is the presence of physical, social, or economic factors in the environment, which pose a substantial threat to development as indicated by a discrepancy between chronological age, after correction for prematurity, and developmental age in two or more areas of development as documented by the evaluation process. A determination of environmental risk shall be made by an interagency team and shall not be based upon behavior related to cultural or language differences.

E. "Diverse abilities"

means any young child with an identified disability, developmental delay, or who may be "at risk" for learning challenges, as well as children who may be challenged as second language learners, or with cognitive, social/emotional, motor, language, or mental health/well-being differences.

F. "Inclusion/

inclusive" is a philosophically based approach to providing accessibility and participation in typical early childhood settings for children with diverse abilities.

G. "Inclusive

practices" are those strategies, which educators, administrators, and families implement to ensure accessibility and full participation of children with diverse abilities in all activities.

H. "Individual

education program" (IEP) means a plan that describes the delivery of services to a child with a disability, age three - 21. The plan serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to decide jointly what the child's needs are, what services will be provided to meet those needs, what the anticipated outcomes may be, and how the child's progress towards meeting the projected outcomes will be evaluated.

I. "Individualized

family service plan" (IFSP) means a plan that describes the delivery of services to a child with a developmental delay or at risk for a developmental delay, birth to two years of age, and the child's family.

Components of the plan include a statement describing the child’s level of functioning in developmental areas; major outcomes including criteria, procedures, and timelines to determine the degree of progress and revision of the plan; specific services needed to achieve outcomes, other services needed by the child and family, name of service coordinator, a transition plan, and an optional statement of family concerns, priorities and resources.

J. “Integrated curriculum” means an approach to curriculum that recognizes that content areas in instruction are naturally interrelated, as they are in real life experiences. In the resulting integrated curriculum, learning is regarded as a process rather than a collection of facts. Learning about math, science, social studies, health, and other content areas are all connected through meaningful activities.

K. “Intervention strategies” means various techniques utilized in teaching a child a particular skill such as physical or verbal prompts and cues, visual aids, modeling, imitation, repetition, task analysis, environmental or stimulus prompts and cues. These strategies are attempts to facilitate learning when the presentation of information or the arrangement of an environment is insufficient in assisting the developmental learning process. The proper design of intervention strategies requires careful observation, individualization, and data keeping. The goal of this approach is to systematically fade the particular technique utilized as the child demonstrates abilities to practice, initiate, and generalize the skill.

L. “Variations across cultures/cultural diversity” means the curriculum, environment, and learning materials are reflective of distinct groups that may differ from one another physically, socially, and culturally.
[6.61.11.7 NMAC - Rp, 6.61.11.7 NMAC, 8/1/2018]

6.61.11.8 REQUIREMENTS:

All persons who perform instructional services in early childhood education (i.e., birth to four years of age) as defined in this rule in public schools or in those special state-supported schools within state agencies must hold valid standard licensure in early childhood education issued by the (“PED”).

A. persons seeking licensure in early childhood education pursuant to the provisions of this rule shall meet the following requirements:

(1) possess a bachelor’s degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 2017, the following:

(a) nine semester hours in communication;

(b) six semester hours in mathematics;

(c) eight semester hours in laboratory science;

(d) nine semester hours in social and behavioral science;

(e) nine semester hours in humanities and fine arts; and

(2) earn 45 semester credits of professional education coursework at a regionally accredited college or university in an early childhood education program approved by the PED in the competencies identified in 6.61.11.10 NMAC; and

(3) earn a minimum of 15 semester hours, six of which would be practicum or supervised field experience nine semester hours of student teaching component in early childhood education for one of the following ranges: birth to four years of age with children who are developing either typically or atypically; and

(a) earn at least 135 contact hours of practicum or supervised field experience at a developmental stage (s) other than the stage selected for student teaching set forth in Paragraph

(3) above; or

(b) evidence of three years of documented, verified, satisfactory work experiences with at least two of the age ranges set forth in Paragraph (3) of Subsection A of 6.61.8.8 NMAC above at a center accredited by the national academy of early childhood programs, a postsecondary laboratory early care and education setting, or an early childhood program accredited by the PED; and

(4) in addition to the requirements specified in Paragraphs (1), (3) and (5) Subsection A of 6.61.11.8 NMAC, six hours in the teaching of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(5) pass all required portions of the New Mexico teacher assessment (NMTA) or any successor teacher examination adopted by the PED; and

B. Possess valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.
[6.61.11.8 NMAC - Rp, 6.61.11.8 NMAC, 8/1/2018]

6.61.11.9 DELAYED IMPLEMENTATION:

[RESERVED]
[6.61.11.9 NMAC - Rp, 6.61.11.9 NMAC, 8/1/2018]

6.61.11.10 REFERENCED MATERIAL: COMPETENCIES FOR EARLY CHILDHOOD EDUCATION:

A. Child growth, development, and learning: Foundations for all learning are established during early childhood. Biological-physical, social, cultural, emotional, cognitive, and language domains are inherently intertwined in growth and development. Early childhood professionals must understand this process of development and the adult’s role in supporting each child’s growth, development, and learning.

(1) Incorporate

understanding of developmental stages, processes, and theories of growth, development, and learning into developmentally appropriate practice.

(2)

Demonstrate knowledge of the interaction between maturation and environmental factors that influence physical, social, emotional, cognitive, and cultural domains in the healthy development of each child.

(3)

Demonstrate knowledge of the significance of individual differences in development and learning. Demonstrate knowledge of how certain differences may be associated with rate of development and developmental patterns associated with developmental delays or specific disabilities.

(4)

Demonstrate knowledge of the similarities between children who are developing typically and those with diverse abilities.

(5)

Provide a variety of activities that facilitate development of the whole child in the following areas: physical/motor, social/emotional, language/cognitive and adaptive/living skills.

(6)

Apply knowledge of cultural and linguistic diversity and the significance of socio-cultural and political contexts for development and learning and recognize that children are best understood in the contexts of family, culture, and society.

(7)

Demonstrate knowledge of the many functions that language serves in the cognitive, social, and emotional aspects of development in the formative years.

(8)

Demonstrate knowledge of the developmental sequence of language and literacy, including the influence of culture and home factors.

(9)

Demonstrate knowledge of how children acquire and use verbal, non-verbal, and alternative means of communication.

(10)

Demonstrate knowledge of the relationship among emotions, behaviors, and communication skills to assist children in identifying and expressing their feelings in appropriate ways.

(11)

Use appropriate guidance to support the development of self-regulatory capacities in young children.

B. Health, safety and nutrition: Early childhood professionals promote physical and mental health and appropriate nutrition and provide an emotionally and physically safe environment for young children in partnership with their families. Sound health, safety, and nutritional practices provide the foundation for development and learning. Good nutrition is critical to the overall development of young children. Meals and snacks encourage good nutrition and eating habits. A safe environment prevents and reduces injuries for young children who are only beginning to recognize dangerous situations.

(1)

Recognize and respond to each child's physical health, intellectual and emotional well-being, and nutritional and safety needs.

(2)

Articulate an understanding of indoor and outdoor learning environments that provide opportunities for children to put into practice healthy behaviors (physically, socially, and emotionally).

(3)

Use appropriate health appraisal and management procedures and makes referrals when necessary.

(4)

Recognize signs of emotional distress, child abuse, and neglect in young children and use procedures appropriate to the situation, such as initiating discussions with families, referring to appropriate professionals, and, in cases of suspected abuse or neglect, reporting to designated authorities.

(5)

Establish an environment that provides opportunities and reinforcement for children's practice of healthy behaviors that promote appropriate

nutrition and physical and psychological well-being.

(6)

Provide and assure a consistent daily schedule for meals, rest, and sleep, as developmentally appropriate.

(7)

Implement health care and educational activities for children and families based on health and nutritional information that is responsive to diverse cultures.

(8)

Assist young children and their families, as individually appropriate, in developing decision-making and interpersonal skills that enable them to make healthy choices and establish health-promoting behaviors.

C. Family and community collaboration: Early childhood professionals are committed to family-centered practices. They maintain an open, friendly, and collaborative relationship with each child's family, encouraging family involvement, and supporting the child's relationship with their family. The diverse cultures and languages representative of families in New Mexico's communities are honored.

(1)

Demonstrate knowledge and skill in building positive, reciprocal relationships with families.

(2)

Articulate an understanding of a safe and welcoming environment for families and community members.

(3)

Develop and maintain ongoing contact with families through a variety of communication strategies.

(4)

Demonstrate knowledge of and respect for variations across cultures, in terms of family strengths, expectations, values, and child-rearing practices.

(5)

Articulate understanding of the complexity and dynamics of family systems.

(6)

Demonstrate understanding of the importance of families as the primary educator of their child.

(7)

Demonstrate the ability to incorporate

the families' desires and goals for their children into classroom or intervention strategies.

(8) Develop partnerships with family members to promote early literacy in the home.

(9) Involve families and community members in contributing to the learning environment.

(10) Establish partnerships with community members in promoting literacy.

(11) Demonstrate ability to communicate to families the program's policies, procedures, and those procedural safeguards that are mandated by state and federal regulations.

(12) Apply knowledge of family theory and research to understand family and community characteristics including socioeconomic conditions, family structures, relationships, stressors, and supports (including the impact of having a child with diverse abilities), home language and ethnicity.

(13) Demonstrate knowledge of and skill to access community resources that assist families and contribute directly or indirectly to children's positive development such as mental health services, health care, adult education, native and English language instruction, and economic assistance.

D. Developmentally appropriate content: Early childhood professionals demonstrate knowledge of child development and learning, as well as content knowledge, both in terms of academic disciplines and in terms of interdisciplinary integration. Their approach to curriculum content emerges from multiple sources, such as play and exploration, and is appropriate for the ages and developmental levels of the children with whom they work. Content includes, but is not limited to, the arts, literacy, mathematics, physical education, health, social studies, science, and technology. Children's initial experiences with these content areas form the foundation for later understanding and success.

(1)

Demonstrate knowledge of relevant content for young children and developmentally appropriate ways of integrating content into teaching and learning experiences for children from birth to four years of age.

(2)

Demonstrate the integration of knowledge of how young children develop and learn with knowledge of the concepts, inquiry tools, and structure of content areas appropriate for different developmental levels.

(3)

Demonstrate knowledge of what is important in each content area, why it is of value, and how it links with earlier and later understandings within and across areas.

(4)

Demonstrate knowledge of the language, reading and writing components of emergent literacy at each developmental level.

(5)

Develop, implement, and evaluate an integrated curriculum that focuses on children's development and interests, using their language, home experiences, and cultural values.

(6)

Adapt content to meet the needs of each child, including the development of individualized family service plans (IFSP) or individualized education plans (IEP) for children with diverse abilities through the team process with families and other team members.

(7)

Provides and uses anti-bias materials and literature, and experiences in all content areas of the curriculum.

E. Learning environment and curriculum implementation: Teaching and learning with young children is a complex process embedded in relationships. These teaching and learning relationships provide the scaffold for jointly constructing meanings about self, others, and the world. Early childhood professionals use their child development knowledge, their knowledge of developmentally appropriate practices, and their content knowledge to design,

implement, and evaluate experiences that promote optimal learning and development for all children from birth to eight years of age. In addition, their use of observations is grounded in a thorough understanding of children's families, cultures, and communities. Early childhood professionals encourage young children's problem solving, critical thinking, and academic and social competence within a supportive and challenging learning environment. These challenging teaching and learning experiences build children's confidence in themselves as competent learners.

(1)

Demonstrate knowledge of varying program models and learning environments that meet the individual needs of all young children, including those with diverse abilities.

(2)

Create environments that encourage active involvement, initiative, responsibility, and a growing sense of autonomy through the selection and use of materials and equipment that are suitable to individual learning, developmental levels, diverse abilities, and the language and cultures in New Mexico.

(3)

Demonstrate knowledge and skill in the use of developmentally appropriate guidance techniques and strategies that provide opportunities to assist children in developing positive thoughts and feelings about themselves and others through cooperative interaction with peers and adults.

(4)

Create and manage inclusive learning environments that provide individual and cooperative opportunities for children to construct their own knowledge through various strategies that include decision-making, problem solving, and inquiry experiences.

(5)

Demonstrate understanding that each child's creative expression is unique and can be encouraged through diverse ways, including creative play.

(6)

Plan blocks of uninterrupted time for children to

persist at self-chosen activities, both indoors and outdoors.

(7)

Demonstrate understanding of the influence of the physical setting, schedule, routines, and transitions on children and use these experiences to promote children’s development and learning.

(8) Use

and explain the rationale for developmentally appropriate methods that include play, small group projects, open-ended questioning, group discussion, problem solving, cooperative learning, and inquiry experiences to help young children develop intellectual curiosity, solve problems, and make decisions.

(9) Create and

manage a literacy-rich environment that is responsive to each child’s unique path of development.

(10) Use

a variety of language strategies during adult-child and child-child interactions and facilitate communication and dialogue of expressive language and thought.

(11)

Demonstrate a variety of developmentally appropriate instructional strategies that facilitate the development of emergent literacy skills.

(12)

Demonstrate knowledge of developmentally appropriate uses of technology, including assistive technology.

(13)

Demonstrate the ability to work collaboratively with educational assistants, volunteers, and others to individualize the curriculum and to meet program goals.

(14)

Demonstrate effective written and oral communication skills when working with children, families, and early care, education, and family support professionals.

F. Assessment of

children and evaluation of programs: Early childhood professionals must develop knowledge of diverse assessment approaches, including observational skills. They use

appropriate ongoing documentation and report information to families and professionals. Appropriate early childhood assessment is responsive to cultural and linguistic differences. It includes information from multiple sources, e.g., observations, checklists, interviews, and both formal and informal standardized measures in diverse settings for making educational decisions about children.

The assessment data gathered from multiple sources that has a major impact on children should be made by a team of family members, teachers, and other professionals. In addition, early childhood professionals engage in systematic, ongoing evaluation of their programs.

(1)

Demonstrate ability to choose valid tools that are developmentally, culturally, and linguistically appropriate; use the tools correctly; make appropriate referrals; and interpret assessment results, with the goal of obtaining valid, useful information to inform practice and decision-making.

(2)

Demonstrate knowledge of maintaining appropriate records of children’s development and behavior that safeguard confidentiality and privacy.

(3)

Demonstrate knowledge of the educator’s role as a participating member of the assessment process as described and mandated by state and federal regulations for Individual family service plans (IFSP) and individual education plans (IEP).

(4)

Demonstrate an understanding of the influences of environmental factors, cultural/linguistic differences, and diverse ways of learning on assessment outcomes.

(5) Involve

the family and, as appropriate, other team members in accessing the child’s development, strengths, and needs in order to set goals for the child.

(6) Articulate

an understanding of the distinctions and definitions of assessment concepts (e.g. authentic, screening,

diagnostic assessment, standardized, testing, accountability, assessment).

(7) Apply

understanding of assessment concepts toward selection of appropriate formal assessment measures, critiquing the limitations of inappropriate measures, and discussing assessment issues as part of interdisciplinary teams.

(8) Articulate

an understanding that responsible assessment is legally and ethically grounded and guided by sound professional standards. It is collaborative and open with the goal of supporting diverse children and families.

(9)

Demonstrate knowledge of assessment techniques, interpretation of assessment information in the application of this data to curriculum development or intervention planning.

(10)

Demonstrate knowledge of a variety of techniques and procedures to evaluate and modify program goals for young children and their families.

(11)

Demonstrate knowledge and use of program evaluation to ensure comprehensive quality of the total environment for children, families, and the community.

(12) Use both

self and collaborative evaluations as part of ongoing program evaluations.

G. Professionalism:

Professionalism is built upon individual integrity, responsibility, and ethical practices that demonstrate a profound respect for all children and their families. Early childhood professionals embrace a multicultural perspective that is responsive to individuals in culturally diverse communities in New Mexico.

Professionals make decisions based upon knowledge of early childhood theories and practices that recognize diversity of ability, developmental level, and family characteristics. Early childhood professionals advocate for excellence in early childhood programs and participate in ongoing professional development to enhance their knowledge and skills.

(1) Adhere to

early childhood professional codes of ethical conduct and issues of confidentiality.

(2)

Demonstrate knowledge of federal, state, and local regulations and public policies regarding programs and services for children birth to eight years of age.

(3)

Demonstrate understanding of conditions of children, families, and professionals; the historical and current issues and trends; legal issues; and legislation and other public policies affecting children, families, and programs for young children and the early childhood profession.

(4)

Demonstrate critical reflection of one's own professional and educational practices from community, state, national, and global perspectives.

(5)

Demonstrate understanding of the early childhood profession, its multiple, historical, philosophical and social foundations, and how these foundations influence current thought and practice.

(6)

Demonstrate a commitment to leadership and advocacy for excellence in programs and services for young children and their families.

(7)

Demonstrate knowledge in technology resources to engage in ongoing professional development.

H. Advanced child development knowledge.

(1)

Demonstrate and facilitate conceptual understanding of family roles in the development of their infant and toddler, including support for family acquisition of knowledge concerning infant and toddler's growth, learning, and development and cultural and linguistic diversity represented within the home setting.

(2) Apply

theoretical knowledge of and ability to provide screening and assessment unique for infants and toddlers.

(3)

Demonstrate ability to work

collaboratively as an advocate with families and IFSP and IEP team members to provide developmentally supportive environment.

(4)

Demonstrate conceptual understanding of curriculum development and implementation for children birth to four years of age and the ability to articulate theoretically-based rationale for differences between infant/toddler curriculum and learning environments, and for children older than four.

(5) Articulate

and demonstrate conceptual understanding of respectful, responsive, and reciprocal interactions that serve as basis for infant/toddler curriculum and learning environments.

(6) Articulate

and apply coherent theoretical knowledge and understanding of young children's characteristics and needs as encompassing multiple, interrelated areas of children's development and learning - including physical, cognitive, social, emotional, language, and aesthetic domains, play, activity, and learning processes, and motivation to learn.

(7) Apply

a conceptual understanding of the multiple influences on development and learning to working with children, including cultural and linguistic contexts for development, children's close relationships with adults and peers, economic conditions of children and families, health status and disabilities, children's individual developmental variations and learning styles, opportunities to play and learn, technology and the media, and family and community characteristics.

I. Curriculum and content knowledge.

(1)

Demonstrate content knowledge (e.g., art, music, movement, science, math, literacy, social studies, and technology) and familiarity with a wide variety of resource in academic disciplines and apply that knowledge in the development, implementation, and evaluation of curriculum.

(2)

Demonstrate skill in collaboration with professionals from other disciplines (e.g., mental health, psychology, speech and language, occupational therapy) when planning curriculum and teaching strategies for young children in diverse abilities.

(3)

Demonstrate an understanding and application of flexible teaching approaches that span a continuum from child-initiated to adult-directed and from free exploration to scaffolded support or teacher modeling.

(4) Apply

understanding of young children's need for balance, order, depth, variety, and challenge through curriculum planning, routines, and scheduling (e.g., daily, weekly, and longer-term).

(5) Link

child characteristics, needs, and interests with informal opportunities to build children's language, concept development, and skills.

(6) Apply

knowledge to create environments that enrich and extend children's play including intervention strategies (i.e., questioning), respect of cultural diversity and gender equity.

(7) Support

a position of the fundamental importance of play in young children's learning and development from birth to four years of age.

(8)

Demonstrate sound knowledge and skills in using technology as a teaching and learning tool.

(9)

Demonstrate the ability to promote positive social interactions and engage children in learning activities while actively working to increase social and emotional competence of all children.

(10)

Demonstrate the ability to analyze and critique early childhood curriculum experiences in terms of the relationship of the experiences to the research base and professional standards.

(11) Establish

priorities for high-quality and meaningful language and pre-literacy

experiences across the developmental continuum, using language, pre-reading and pre-writing to facilitate skill development while strengthening children’s cultural identity.

(12)

Demonstrate knowledge of second-language acquisition and bilingualism including the diversity of home language environments.

(13)

Facilitate family involvement so that families are engaged with curriculum planning, assessing of children’s learning, and planning for children’s transitions to new programs.

(14)

Establish integrated experiences (art, music, movement, science, math, literacy, social studies, and technology) across a developmental continuum.

(15)

Demonstrate conceptual knowledge of the principles and standards derived from professional organizations (Zero to Three, NAEYC, DEC) for curriculum-decision making.

(16)

Demonstrate the use of reflective practice.
[6.61.11.10 NMAC - N, 8/1/2018]

HISTORY OF 6.61.11 NMAC:

6.61.11 NMAC, Licensure in Early Childhood Education, Birth - Pre-K, filed 1/29/2010, was repealed and replaced by 6.61.11 NMAC, Licensure in Early Childhood Education, Birth - Pre-K, effective 8/1/2018.

History of Repealed Material:

6.61.11 NMAC, Licensure in Early Childhood Education, Birth - Pre-K, filed 1/29/2010 - Repealed effective 8/1/2018.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 63 SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL

PART 15 LICENSURE FOR SCHOOL HEALTH ASSISTANTS, GRADES PRE K-12

6.63.15.1 ISSUING AGENCY:

Public Education Department (PED).
[6.63.15.1 NMAC - Rp, 6.63.15.1 NMAC, 9/26/2017]

6.63.15.2 SCOPE:

This rule governs licensure for school health assistants, grades pre k-12, for those persons seeking such licensure.
[6.63.15.2 NMAC - Rp, 6.63.15.2 NMAC, 9/26/2017]

6.63.15.3 STATUTORY AUTHORITY:

Sections 22-2-1, 22-2-2, 22-10A-3, and 22-10A-17, NMSA 1978.
[6.63.15.3 NMAC - Rp, 6.63.15.3 NMAC, 9/26/2017]

6.63.15.4 DURATION:

Permanent
[6.63.15.4 NMAC - Rp, 6.63.15.4 NMAC, 9/26/2017]

6.63.15.5 EFFECTIVE DATE:

September 12, 2017, unless a later date is cited in the history note at the end of a section.
[6.63.15.5 NMAC - Rp, 6.63.15.5 NMAC, 9/26/2017]

6.63.15.6 OBJECTIVE:

This rule establishes the requirements for school health assistant licensure for persons seeking such licensure.
[6.63.15.6 NMAC - Rp, 6.63.15.6 NMAC, 9/26/2017]

6.63.15.7 DEFINITIONS:

A. “Administration of medications” as defined in Paragraph (2) of Subsection A of 16.12.2.7 NMAC is a process whereby a prescribed drug or biological agent, as allowed by any applicable state or federal law, is given to a patient/client by a person licensed or certified by the board to administer medications.

B. “Assessment” as defined in Paragraph (9) of Subsection A of 16.12.2.7 NMAC means the review and interpretation by a licensed individual of specific data

necessary to determine the patient/client’s care and treatment needs (also see data collection).

C. “Assignment of nursing activity” as defined in Paragraph (10) of Subsection A of 16.12.2.7 NMAC means appointing or designating another licensed nurse or assistive personnel that is consistent with his/her scope of practice (licensed person) or role description (unlicensed person).

D. “Data collection” as defined in Paragraph (1) of Subsection D of 16.12.2.7 NMAC means the process of obtaining information, material, fact, or clinical observations which will be used in the assessment process; data collection is not limited to licensed individuals.

E. “Delegation” as defined in Paragraph (2) of Subsection D of 16.12.2.7 NMAC means the transferring to a competent individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation. As stipulated in Subsection B of 16.12.2.12 NMAC, the nurse shall assign/delegate to licensed and unlicensed persons only those nursing functions which that person is prepared, qualified, licensed, or certified to perform.

(1) The nurse is accountable for assessing the situation and is responsible for the decision to delegate or make the assignment.

(2) The delegating nurse is accountable for each activity delegated, for supervising the delegated function or activity, and for assessing the outcome of the delegated function or activity.

(3) The nurse may not delegate the specific functions of nursing assessment, evaluation, and nursing judgment to non-licensed persons.

(4) Registered nurses engaged in school nursing practice may delegate medication administration, including emergency medication, to adults affiliated with school operations.

F. “Supervision/

direction” as defined in Paragraph (5) of Subsection S of 16.12.2.7 NMAC, means initial verification of a person’s knowledge and skills in the performance of a specific function or activity followed by periodic observation, direction, and evaluation of that person’s knowledge and skills as related to the specific functions or activity.
[6.63.15.7 NMAC - Rp, 6.63.15.7 NMAC, 9/26/2017]

6.63.15.8 REQUIREMENTS:

Persons seeking licensure as a school health assistant pursuant to the provisions of this rule shall meet the following requirements:

- A. high school diploma or equivalency;
- B. be at least eighteen years of age;
- C. provide verification of current valid certification in cardiopulmonary resuscitation, which includes hands-on demonstration;
- D. provide verification of current valid certification in first aid;
- E. provide verification of completion of a one-time New Mexico department of health and public education department approved training for school health assistants, related to state/federal laws, regulations and guidelines;
- F. provide verification by the public school superintendent or private school official that a local orientation related to assigned duties, and facilitated by the public education department licensed registered nurse, was satisfactorily completed; and
- G. submit to and satisfactorily clear a fingerprint-based background check per local school board or regional education cooperatives policy pursuant to Section 22-10A-5, NMSA 1978.
[6.63.15.8 NMAC - Rp, 6.63.15.8 NMAC, 9/26/2017]

6.63.15.9 CONTINUING SCHOOL HEALTH ASSISTANT LICENSURE:

Persons holding a valid school health assistant license and seeking continuation of this license shall meet the following

requirements:

- A. a completed application for continuing New Mexico licensure shall be submitted to the public education department;
- B. a copy of a current valid certification in cardiopulmonary resuscitation (CPR) which includes hands-on demonstration;
- C. a copy of a current valid certification in first aid; and
- D. the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of application for continuing licensure must submit verification that the applicant has satisfactorily been employed as a PED licensed school health assistant.
[6.63.15.9 NMAC - Rp, 6.63.15.9 NMAC, 9/26/2017]

6.63.15.10 COMPETENCIES FOR ENTRY LEVEL SCHOOL HEALTH ASSISTANTS:

The school health assistant assists the public education department licensed school registered nurse with the implementation of the school health program, by providing delegated nursing services in the health room, including health screening, assisting with the administration of medications, basic first aid procedures, maintenance of student health records, and maintenance of a clean and orderly health room. The school health assistant may also perform nursing tasks as appropriately delegated by the public education department licensed registered nurse for the care of individual students with special needs, including diapering, range of motion exercises, and feeding assistance. To carry out the duties, the school health assistant:

- A. collects and reports data regarding health status of students, under the direction and supervision of the public education department licensed registered nurse by:
 - (1) assisting with routine vision, hearing, height, and weight screening;
 - (2) assisting

with the monitoring of students per individualized health care plan; and
(3) sharing relevant information/observations with the public education department licensed registered nurse in a timely manner.

B. implements aspects of the nursing plan of care, commensurate with training and verified competency, under the direction and supervision of the public education department licensed registered nurse by:

- (1) performing student-specific delegated nursing procedures and treatments in accordance with the individualized health plan;
- (2) assisting with administration of medications in accordance with school district medication policy and in compliance with the Nursing Practice Act;
- (3) assisting with the implementation of policies and procedures regarding the control of communicable diseases in schools; and

(4) performing basic first aid and CPR, as needed.

C. assists with the maintenance of student health records, including immunization records, and shares relevant information with the public education department licensed registered nurse;

D. maintains confidentiality in accordance with state and federal laws and district policy;

E. shares responsibility for the care of district inventory, as well as the proper and safe use of facilities, equipment, and supplies, reporting safety hazards promptly;

F. maintains a clean, organized, and orderly health room environment;

G. demonstrates effective interpersonal and communication skills (written and oral) with diverse populations, including students, parents, co-workers, and supervisor(s);

H. displays a desire to work with students and responds to students as individuals;

I. serves as a healthy role model for students, families, and staff;

J. maintains competency through training and in-service educational activities. [6.63.15.10 NMAC - Rp, 6.63.15.10 NMAC, 9/26/2017]

HISTORY OF 6.63.15 NMAC:

6.63.15 NMAC, Licensure for School Health Assistants, Grades Pre K-12, filed 5/28/2004 was repealed and replaced by 6.63.15 NMAC, Licensure for School Health Assistants, Grades Pre K-12, effective 9/26/2017.

HISTORY OF REPEALED

MATERIAL:

6.63.15 NMAC, Licensure for School Health Assistants, Grades Pre K-12, filed 5/28/2004 - Repealed effective 9/26/2017.

**PUBLIC EDUCATION
DEPARTMENT**

**TITLE 6 PRIMARY AND
SECONDARY EDUCATION
CHAPTER 63 SCHOOL
PERSONNEL - LICENSURE
REQUIREMENTS FOR
ANCILLARY AND SUPPORT
PERSONNEL
PART 16 LICENSURE
FOR SCHOOL LICENSED
PRACTICAL NURSES, GRADES
PRE K-12**

6.63.16.1 ISSUING

AGENCY: Public Education Department (PED). [6.63.16.1 NMAC - Rp, 6.63.16.1 NMAC, 9/26/2017]

6.63.16.2 SCOPE: This rule governs licensure for school licensed practical nurses, grades Pre K-12. [6.63.16.2 NMAC - Rp, 6.63.16.2 NMAC, 9/26/2017]

6.63.16.3 STATUTORY

AUTHORITY: Sections 22-2-1, 22-2-2, 22-10A-3, and 22-10A-17, NMSA 1978. [6.63.16.3 NMAC - Rp, 6.63.16.3

NMAC, 9/26/2017]

6.63.16.4 DURATION:

Permanent. [6.63.16.4 NMAC - Rp, 6.63.16.4 NMAC, 9/26/2017]

6.63.16.5 EFFECTIVE

DATE: September 12, 2017, unless a later date is cited in the history note at the end of a section. [6.63.16.5 NMAC - Rp, 6.63.16.5 NMAC, 9/26/2017]

6.63.16.6 OBJECTIVE:

This rule establishes the requirements for school licensed practical nurses, grades Pre K-12, for persons seeking such licensure. [6.63.16.6 NMAC - Rp, 6.63.16.6 NMAC, 9/26/2017]

6.63.16.7 DEFINITIONS:

A. "Administration of medications" as defined in Paragraph (2) of Subsection A of 16.12.2.7 NMAC means a process whereby a prescribed drug or biological agent, as allowed by an applicable state or federal law, is given to a patient/client by a person licensed or certified by the board to administer medications.

B. "Assessment" as defined in Paragraph (9) of Subsection A of 16.12.2.7 NMAC means the review and interpretation by a licensed individual of specific data necessary to determine the patient/client's care and treatment needs (also see data collection).

C. "Assignment of nursing activity" as defined in Paragraph (10) of Subsection A of 16.12.2.7 NMAC means appointing or designating another licensed nurse or assistive personnel that is consistent with his/her scope of practice (licensed person) or role description (unlicensed person).

D. "Competency in nursing" as defined by Paragraph (4) of Subsection C of 16.12.2.7 NMAC, means the ability to perform skillfully and proficiently the role of the licensee. The role encompasses essential knowledge, judgment, attitudes, values, skills and

abilities, which are varied in range and complexity. Competency is a dynamic concept and is based on educational training, preparation, and expertise.

E. "Data collection" as defined in Paragraph (1) of Subsection D of 16.12.2.7 NMAC means the process of obtaining information, material, fact, or clinical observations which will be used in the assessment process; data collection is not limited to licensed individuals.

F. "Delegation" as defined in Paragraph (2) of Subsection D of 16.12.2.7 NMAC means the transferring to a competent individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation. As stipulated in Subsection B of 16.12.2.12 the nurse shall assign/delegate to licensed and unlicensed persons only those nursing functions which that person is prepared, qualified, or licensed or certified to perform.

(1) The nurse is accountable for assessing the situation and is responsible for the decision to delegate or make the assignment.

(2) The delegating nurse is accountable for each activity delegated, for supervising the delegated function or activity, and for assessing the outcome of the delegated function or activity.

(3) The nurse may not delegate the specific functions of nursing assessment, evaluation, and nursing judgment to non-licensed persons.

(4) Registered nurses engaged in school nursing practice may delegate medication administration, including emergency medication, to adults affiliated with school operations.

G. "Licensed practical nursing" as defined in Subsection I of Section 61-3-3, NMSA 1978, means the practice of a directed scope of nursing requiring basic knowledge of the biological, physical, social and behavioral sciences, and nursing procedures,

which practice is at the direction of a registered nurse, physician, or dentist licensed to practice in this state. This practice includes:

- (1) contributing to the assessment of the health status of individuals, families, and communities;
- (2) participating in the development and modification of the plan of care;
- (3) implementing appropriate aspects of the plan of care commensurate with education and verified competence;
- (4) collaborating with other health care professionals in the management of health care; and
- (5) participating in the evaluation of responses to interventions.

H. “Nursing Practice Act” means Chapter 61, Article 3 NMSA 1978 regulating the practice of nursing, schools of nursing, hemodialysis technicians, and medication aides in the state.

I. “Professional registered nursing” as defined in Subsection M of Section 61-3-3, NMSA 1978, means the practice of the full scope of nursing requiring substantial knowledge of the biological, physical, social and behavioral sciences, and of nursing theory and may include advanced practice pursuant to the Nursing Practice Act. This practice includes:

- (1) assessing the health status of individuals, families, and communities;
- (2) establishing a nursing diagnosis;
- (3) establishing goals to meet identified health care needs;
- (4) developing a plan of care;
- (5) determining nursing interventions to implement the plan of care;
- (6) implementing the plan of care commensurate with education and verified competence;
- (7) evaluating responses to interventions;

(8) teaching based on the theory and practice of nursing;

(9) managing and supervising the practice of nursing;

(10) collaborating with other health care professionals in the management of health care; and

(11) conducting nursing research.

J. “Scope of practice” as defined in Subsection O of Section 61-3-3, NMSA 1978, means the parameters within which nurses practice based upon education, experience, licensure, certification, and expertise.

K. “Supervision/direction” as defined in Paragraph (5) of Subsection S of 16.12.2.7 NMAC, means initial verification of a person’s knowledge and skills in the performance of a specific function or activity followed by periodic observation, direction and evaluation of that person’s knowledge and skills as related to the specific functions or activity. [6.63.16.7 NMAC - Rp, 6.63.16.7 NMAC, 9/26/2017]

6.63.16.8 REQUIREMENTS: Persons seeking licensure as a school licensed practical nurse (LPN) pursuant to the provisions of this rule shall meet the following requirements:

- A.** high school diploma or equivalency; and
- B.** minimum 18 years of age; and
- C.** current valid certification in cardiopulmonary resuscitation (CPR), which includes hands-on skills demonstration;
- D.** provide verification of current valid certification in basic first aid; and
- E.** completion of a state approved or nationally accredited program of study for practical nursing; and
- F.** current valid practical nursing license issued by the New Mexico board of nursing or a multi-state license to practice

practical nursing pursuant to the nurse licensure compact or any successor licensing board for;

G. minimum of one year of supervised clinical nursing experience, outside of a school setting; and

H. verification by the public school superintendent or private school official that a local orientation related to assigned duties, and facilitated by the PED licensed registered nurse, was satisfactorily completed; and

I. submit to and satisfactorily clear a fingerprint-based background check per local school board or regional education cooperatives policy pursuant to Section 22-10A-5, NMSA 1978. [6.63.16.8 NMAC - Rp, 6.63.16.8 NMAC, 9/26/2017]

6.63.16.9 CONTINUING LICENSURE FOR SCHOOL LICENSED PRACTICAL

NURSES: Persons holding a valid school licensed practical nurse license and seeking continuation of this license shall meet the following requirements:

- A.** A completed application for continuing PED licensure shall be submitted to the director of professional licensure; and
- B.** a copy of a current valid certification in cardiopulmonary resuscitation which includes hands-on demonstration; and
- C.** a copy of a current valid certification in first aid; and
- D.** the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of application for continuing licensure must submit verification that the applicant has satisfactorily been employed as a PED school licensed practical nurse; and
- E.** a copy of a current valid practical nursing license shall be submitted with the application for continuing PED licensure. [6.63.16.9 NMAC - Rp, 6.63.16.9 NMAC, 9/26/2017]

6.63.16.10 COMPETENCIES FOR ENTRY LEVEL SCHOOL LICENSED PRACTICAL

NURSES: The principle role of the school licensed practical nurse is to assist the PED licensed registered nurse with the implementation of the school health program, by providing practical nursing care for students in the health room, and by meeting the complex needs of medically fragile/severely disabled students. This includes, but is not limited to, nursing procedures, medication administration, assisting in the assessment and monitoring of the health and immunization status of students, and communicating effectively with parents, students, medical providers, and school staff. These functions may be carried out in the health room or classroom, traveling to and from school, and on field trips for community based instruction.

A. Contributes to the assessment of the health status of individual students and schools.

(1) uses basic nursing knowledge to assess and monitor the status of individual students;

(2) participates in the routine health screening, and assists in the assessment of screening results; and

(3) assists in the assessment of the immunization status of the student population.

B. Participates in the development of the nursing plan for care for individual students and the school population.

(1) assists with the development of individualized health/emergency care plans; and

(2) assists with school planning related to health and safety.

C. Implements aspects of the nursing plan of care, commensurate with education and verified competency, under the direction and supervision of the PED licensed registered nurse.

(1) provides nursing/medically prescribed interventions including tube feeding,

urinary catheterization, glucose monitoring, tracheal suctioning, nebulizer treatment, peak flow measurement, and ventilator care;

(2) administers medications to students in compliance with the Nursing Practice Act;

(3) assists in the implementation of policies and procedures regarding the control of communicable diseases in schools;

(4) prepares and maintains accurate and complete records and reports as required by law, state directives, district policy, and administrative regulations.

D. Collaborates with PED licensed registered nurses, health assistants, site administrators, school staff, parents, and students regarding the provision of health care for individual students and the school population as a whole.

E. Participates in the evaluation of responses to nursing interventions.

F. Maintains professional competence through individual and staff training, in-service educational activities and self-selected professional growth activities.

G. Shares the responsibility for the care of district inventory, as well as the proper and safe use of facilities, equipment, and supplies, reporting safety hazards promptly.

H. Maintains confidentiality in accordance with state and federal laws and district policy.

I. Demonstrates effective interpersonal and communication skills (written and oral) with diverse populations. [6.63.16.10 NMAC - Rp, 6.63.16.10 NMAC, 9/26/2017]

6.63.16.11 NOTIFICATION REQUIREMENT:

All persons issued a license as school licensed practical nurses, grades Pre K-12, by the PED shall continuously hold a license issued by the board of nursing for so long as they hold licensure issued by the PED.

A. Should this

underlying license expire, be suspended or revoked, or its renewed or initial issuance denied, a person seeking or holding a license as a school licensed practical nurse, grades Pre K-12 from the PED shall notify the local school superintendent and the professional licensure bureau in writing within 14 calendar days of such suspension, revocation, denial, or expiration.

B. Suspension, revocation, denial, or expiration of the license issued by the board of nursing shall constitute just cause for discharge or termination from employment, and for suspension, revocation, or denial of renewed or initial issuance of an instructional support provider license.

[6.63.16.11 NMAC - Rp, 6.63.16.11 NMAC, 9/26/2017]

HISTORY OF 6.63.16 NMAC: 6.63.16 NMAC, Licensure for School Licensed Practical Nurses, Grades Pre K-12, filed 5/28/2004 was repealed and replaced by 6.63.16 NMAC, Licensure for School Licensed Practical Nurses, Grades Pre K-12, effective 9/26/2017.

HISTORY OF REPEALED MATERIAL: 6.63.16 NMAC, Licensure for School Licensed Practical Nurses, Grades Pre K-12, filed 5/28/2004 - Repealed effective 9/26/2017.

PUBLIC REGULATION COMMISSION

The Public Regulation Commission approved, at its 09/12/2017 hearing, to repeal its rule 17.7.2 NMAC, Energy Efficiency (filed 4/16/2010) and replace it with rule 17.7.2 NMAC, Energy Efficiency, adopted on 09/13/2017 and effective 09/26/2017.

**PUBLIC REGULATION
COMMISSION**

**TITLE 17 PUBLIC
UTILITIES AND UTILITY
SERVICES
CHAPTER 7 ENERGY
CONSERVATION
PART 2 ENERGY
EFFICIENCY**

17.7.2.1 ISSUING

AGENCY: The New Mexico Public Regulation Commission.

[17.7.2.1 NMAC - Rp. 17.7.2.1 NMAC, 9/26/2017]

17.7.2.2 SCOPE: This rule applies to all electric, gas and distribution cooperative utilities subject to the commission’s jurisdiction.

[17.7.2.2 NMAC - Rp. 17.7.2.2 NMAC, 9/26/2017]

17.7.2.3 STATUTORY

AUTHORITY: Sections 8-8-16, 63-3-1, 62-8-6, 62-17-1 *et. seq.*, NMSA 1978.

[17.7.2.3 NMAC - Rp. 17.7.2.3 NMAC, 9/26/2017]

17.7.2.4 DURATION:

Permanent.

[17.7.2.4 NMAC - Rp. 17.7.2.4 NMAC, 9/26/2017]

17.7.2.5 EFFECTIVE

DATE: September 26, 2017.

Applications filed prior to this effective date shall be governed by the specific orders related to those applications.

[17.7.2.5 NMAC - Rp. 17.7.2.5 NMAC, 9/26/2017]

17.7.2.6 OBJECTIVE:

The purpose of this rule is to implement the Efficient Use of Energy Act and establish criteria to evaluate and implement cost-effective measures or programs that reduce energy demand and energy consumption. The rule also specifies how annual program funding is to be determined; how the public utility’s prior commission approved total portfolio of programs will be cost-effective; how the public

utility’s total new portfolio of programs will be cost-effective; and establishes annual incentive criteria for a public utility.

[17.7.2.6 NMAC - Rp. 17.7.2.6 NMAC, 9/26/2017]

17.7.2.7 DEFINITIONS:

In addition to the definitions used in Section 62-17-4 NMSA 1978, the following definitions apply to this rule:

A. application means a utility application for commission approval of proposed energy efficiency measures or programs and load management measures or programs;

B. estimate or estimated means a projection or forecast utilizing well known, commercially available or standard engineering, economic and financial calculations, ratings and simulations, or other reasonable means;

C. life-cycle basis means utilizing the expected useful life of the energy efficiency and load management measures or programs and applying the net present value methodology in order to estimate the associated monetary costs and avoided monetary costs of the measure or program being evaluated;

D. low income customer means a customer with an annual household income at or below two hundred percent of the federal poverty level, as published annually by the United States department of health and human services;

E. measure or program means an energy efficiency measure or program or a load management measure or program;

F. measurement and verification means an analysis performed by an independent evaluator that estimates, consistent with Subsection B of 17.7.2 NMAC, reductions of energy usage or peak demand and determines any actual reduction of energy usage or peak demand that directly results from the utility’s implementation of particular energy efficiency measures or programs or of particular load management measures or programs;

G. plan year means the calendar year for which

commission approval is being sought;

H. plan year overage means the public utility’s actual prior plan year expenditures that exceeded the same plan year’s actual collections;

I. plan year underage means the public utility’s actual prior plan year collections that exceeded the same plan year’s actual expenditures.

[17.7.2.7 NMAC - Rp. 17.7.2.7 NMAC, 9/26/2017]

Continued on the following page

17.7.2.8 PUBLIC UTILITY FILING REQUIREMENTS FOR APPLICATIONS AND ANNUAL REPORTS:

A. Timing. Beginning in the year specified below, each public utility shall file an application every three years:

2018	2019	2020
<u>El Paso Electric Company (and its successors)</u>	<u>Southwest Public Service Company (and its successors)</u>	<u>Public Service Company of New Mexico (and its successors)</u>
<u>Zia Natural Gas Company (and its successors)</u>	<u>New Mexico Gas Company (and its successors)</u>	<u>Raton Natural Gas Company (and its successors)</u>
		<u>Any other public utility</u>

Each of the three years covered by an application shall, for the purposes of 17.7.2.7 NMAC, be treated as a plan year. Each public utility may, but is not required to, file an application prior to the year specified in this subsection. If a utility does not elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in the utility’s last energy efficiency case shall continue in effect until modified or terminated. If a utility does elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in that case shall continue in effect as provided by the commission. All utilities shall file their annual reports each year and in the same docket as the application that covered the period of the annual report. Public service company of New Mexico (and its successors) shall file its application and its annual reports on April 15 of the applicable year. Southwestern public service company (and its successors) shall file its application and its annual reports on May 15 of the applicable year. El Paso electric company (and its successors) shall file its application and its annual reports on June 1 of the applicable year. A natural gas company shall file its annual report on or before July 1 of each year, and shall file its application on or before August 31 of the applicable year in which it is required to file an application. If a specified filing date falls on a weekend or legal holiday, the public utility shall file on the next business day.

B. Compliance with pre-filing requirements. Applications shall describe how the public utility has met the pre-filing requirements of Subsection E of Section 62-17-5 NMSA 1978, including descriptions of the process used to solicit non-binding recommendations, and any competitive bids required by the commission for good cause. The public utility shall identify by name, association, and contact information, each interested party that participated in the process, including commission staff, the attorney general, and the energy, minerals and natural resources department. The public utility shall summarize each participant’s non-binding recommendation on the design, implementation, and use of third-party energy service contractors through competitive bidding for programs and measures.

C. The public utility shall identify within its application its estimated plan year funding for energy efficiency and load management program costs.

(1) Estimated plan year funding for electric public utilities’ energy efficiency and load management program costs shall be three percent of billing revenues from all of its customers’ bills that the public utility estimates to be billed during the plan year, excluding:

- (a)** gross receipts taxes and franchise and right-of-way access fees;
- (b)** revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);
- (c)** any customer’s plan year self-directed program credits approved by the public utility or by a commission approved self-direct administrator; and
- (d)** any customer’s plan year self-directed program exemptions approved by the public utility or by a commission approved self-direct administrator.

(2) Estimated plan year funding for gas public utilities’ energy efficiency and load management program costs shall not exceed three percent of customers’ bills that the public utility estimates to be billed during the plan year, excluding:

- (a)** gross receipts taxes and franchise and right-of-way access fees;
- (b)** revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);
- (c)** any customer’s plan year self-directed program credits approved by the public utility or by a commission approved self-direct administrator; and
- (d)** any customer’s plan year self-directed program exemptions approved by the public utility or by a commission approved self-direct administrator.

D. The public utility’s application shall calculate and provide the difference between its actual prior plan

year expenditures for measures and programs and the same plan year's applicable funding required by statute. At the end of each plan year, the public utility shall calculate the following applicable values:

- (1) any plan year overage; or
- (2) any plan year underage.

E. In each plan year, a public utility shall make its best efforts to expend its applicable plan funding as calculated in Subsection C of 17.7.2.8 NMAC above subtracting any applicable prior plan year overage or adding any applicable prior plan year underage; provided, however, that a public utility may periodically adjust its plan year expenditures by an amount not greater than ten percent of the applicable funding required by statute if the adjustment will result in aligning plan year expenditures more closely with projected plan year collections under the utility's energy efficiency rider. By motion in the docket of its most recent energy efficiency case a utility may seek approval to adjust its plan year expenditures by more than ten percent of the applicable funding required by statute.

F. The application shall include an executive summary to facilitate commission review.

G. The utility shall utilize well known, commercially available or standard engineering, economic and financial calculations, ratings, and simulations, or other reasonable methods, to determine monetary costs and avoided monetary costs of measures and programs.

H. For each proposed measure or program, including previously approved measures and programs submitted for reauthorization, the application shall provide:

- (1) the public utility's statement that the measure or program is estimated to be cost-effective and meets the utility cost test;
- (2) a detailed description of the proposed measure

or program;

(3) the expected useful life of the measure or program;

(4) any participation requirements and restrictions of the measure or program;

(5) the time period during which the measure or program will be offered;

(6) a description of any competitive bid process for utility measures or programs;

(7) the estimated number of measure or program participants, supported by written testimony and exhibits;

(8) the estimated economic benefit to the participants attributable to the measure or program, supported by written testimony and exhibits;

(9) the estimated annual energy savings and the estimated energy savings over the useful life for the measure or program (expressed in kilowatt hours and dollars), supported by written testimony and exhibits;

(10) the estimated annual demand savings and the estimated demand savings over the useful life for the measure or program (expressed in kilowatts and dollars), supported by written testimony and exhibits;

(11) the proposed program costs to be incurred by the utility to support more than one measure or program, along with the associated allocation of this cost to each measure or program, and the method used to determine each allocation, supported by written testimony and exhibits;

(12) a detailed separate measure or program budget that identifies the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure and program on a life cycle basis, for each year of the expected useful life of the measure or program;

(13) the estimated monetary program costs

to be incurred by the public utility in acquiring, developing, and operating each measure or program on a life cycle basis, supported by written testimony and workpapers that:

(a) demonstrate and justify how the estimated monetary program costs will be equal to or greater than the actual monetary program costs; and

(b) explain the public utility's rationale and methodology used to determine the estimated monetary program costs.

(14) the estimated avoided monetary cost associated with developing, acquiring and operating associated supply side resources, supported by written testimony and exhibits that:

(a) demonstrate and justify how the estimated avoided monetary cost will be equal to or greater than the actual avoided monetary cost; and

(b) explain the public utility's rationale and methodology used to estimate the avoided monetary cost associated with acquiring, developing, and operating the associated supply side resource.

(15) supporting documentation, underlying data, calculations, estimates and other items shall be presented in a manner that facilitates the preparation of a measurement and verification report by an independent program evaluator, along with compilation and preparation of the public utility's reporting requirements, and that facilitates a simple comparison of measure or program estimated results to actual results, including the public utility's cost of capital and discount rate; and

(16) if the utility cost test is not met, justify why the utility is proposing to implement the program within its portfolio of proposed programs.

I. The public utility shall demonstrate, and has the burden to demonstrate, that it has evaluated and determined that the proposed measure or program is

cost-effective and will reduce energy usage or energy demand or both, if approved by the commission and implemented by the utility.

J. The public utility shall demonstrate that its portfolio of proposed measures and programs are cost-effective, meets the utility cost test as defined by Subsection C of Section 62-17-4 NMSA 1978 and are designed to provide every affected customer class with the opportunity to participate and benefit economically.

K. The public utility shall demonstrate that no less than five percent of the funding for measure and program costs shall be specifically directed to measures or programs for low-income customers.

L. As stated in Subsection F of Section 62-17-5 NMSA 1978, applications may include a proposal for an opportunity to earn a profit on cost effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the public utility than a supply-side utility resource. Accordingly, any application that includes a proposed annual incentive award shall:

- (1) be based on the utility's costs;
- (2) be based on satisfactory performance of measures and programs;
- (3) be supported by written testimony and exhibits; and
- (4) shall not exceed the product (expressed in dollars) of:

(a) its weighted cost of capital (expressed as a percent), and

(b) its approved annual program costs.

M. For each approved large customer self-directed program, the utility's application shall describe, in an annual report, the process that enabled the utility to determine that a large customer self-directed program met the cost-effective definition set forth

in Subsection B of Section 62-17-9 NMSA 1978 and merited the credit or exemption.

N. The commission shall act expeditiously on the public utility's request for approval of its energy efficiency and load management measures and programs. [17.7.2.8 NMAC - Rp. 17.7.2.8 NMAC, 9/26/2017]

17.7.2.9 RESIDENTIAL PROGRAMS:

A. The programs should enable residential customers or households to conserve energy, reduce demand, or reduce residential energy bills.

B. Provided that the public utility's total portfolio of programs remains cost-effective, no less than five percent of the amount received by the public utility for program costs shall be specifically directed to energy efficiency programs for low-income customers.

(1) A public utility may coordinate with existing community resources, including affordable housing programs, and low-income weatherization programs managed by federal, state, county, or local governments. This section does not preclude the public utility from designing and proposing other low-income programs.

(2) Whenever possible, providers of low-income energy efficiency measures or programs should have demonstrated experience and effectiveness in the design, administration and provision of low-income measures and programs, along with experience in identifying and conducting outreach to low-income households. In the absence of qualified independent agencies, a public utility that does not provide measures or programs directly, may solicit qualified competitive bids for these services.

(3) Public utilities shall notify customers experiencing ability-to-pay problems of the availability of energy efficiency and load management measures and programs, as well as

hardship funds.

(4) In developing the utility cost test for energy efficiency and load management measures and programs directed to low-income customers, unless otherwise quantified in a commission proceeding, the public utility shall assume that twenty percent of the calculated energy savings is the reasonable value of reductions in working capital, reduced collection costs, lower bad-debt expense, improved customer service, effectiveness, and other appropriate factors qualifying as utility system economic benefits. [17.7.2.9 NMAC - Rp. 17.7.2.9 NMAC, 9/26/2017]

17.7.2.10 SELF-DIRECTED PROGRAM CREDITS FOR LARGE CUSTOMERS: The following criteria apply to large customer utility credits for self-directed programs.

A. The expenditures made by the large customer at its facilities shall be cost-effective according to the utility cost test.

B. Projects that have received rebates, financial or other program support from a utility are not eligible for a credit.

C. Eligible expenditures must have a simple payback period of more than one year but less than seven years.

D. Large customers shall seek and receive approval for credits from the utility or a commission-approved self-direct administrator.

E. Large customers applying for an investor-owned electric utility bill credit must meet the electricity consumption size criteria set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.

F. Large customers applying for gas utility bill credit must meet the gas consumption criteria as set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.

G. Large customers

seeking a credit shall provide, to the public utility or the commission-approved self-direct program administrator, access to all relevant engineering studies and documentation needed to verify energy savings of the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-direct program shall be maintained by the large customer for the duration of that program, which shall be evaluated in accordance with 17.7.2.15 NMAC, subject to appropriate protections for confidentiality.

H. The utility shall designate a qualified representative to review, approve, or disapprove large customer requests for credits.

I. The commission may appoint a "commission-approved" self-direct program administrator to review, approve, or disapprove large customer requests for credits.

J. Approvals or disapprovals by the utility representative or administrator shall be subject to commission review. Within 30 business days of the action, the utility representative or administrator shall file and serve notice of each self-direct program review, approval, or disapproval with the commission, and on all interested parties. Notice of an appeal of a utility or administrator approval or disapproval of a large customer credit request shall be filed with the commission within 30 calendar days of the approval or disapproval action by Staff, the large customer or any interested party.

K. Once approved, the credit may be used to offset up to seventy percent of the tariff rider authorized by the Efficient Use of Energy Act, until said credit is exhausted.

L. Any credit not fully utilized in the year it is received shall carry over to subsequent years.

M. Implementation of credits shall be designed to minimize utility administrative costs.

N. Self-direct program

participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-direct program credits.

O. Large customers must respond to reasonable utility or administrator information requests and allow the utility or an administrator to perform necessary site visits.

P. The utility or administrator shall act in a timely manner on requests for self-direct program approval.

Q. For investor-owned electric utilities, the equivalent amount of energy savings associated with a large customer's self-directed program will be accounted for in calculating its compliance with minimum required energy savings.

R. Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit. Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit. Large customer expenditures incurred to produce both electric and natural gas energy savings, both electric and natural gas demand savings, or any combination of energy savings and demand savings for both electric and natural gas are eligible for both an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures cannot be accounted for twice.

S. Upon written request by the large customer, the information provided by that customer to the utility or program administrator, program evaluator, or others, shall remain confidential, except as otherwise ordered by the commission.

[17.7.2.10 NMAC - Rp. 17.7.2.10 NMAC, 9/26/2017]

17.7.2.11 SELF-DIRECTED PROGRAM EXEMPTIONS FOR LARGE CUSTOMERS: The following criteria apply to utility exemptions to large customers for self-directed programs.

A. To receive approval for an exemption to paying seventy percent of the tariff rider, a large customer must demonstrate to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures at its facility.

B. Projects that have received rebates, financial or other program support from a utility are not eligible for an exemption.

C. Eligible expenditures must have a simple payback period of more than one year but less than seven years.

D. Large customers shall seek and receive approval for exemptions from the utility or a commission-approved self-direct administrator.

E. Large customers applying for an investor-owned electric utility bill exemption must meet the electricity consumption size criterion set forth in Subsection G of Section 62-17-4 NMSA 1978.

F. Large customers applying for a gas utility bill exemption must meet the gas consumption criterion set forth in Subsection G of Section 62-17-4 NMSA 1978.

G. The utility shall designate a qualified representative to review and approve, or disapprove, large customer requests for exemptions.

H. The commission may appoint a "commission-approved" self-direct program administrator to review and approve, or disapprove, large customer requests for exemptions.

I. Approvals or disapprovals by the utility representative or administrator shall be subject to commission review. Within 30 business days of

the action, the utility representative or administrator shall file and serve notice of each self-direct program approval or disapproval with the commission, and on all interested parties. Notice of an appeal of a utility or administrator approval or disapproval of a large customer exemption request shall be filed with the commission within 30 calendar days of the approval or disapproval action by staff, the large customer or any interested party.

J. Self-direct program participants, or large customers seeking an exemption shall provide, to the public utility or the commission approved self-direct program administrator, access to all relevant engineering studies and documentation needed to verify energy saving of the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-direct program shall be maintained by the large customer for the duration of that program, which shall be evaluated in accordance with 17.7.2.15 NMAC, subject to appropriate protections for confidentiality.

K. Self-direct program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-direct program exemptions.

L. Large customers must respond to reasonable utility or administrator information requests and allow the utility or an administrator to perform necessary site visits.

M. The utility or administrator shall act in a timely manner on requests for self-direct program approval.

N. For investor-owned electric utilities, the equivalent amount of energy savings associated with a large customer's self-directed program will be accounted for in calculating its compliance with

minimum required energy savings.

O. Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit. Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit. Large customer expenditures incurred to produce both electric and natural gas energy savings, both electric and natural gas demand savings or any combination of energy savings and demand savings for both electric and natural gas are eligible for both an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures cannot be accounted for twice.

P. Upon written request by the large customer, the information provided by large customers to the utility or program administrator, program evaluator or others shall remain confidential, except as otherwise ordered by the commission.

[17.7.2.11 NMAC - Rp. 17.7.2.11 NMAC, 9/26/2017]

17.7.2.12 MODIFICATION OR TERMINATION OF PROGRAMS:

Within each plan year, the utility, commission staff, attorney general, energy, minerals and natural resources department, or any other interested party, may petition the commission to modify or terminate a measure or program, or to approve a new program, for good cause by filing a motion in the same docket in which the public utility filed its most recent application. Program modification or termination shall not nullify any preexisting obligations of the utility, alternative energy efficiency provider, or contractor, for performance or failure to perform. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its prudent and reasonable program costs.

[17.7.2.12 NMAC - Rp. 17.7.2.12

NMAC, 1/1/2015, A, 9/26/2017, 9/26/2017]

17.7.2.13 FILING REQUIREMENTS FOR COST RECOVERY:

A. Public utility recovery of program costs shall only be from customer classes with an opportunity to participate in approved measures and programs and shall be three percent of customers' bills or seventy-five thousand dollars (\$75,000) per customer per plan year, whichever is less.

B. The public utility, at its option, may recover its prudent and reasonable program costs and approved incentives, either through an approved tariff rider, in base rates or by combining recovery through a tariff rider and base rates.

C. If a public utility seeks recovery of costs through a tariff rider, a utility shall present the proposed ratemaking treatment to the commission for approval. The proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

(1) The tariff rider shall be applied on a monthly basis, unless otherwise allowed by the commission.

(2) Unless otherwise ordered by the commission, a tariff rider approved by the commission shall require language on customer bills explaining program benefits.

(3) A public utility seeking approval of a tariff rider shall file an advice notice containing the information required by 17.1.2.210.11 NMAC and served upon the individuals and entities set forth in that rule. The proposed tariff rider shall go into effect 30 days after filing, unless suspended by the commission for a period not to exceed 180 days. If the commission has not acted to approve or

disapprove the tariff rider by the end of an ordered suspension period, or within 30 days of filing, it shall be deemed approved as a matter of law.

D. If base rate recovery of costs is sought, a utility shall present the proposed ratemaking treatment to the commission for approval. The proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

E. Program costs and incentives may be deferred for future recovery through creation of a regulatory asset. Prior commission approval is required for the public utility to create a regulatory asset and to establish any associated carrying charge.

[17.7.2.13 NMAC - Rp. 17.7.2.13 NMAC, 9/26/2017]

17.7.2.14 ANNUAL REPORT:

A. Annual reports shall provide information relating to the public utility's actions to comply with the Efficient Use of Energy Act.

B. Each public utility shall post its annual report on a publicly accessible website.

C. Annual reports shall include the following for each measure and program:

(1) documentation of program expenditures and estimates of the program expenditures expected in the next year, including documentation of any adjustments to expenditures in the plan year and expected adjustments to the next plan year;

(2) estimated and actual customer participation levels;

(3) estimated and actual energy savings;

(4) estimated and actual demand savings;

(5) estimated and actual monetary costs of the public utility;

(6) estimated and actual avoided monetary costs of the public utility;

(7) an evaluation of its cost-effectiveness; and

(8) an evaluation of the cost-effectiveness and pay-back periods of self-directed programs.

D. Annual reports also shall include the following:

(1) the most recent measurement and verification report of the independent program evaluator, which includes documentation, at both the portfolio and individual program levels of expenditures, savings, and cost-effectiveness of all energy efficiency measures and programs and load management measures and programs, expenditures, savings, and cost-effectiveness of all self-direct programs, and all assumptions used by the evaluator;

(2) a listing of each measure or program expenditure not covered by the independent measurement and verification report and related justification as to why the evaluation was not performed;

(3) a comparison of estimated energy savings, demand savings, monetary costs and avoided monetary costs to actual energy savings, demand savings, actual monetary costs, and avoided monetary costs for each of the utility's approved measures or programs by year;

(4) a listing of the number of program participants served for each of the utility's approved measures or programs by year;

(5) a listing of the calculated economic benefits for each of the utility's approved measures or programs by year;

(6) information on the number of customers applying for and participating in self-direct programs, the number of customers applying for and receiving exemptions, measurement and verification of

self-direct program targets, payback periods and achievements, customer expenditures on qualifying projects, oversight expenses incurred by the utility representative or administrator; and

(7) any other information required by the commission.

[17.7.2.14 NMAC - Rp. 17.7.2.14 NMAC, 9/26/2017]

17.7.2.15 MEASUREMENT AND VERIFICATION:

A. Every energy efficiency and load management program shall be independently evaluated at least every three years. Every year, a public utility shall submit to the commission a comprehensive measurement, verification and program evaluation report prepared by an independent program evaluator.

(1) The independent program evaluator shall, at a minimum determine and verify energy and demand savings;

(a) determine and verify energy and demand savings;

(b) determine program cost effectiveness by applying the monetary values contained in the utility's approved plan year application;

(c) assess the public utility's performance in implementing energy efficiency and load management programs;

(d) assess whether the utility has failed to meet its requirements under the Efficient Use of Energy Act or has not operated in good faith;

(e) provide recommended improvements on program performance for commission directed modification;

(f) confirm that commission approved measures and programs were installed or implemented, meet reasonable quality standards, and are operating fully and correctly;

(g) utilize applicable international

performance measurement and verification protocols, describe any deviation from those protocols, and explain the reason for that deviation; and

(h)

fulfill any other measurement and verification statutory requirements not specifically delineated herein.

(2) The

public utility shall cooperate with the independent program evaluator and commission staff in making information and personnel available to facilitate the independent program evaluator's proper evaluation of each public utility and completion of a comprehensive measurement, verification and program evaluation report.

B. The commission, through its staff, will select and direct an independent program evaluator to prepare and submit a comprehensive measurement, verification and program evaluation report to the commission. Staff, to fulfill its obligation under Subsection B of this Section, may consult with public utilities and other interested parties.

C. Staff shall:

(1) undertake

a competitive bid process and abide by state purchasing rules and commission policies in selecting a sole independent program evaluator to evaluate public utility compliance with the Efficient Use of Energy Act;

(2) develop

a request for proposals ("RFP"), including the scope, terms of work, and evaluation process to score the RFP responses;

(3) receive,

review, score and rank the RFP responses;

(4)

subsequently rank and recommend competitive qualified bidders to the commission;

(5) negotiate

a contract with the competitive bidder awarded the contract; and

(6) administer

the contract, including: confirming that contract deliverables are met, reviewing invoices and related

contract performance, and approving utility invoices after staff's review and approval.

D. Funding for services of the independent program evaluator's completion of a comprehensive measurement and verification report will be paid initially by the public utility and treated as a regulatory asset; to be recovered through rates established in the public utility's next general rate proceeding.

E. Self-direct measures, programs, expenditures, credits and exemptions shall be evaluated and reported in the utility's annual report by the independent program evaluator using the same measurement and verification standards applied to utility measures and programs by the utility or commission-approved self-direct program administrator.

F. Upon written request by the large customer, the information provided by large customers to the utility or program administrator, program evaluator, or others, shall remain confidential except as otherwise ordered by the commission.

G. The commission may require other information. [17.7.2.15 NMAC - Rp. 17.7.2.15 NMAC, 9/26/2017]

17.7.2.16 RURAL ELECTRIC COOPERATIVES:

A. Distribution cooperative utilities shall, within 24 months after the effective date of this rule, and every 24 months thereafter, examine potential customer assistance in reducing energy consumption or peak electricity demand in a cost-effective manner. Based on these studies, distribution cooperative utilities shall establish and implement energy efficiency and load management targets and programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility rather than the commission.

B. Each

distribution cooperative utility shall simultaneously file with the commission its annual report by May 1st, along with a report describing the cooperative's examination of efficiency potential set forth in Subsection A of Section 17.7.2.18 NMSA 1978. The distribution cooperative utility's report will also address all of its programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on electricity consumption. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Subsection B of Section 17.7.2.18 NMSA 1978, a description of all planned programs or measures to promote energy efficiency, conservation or load management and the anticipated implementation date.

D. Costs resulting from programs or measures to promote energy efficiency, conservation or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in Subsection G of Section 62-8-7 NMSA 1978.

E. The commission may develop necessary compliance forms. [17.7.2.16 NMAC - Rp. 17.7.2.16 NMAC, 9/26/2017]

17.7.2.17 REGULATORY DISINCENTIVES:

The commission shall, upon petition or its own motion, identify regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures and ensure that they are

removed in a manner that balances the public interest, consumers' interests and investors' interests. Public utility petitions for regulatory disincentive removal shall be supported by testimony and exhibits. [17.7.2.17 NMAC - Rp. 17.7.2.17 NMAC, 9/26/2017]

17.7.2.18 AUDIT: The commission may order a public utility to submit to an audit that examines whether the public utility's energy efficiency and load management program costs are prudent, reasonable and being properly assigned to programs in accordance with this rule, commission orders, and other applicable requirements and standards. The cost of such audit shall be considered recoverable program costs, unless it results in a commission order containing findings of the public utility's malfeasance, in which case, audit costs shall not be recoverable from the public utility's customers. [17.7.2.18 NMAC - Rp. 17.7.2.18 NMAC, 9/26/2017]

17.7.2.19 VARIANCES: Written applications for a variance from any of the provisions of this guideline shall:

- A. state the reason(s) for the variance request;
 - B. identify each of the sections of this guideline for which a variance is requested;
 - C. describe the effect the variance will have, if granted, on compliance with this guideline;
 - D. describe how granting the variance will not compromise, or will further, the purposes of this guideline; and
 - E. indicate why the proposed variance is a reasonable alternative to the requirements of this guideline.
- [17.7.2.19 NMAC - N, 9/26/2017]

HISTORY OF 17.7.2 NMAC:
Pre NMAC History: none.

History of Repealed Material:
 17.7.2 NMAC, Energy Efficiency (filed 2/2/2007), repealed 5/3/2010.
 17.7.2 NMAC, Energy Efficiency (filed 4/16/2010), repealed 1/1/2015.
 17.7.2 NMAC, Energy Efficiency, filed (04/16/2010) - Repealed effective 9/26/2017.

NMAC History:
 17.7.2 NMAC, Energy Efficiency (filed 2/2/2007) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 5/3/2010.
 17.7.2 NMAC, Energy Efficiency, (filed 04/16/2010) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 9/26/2017.

SECRETARY OF STATE

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
 CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
 PART 13 CAMPAIGN FINANCE**

1.10.13.1 ISSUING AGENCY: Office of the Secretary of State.
 [1.10.13.1 NMAC - N, 10/10/2017]

1.10.13.2 SCOPE: This rule applies to all persons, candidates and committees covered by the Campaign Practices Act, Sections 1-19-1 through 1-19-37 NMSA 1978.
 [1.10.13.2 NMAC - N, 10/10/2017]

1.10.13.3 STATUTORY AUTHORITY: This rule is authorized by Section 1-2-1 NMSA 1978 and Section 1-19-26.2 of the Campaign Reporting Act, Sections 1-19-25 through 1-19-37 NMSA 1978.
 [1.10.13.3 NMAC - N, 10/10/2017]

1.10.13.4 DURATION: Permanent.
 [1.10.13.4 NMAC - N, 10/10/2017]

1.10.13.5 EFFECTIVE DATE: October 10, 2017, unless a later date is cited at the end of a

section.
 [1.10.13.5 NMAC - N, 10/10/2017]

1.10.13.6 OBJECTIVE:
 The objective of this rule is to provide clear guidance regarding the application and implementation of the provisions of the Campaign Practices Act, Sections 1-19-1 through 1-19-37 NMSA 1978 to affected parties in a manner that meets the requirements set forth in applicable case law while also providing for clear and specific guidance to the secretary of state in administering and enforcing the law.
 [1.10.13.6 NMAC - N, 10/10/2017]

1.10.13.7 DEFINITIONS:
A. "Advertisement"
 means a communication referring to a candidate or ballot measure that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, internet videos, paid online advertising, recordings, or by printed materials, including mailers, handbills, signs and billboards, but "advertisement" does not include:

- (1) a communication by a membership organization or corporation to its current members, stockholders or executive or administrative personnel;
- (2) a communication appearing in a news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium;
- (3) a candidate debate or forum, or a communication announcing a candidate debate or forum, paid for on behalf of the debate or forum sponsor; provided that two or more candidates for the same position have been invited to participate, or provided that the single candidate is invited in the event that there is only one candidate for that position;
- (4) nonpartisan voter guides allowed by the federal Internal Revenue Code of 1986 for Section 501(c)(3) organizations; or
- (5) statements made to a court or administrative

board in the course of a formal judicial or administrative proceeding.

B. “Agent” means a person with express or implied authorization to engage in campaign related activities on behalf of a candidate or committee.

C. “Aggregate contributions” means the sum total of all contributions given to a candidate, campaign committee, or political committee by the same donor in the same election cycle. Aggregate contributions may not exceed contribution limits.

D. “Ballot measure” means a constitutional amendment, bond, tax or other question submitted to the voters in an election.

E. “Clearly identified” means: (1) the name of the candidate or ballot measure appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate or ballot proposal is otherwise apparent by unambiguous reference.

F. “Committee” means a political committee or campaign committee covered under the Campaign Reporting Act.

G. “Contribution or coordination political committee” means a type of political committee that makes contributions or coordinated expenditures to candidates or committees.

H. “Coordinated expenditure” means an expenditure that is made by a person other than a candidate or campaign committee at the request or suggestion of, or in cooperation, consultation, or concert with, a candidate, an agent of the candidate, the candidate’s campaign committee or a political party for the purpose of:

(1) supporting or opposing the nomination or election of a candidate; or

(2) paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico within 30 days before the primary election or 60 days before the general election in which the candidate is on

the ballot.

I. “Debt” means an outstanding expenditure or loan which is not fully paid at the time it is reported in the campaign finance information system and is therefore reported as unpaid debt.

J. “Donor” means contributor.

K. “Earmarking” means making a contribution in which the original donor expresses an intention for the contribution to pass through some other person to a specific candidate or committee or to be used for a specific purpose, such as funding independent expenditures.

L. “Election cycle” for purposes of applying the disclosure of reporting requirements of the act and this rule, the definition of this term is the definition set forth in Subsection A of Section 1-1-3.1 NMSA 1978 and means the period beginning on the day after the last general election and ending on the day of the general election. For purposes of applying the contribution limits established by Section 1-19-34.7 NMSA 1978, the definition is the one used in Subsection G of Section 1-19-34.7 NMSA 1978 and is more fully explained in Section 1.10.13.27 NMAC.

M. “Expressly advocate” means that the communication contains a phrase including, but not limited to, “vote for,” “re-elect,” “support,” “cast your ballot for,” “candidate for elected office,” “vote against,” “defeat,” “reject,” or “sign the petition for,” or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot measures or candidates.

N. “Final report” means the last report electronically filed under the Campaign Reporting Act in accordance with Subsection F of Section 1-19-29 NMSA 1978 indicating that:

(1) there are

no outstanding campaign debts;

(2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and

(3) the bank account has been closed.

O. “Foreign nationals” means an individual who is not a citizen or a national of the United States (as defined in 8 U.S.C. §1101(a)(22)) and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20).

P. “General election cycle” means the period beginning on the day after the primary election and ending on the day of the general election. See 1.10.13.27 NMAC for specific information on how this is applied to different reporting entities.

Q. “Independent expenditure” means an expenditure that is:

(1) made by a person other than a candidate or campaign committee;

(2) not a coordinated expenditure as defined in paragraph H of this section; and

(3) made to pay for an advertisement that:

(a) expressly advocates for the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot measure;

(b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot measure; or

(c) refers to a clearly identified candidate or ballot measure and is published and disseminated to the relevant electorate in New Mexico within 30 days before the primary election or 60 days before the general election in which the candidate or ballot measure is on the ballot.

R. “In-kind contributions” means goods or services or anything of value contributed to a candidate or committee other than money. The provision of any goods or services without charge or at a charge that is

less than the usual and normal charge for such goods or services is an in-kind contribution. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.

S. “Loan” means an extension of credit to a candidate or committee by any person, including the candidate themselves, for use as monies spent toward the election of a candidate or other political purpose.

T. “Members” means all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization’s invitation to become a member, and either:

(1) have some financial attachment to the membership organization; or

(2) pay membership dues at least annually, of a specific amount predetermined by the organization; or

(3) have an organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization’s highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization’s annual budget; or the right to participate directly in similar aspects of the organization’s governance.

U. “Membership organization” means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(1) is composed of members;

(2) expressly states the qualifications and

requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

(3) makes its articles, bylaws, constitution or other formal organizational documents available to its members;

(4) expressly solicits persons to become members;

(5) expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member’s name on a membership newsletter list; and

(6) is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for offices covered under the Campaign Reporting Act.

V. “Mixed purpose political committee” means a type of political committee that makes independent expenditures and coordinated expenditures or contributions and that segregates funds used for coordinated expenditures and contributions subject to contribution limits into a separate bank account from funds used for independent expenditures.

W. “Person” means individual or entity pursuant to Subsection K of Section 1-19-26 NMSA 1978.

X. “Pledge” means a promise from a contributor to send or deliver a contribution by a specified time.

Y. “Political party” means an association that has qualified as a political party pursuant to the provisions of Section 1-7-2 NMSA 1978.

Z. “Primary election cycle” means the period beginning the day after the preceding general election and ending on the day of the primary election. See 1.10.13.27 NMAC for specific information on how this is applied to different reporting entities.

AA. “Primary purpose” means the purpose for which an entity or committee:

(1) was created, formed or organized; or

(2) has made more than fifty percent of its expenditures during the current election cycle exclusive of salaries and administrative costs; or

(3) has devoted more than fifty percent of the working time of its personnel during the current election cycle.

BB. “Relevant electorate” means the constituency eligible to vote for the candidate or ballot measure.

CC. “Reporting individual” means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee pursuant to Subsection Q of Section 1-19-26 NMSA 1978.

DD. “Solicit” means to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether it is to be made or provided directly to the candidate or committee, or through a conduit or intermediary.

EE. “Sponsoring organization” means an organization that has provided more than twenty-five percent of the total contributions to a political committee as of the time the committee is required to register under this rule.

FF. “Special event” means a barbeque, tea, coffee, dinner, reception, dance, concert or similar fundraiser where tickets costing fifteen dollars (\$15) or less are sold and no more than one thousand dollars (\$1,000) net contributions are received.

GG. “Statement of no activity” means the prescribed form used by a reporting individual to indicate that no contributions were raised or expenditures were made during a particular reporting period.

HH. “Treasurer” means an individual explicitly designated by a candidate or committee to authorize disbursements, receive contributions, maintain a proper record of the campaign finances, and who, along with the candidate, is liable for discrepancies in the finances and reports of the committee.

[1.10.13.7 NMAC - N, 10/10/2017]

1.10.13.8 CANDIDATE CAMPAIGN COMMITTEE REGISTRATIONS:

A. A candidate for a non-statewide office shall register the candidate's campaign committee with the secretary of state within 10 days of receiving contributions or expending one thousand dollars (\$1,000) or more for campaign expenditures or filing a declaration of candidacy; whichever occurs earlier.

B. A candidate for statewide office shall register the candidate's campaign committee with the secretary of state within 10 days of receiving contributions or expending two thousand five hundred dollars (\$2,500) or more for campaign expenditures or filing a declaration of candidacy; whichever occurs earlier.

C. All candidates shall complete a candidate campaign registration form and submit the completed form to the secretary of state, or otherwise with the proper filing officer, if completed at the time the declaration of candidacy is submitted. Following acceptance of the candidate campaign registration form, the secretary of state will create a user account for the candidate in the campaign finance information system (CFIS) and will issue the candidate a unique CFIS user identification and password.

D. A candidate is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the candidate's liability regarding fines and civil actions against the candidate or public official related to campaign reporting.

E. Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the candidate must, at all times, maintain a valid email address on file with the secretary of state.

F. A candidate

may serve as the candidate's own treasurer. If the candidate does not serve as the candidate's own treasurer, then the candidate shall appoint a treasurer who shall be jointly responsible as a reporting individual with the candidate for the campaign committee.

G. If the candidate does not serve as the candidate's own treasurer, in the event of a vacancy in the position of treasurer, the candidate shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.

H. The candidate is deemed to have authorized and approved each report entry submitted to CFIS.

I. A candidate may only have one campaign committee at a time. Any candidate campaign committee registration form received will result in the secretary of state moving the last reported campaign balance, including debts, to the new campaign committee account in CFIS unless the candidate is seeking public financing and must keep a previous campaign account open and separated. [1.10.13.8 NMAC - N, 10/10/2017]

1.10.13.9 WITHDRAWING FROM CANDIDACY:

If a candidate files a statement of withdrawal, the candidate must file a final report in CFIS no later than the next report deadline or continue to file CFIS reports pursuant the schedule defined by Section 1-19-29 NMSA 1978.

[1.10.13.9 NMAC - N, 10/10/2017]

1.10.13.10 POLITICAL COMMITTEE REGISTRATIONS:

A. The Campaign Reporting Act, specifically Subsection A, Paragraph 3 of Subsection L, and Subsection M of Section 1-19-26 NMSA 1978 and Section 1-19-26.1 NMSA 1978, requires every person who spends more than five hundred dollars (\$500) on advertisements influencing or attempting to influence an election to register as a political committee, to appoint a treasurer, establish a

bank account and thereafter report every contribution received and every expenditure made for any purpose as long as the person continues to exist. The courts have determined, however, that only a small subset of these persons can constitutionally be compelled to comply with these extensive registration and reporting requirements. In compliance with these court decisions, only the following will be obligated to comply with the requirements for political committees that are prescribed by the Campaign Reporting Act:

(1) a state or county political party;

(2) an association of two or more persons that has as its primary purpose making contributions to candidates or committees, coordinated expenditures or any combination thereof, and has received more than five hundred dollars (\$500) in contributions or made expenditures of more than five hundred dollars (\$500) in the preceding 12 months; and

(3) an association of two or more persons that has as its primary purpose making independent expenditures and that has received more than five thousand dollars (\$5,000) in contributions or made expenditures of more than five thousand dollars (\$5,000) in the preceding 12 months.

(4) Unless otherwise stated, requirements for political committees set forth in these rules shall apply only to political committees that fall within one of these categories enumerated in this section, and will not be applied to political committees that satisfy the statutory definition pursuant to Subsection L of Section 1-19-26 NMSA 1978 but that do not fall within any of these categories. However, all persons making independent expenditures shall be subject to the reporting requirements for independent expenditures set forth in Section 1.10.13.11 NMAC.

B. Registration.

(1) Notwithstanding the political committee registration requirements

as outlined in Section 1-19-26.1 NMSA 1978 and pursuant to applicable case law, a political committee of the kind described in Paragraph (3) of Subsection A of 1.10.13.10 NMAC is not required to register until 10 days after it has received more than five thousand dollars (\$5,000) in contributions or made expenditures of more than five thousand dollars (\$5,000) in a 12 - month period;

(2) All political committees shall complete a political committee registration form and submit the completed form to the secretary of state. The form shall include:

(a) the full name of the political committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization;

(b) the physical address of the political committee, a mailing address if different from the physical address, and an email address;

(c) a statement of the political purpose for which the political committee was organized; under this section, the committee shall designate the type of expenditures it will be making; the committee will have the option of registering as:

(i) an independent expenditure political committee;

(ii) a contribution or coordination political committee;

(iii) a mixed purpose political committee; or

(iv) other; if a political committee selects other, then the political committee shall submit a written explanation to the secretary of state as to why the categories of independent expenditure political committee, contribution or coordination political committee, and mixed purpose political committee do not apply;

(d) the name, address and relationship

of any connected or associated organization or entity; a connected or associated organization or entity means a related corporation, union or trade organization from which the political committee receives more than fifty percent of its funding;

(e) the names and addresses of the officers of the committee;

(f) an identification of the bank used by the committee for all expenditures or contributions made or received; this shall include the name of the bank, business address of the branch office where the account was opened, and a telephone number for the bank; and

(g) the treasurer's name, mailing address, email address, and contact information.

(3) Following acceptance of the political committee registration form, the secretary of state will create a user account for the political committee in the (CFIS) and will issue the treasurer a unique CFIS user identification and password.

(4) The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission (FEC). If the political committee is located in another state and reports to the FEC, the committee shall file a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico with the secretary of state within 10 days of filing the report to the FEC.

(5) If a political committee is located in another state, and is making contributions and expenditures to New Mexico reporting individuals, but is not registered with the FEC, then the out-of-state political committee must register and report its New Mexico contributions and expenditures in accordance with the provisions of the Campaign Reporting Act and this rule.

(6) If a

political committee is located in New Mexico, and is required to register as a political committee under this rule, the political committee must register with the secretary of state even if it is also registered with the FEC.

(7) The political committee's treasurer is responsible for carrying out the duties described in the Campaign Reporting Act and this rule, and should understand the responsibilities and potential liabilities associated with those duties. Under the Campaign Reporting Act, the treasurer is a reporting individual who can be named in a complaint or official action by the secretary of state. Additionally, a treasurer may be found liable if he or she knowingly and willfully violates the Campaign Reporting Act.

(8) If a change is made to a treasurer of a political committee, the political committee shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.

(9) A political committee shall not continue to receive or make any contributions or expenditures unless the name of the current treasurer is on file with the secretary of state by filing an updated political committee registration form.

(10) A political committee is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the political committee's liability regarding fines and civil actions related to campaign reporting.

C. Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the political committee must maintain a valid email address on file with the office.

D. Political party registration: Qualified political parties that file rules in accordance with Article 7 of the Election Code

with the secretary of state or county clerk are required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act and this rule.

E. The contribution limits provided for in Section 1-19-34.7 NMSA 1978 do not apply to a political committee that only makes independent expenditures or to any contribution to a political committee that is deposited in a segregated bank account that may only be used to make independent expenditures. [1.10.13.10 NMAC - N, 10/10/2017]

1.10.13.11 REPORTING OF INDEPENDENT EXPENDITURES

A. Persons making independent expenditures for elections covered by the act who do not fall within any of the categories enumerated in Subsection A of 1.10.13.10 NMAC cannot be constitutionally compelled to comply with all the registration and reporting requirements imposed on political committees by the Campaign Reporting Act. Courts have also ruled, however, that persons who engage in the particular kind of campaign spending that meets the definition of independent expenditure under this rule can be required to report certain categories of information regarding the nature of their independent expenditures and the sources of the money that were used to pay for them. Accordingly, all persons making independent expenditures for elections covered by the act will be required to file reports in compliance with the rules set forth in this section.

B. Any person who makes an independent expenditure not otherwise required to be reported under these regulations in an amount that exceeds one thousand dollars (\$1,000) for one or more non-statewide race or ballot measure or in an amount that exceeds two thousand five hundred dollars (\$2,500) for one or more statewide race or ballot measure, or in an amount that, when added to the aggregate amount of the

independent expenditures made by the same person during the election cycle, exceeds these thresholds, shall file a report of the independent expenditure that includes all of the following information:

(1) The name and address of the person who made the independent expenditure.

(2) The name and address of the person to whom the independent expenditure was made and the amount, date and purpose of the independent expenditure. If no reasonable estimate of the monetary value of a particular expenditure is practicable, it is sufficient to report instead a description of the services, property or rights furnished through the expenditure.

(3) The source of the contributions used to make the independent expenditure as provided in Subsections C and D of this section.

(4) The candidate(s) or ballot measure(s) referenced in the advertisement(s) that are paid for by the independent expenditure and a description of the message included in the advertisement(s). If the advertisement(s) refer to multiple candidates or ballot measures, some statewide and some non-statewide, the lower reporting threshold for non-statewide elections, i.e. one thousand dollars (\$1,000) for reporting under Subsections B and C of this section, and three thousand dollars (\$3,000) for reporting under Subsection D of this section, will trigger the reporting requirement.

C. A person who makes independent expenditures totaling three thousand dollars (\$3,000) or less in a non-statewide race or ballot measure, or seven thousand five hundred dollars (\$7,500) or less in a statewide race or ballot measure during the election cycle shall report the name and address of each person who has made contributions of more than a total of two hundred dollars (\$200) in the previous twelve months that were earmarked or made in response to a solicitation to fund independent

expenditures, and shall report the amount of each such contribution made by that person.

D. A person who makes independent expenditures totaling more than three thousand dollars (\$3,000) for a non-statewide race or ballot measure or more than seven thousand five hundred dollars (\$7,500) for a statewide race or ballot measure during an election cycle shall report the following information:

(1) if the expenditures were made exclusively from a segregated bank account that contains only funds contributed to the account by individuals for the purpose of making independent expenditures, the name and address of, and the amount of each contribution not previously reported for, each contributor who contributed more than two hundred dollars (\$200) in the aggregate to the account during the 12 months preceding the report; or

(2) if the expenditures were made from any source other than a bank account of the kind described in paragraph (1), the name and address of, and amount of each donation made by, each donor who donated more than a total of five thousand dollars (\$5,000), to the person making the independent expenditures in the previous twelve months; provided, however, that a donation is exempt from reporting pursuant to this paragraph if the donor requested in writing that the donation not be used to fund independent or coordinated expenditures or make contributions to a candidate, campaign committee or political committee.

E. A person reporting an independent expenditure under this section shall complete the online registration process prescribed by the secretary of state in order to access the required disclosure reporting system. All reports of independent expenditures under this section shall be filed using the required system.

F. Time of filing reports:

(1) An independent expenditure of more than three thousand dollars (\$3,000) that

is made within fourteen days before a primary, general, or statewide special election shall be reported within twenty-four hours after making the expenditure.

(2) Except for independent expenditures that are required to be reported within 24 hours pursuant to Paragraph (1) of Subsection F of Section 1.10.13.11 NMAC, every independent expenditure shall be reported on the earliest of the reporting dates specified in Section 1-19-29 NMSA 1978 subsequent to the date the independent expenditure is made.

(3) An independent expenditure is considered to be made on the first date on which the communication or advertisement is published, broadcast or otherwise publicly disseminated.

(4) If any person making independent expenditures incurs subsequent independent expenditures, the person shall report such expenditures pursuant to this section.

G. No person may make contributions or expenditures with an intent to conceal the names of persons who are the true source of funds used to make independent expenditures.

[1.10.13.11 NMAC - N, 10/10/2017]

1.10.13.12 GENERAL REPORTING RULES:

A. Candidate campaign committees.

(1) All campaign committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until midnight mountain time on the date of filing without penalty. Beginning after 12:01 a.m. mountain time on the day after the due date of the report, penalties for late filing shall begin to accrue.

(2) Campaign committees shall report all contributions, in-kind contributions, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) Coordinated expenditures made on

behalf of the candidate or campaign committee shall be reported by the campaign committee as in-kind contributions received from the coordinating political committee and are subject to contribution limits.

(4) Candidates must file all required reports while they are an active candidate and continue to file timely reports until such time as they meet the requirements to file a final report. For example, a primary election candidate that loses the primary election must file all reports included in the primary election cycle and continue to file reports until the candidate files a final report. Losing an election does not terminate a candidate's requirement to file under the Campaign Reporting Act.

(5) A candidate's personal funds spent in support of a candidate's own campaign are considered a contribution and shall be disclosed by filing the required reports in CFIS; however, these funds are not subject to contribution limits.

(6) Upon request by the secretary of state, the campaign committee shall provide a copy of bank statements for any reporting period.

(7) Candidates benefiting from independent expenditures have no obligation to report the independent expenditure.

B. Political committees.

(1) All political committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until midnight on the date of filing deadline without penalty. Beginning after 12:01 a.m. mountain time on the date after the filing deadline of the report, penalties for late filing shall begin to accrue.

(2) Political committees shall report all contributions, in-kind contributions, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) In addition to disclosing the information required

by the Campaign Reporting Act for expenditures, a political committee making coordinated expenditures shall also disclose the name of the candidate, campaign committee, or political committee who is being coordinated with.

(4) Upon request by the secretary of state, the political committee shall provide a copy of bank statements for the political committee for any reporting period.

C. Hardship waivers.

(1) All reports required by these rules shall be filed electronically in the manner and on forms as prescribed by the secretary of state. Reporting individuals required to file reports may apply to the secretary of state for exemption from electronic filing in case of hardship by submitting a hardship waiver request form prescribed by the secretary of state. The secretary of state may approve or deny this request. Approval may be granted at the discretion of the secretary of state only if the reporting individual has no way to access CFIS.

(2) Upon approval of a hardship waiver, the reporting individual shall submit the report on a prescribed paper form. Approval of a hardship waiver by the secretary of state, authorizes the secretary of state to enter the report into the electronic system on behalf of the reporting individual. A copy of the electronic report entered by the secretary of state will be mailed to the reporting individual once it has been entered into CFIS.

(3) Submission of a hardship waiver request does not constitute meeting the reporting requirements including the statutory reporting deadlines. Failure to adhere to a report deadline may still result in fines pursuant to Section 1-19-35 NMSA 1978. Reporting individuals shall make arrangements for hardship approval with the secretary of state in advance of report deadlines to ensure timely filing.

[1.10.13.12 NMAC - N, 10/10/2017]

1.10.13.13 NO ACTIVITY:

A. All candidates are required to register and file reports in CFIS according to the reporting schedule outlined in the Campaign Reporting Act once a declaration of candidacy has been filed, even if the candidate does not raise or spend any funds. Candidates who have collected no contributions and made no expenditures shall file a statement of no activity.

B. Candidates who do not raise funds are not required to open a campaign bank account.

C. Receiving funds as a publicly financed candidate pursuant to the Voter Action Act is considered raising funds for the purpose of this rule.

[1.10.13.13 NMAC - N, 10/10/2017]

1.10.13.14 SUPPLEMENTAL REPORTS:

A. Certain candidates must report in CFIS contributions and pledges to contribute that are received beginning the Thursday before an election through the election in CFIS using supplemental reports in accordance with Paragraph 5 of Subsection B of Section 1-19-29 NMSA 1978.

B. If a candidate receives a pledge during the time period specified in Paragraph 5 of Subsection B of Section 1-19-29 NMSA 1978 but does not receive the contribution as pledged, the candidate may later amend the campaign committee's supplemental report.

[1.10.13.14 NMAC - N, 10/10/2017]

1.10.13.15 LATE FILING OF REPORTS:

A. If a reporting individual or person required to file a report under Section 1.10.13.11 NMAC fails to timely file a report in CFIS, or fails to file a report, a written notice will be sent by the secretary of state to the reporting individual or person required to file a report explaining the violation and the fine imposed.

B. The reporting individual or person required to file a report is afforded 10 working days from the date of the written notice to

file, if needed, and provide a written explanation within CFIS indicating why the violation occurred.

C. If a timely explanation is provided and the report is filed within the timeframe provided by the notice, the secretary of state will make a determination whether good cause exists to fully or partially waive the fine.

D. If the reporting individual or person required to file the report fails to provide a written response or fails to file a report within the timeframe provided by the notice, the secretary of state shall issue a notice of final action requiring the reporting individual or person required to file the report to file the late report, provide a written explanation of why the violation occurred, and pay the fine owed.

E. Fines for late filing will accrue beginning the day after the filing deadline until the report is filed at the statutory rate of fifty dollars (\$50) per day up to a maximum fine of five thousand dollars (\$5,000) per report. Candidates required to file supplemental reports are subject to additional fines pursuant to Subsection C of Section 1-19-35 NMSA 1978.

F. The reporting individual or person required to file the report may challenge the imposition of a fine within 10 working days of the date of the notice of final action by filing a request for arbitration on the prescribed arbitration request form. The arbitrator shall conduct the hearing within 30 days of the request for arbitration. The arbitrator may schedule the arbitration beyond the 30-day timeframe with the agreement of the parties.

G. The arbitrator shall issue a binding written decision in accordance with Subsection F of Section 1-19-34.4 NMSA 1978, which shall be a public record. The decision shall be issued and filed with the secretary of state within 30 days of the arbitration hearing.

H. Failure to respond to the notice of final action may result in a referral to the attorney general's

office or district attorney's office. [1.10.13.15 NMAC - N, 10/10/2017]

1.10.13.16 LOANS:

A. All loans made to a candidate or committee, including loans sourced from a candidate's own personal funds must be reported.

B. Contribution limits apply to loans, unless the loan is sourced from the candidate's own personal funds in accordance with Subsection F of Section 1-19-34.7 NMSA 1978.

C. If a spouse of a candidate co-signs a commercial loan to a candidate pledging community assets as collateral, it is not considered a contribution from the spouse to the candidate as long as the candidate's interest in the community asset meets or exceed the amount of the loan.

D. Loan repayments and forgiven loans must be reported separately from other expenditures within the loan module of CFIS.

[1.10.13.16 NMAC - N, 10/10/2017]

1.10.13.17 CAMPAIGN DEBTS:

A. Campaign debts may not exceed available campaign funds unless the debt is a loan. Loans from a third party must conform to contribution limits.

B. Following the date of the primary or general election, if a candidate has outstanding debts after expending all available campaign funds, the candidate may collect contributions for the sole purpose of paying those debts.

C. The contributions will apply to the primary or general election cycle for which the campaign debt was incurred for purposes of computing allowable contribution limits.

D. A candidate who does not have net outstanding campaign debt may not collect contributions for a primary or general election cycle that has ended.

E. A candidate may not transfer funds collected specifically to satisfy campaign debt to a subsequent primary or general election cycle.

Accordingly, contributions collected for the purpose of paying off outstanding campaign debts may not exceed the amount of the outstanding debts.

[1.10.13.17 NMAC - N, 10/10/2017]

1.10.13.18 IN-KIND CONTRIBUTIONS:

A. In-kind contributions must be reported with the actual value of the contribution. If an actual value is not available, an estimated value of the contribution may be used.

B. Coordinated expenditures are treated as in-kind contributions and must be reported as such.

C. If a committee or person makes an in-kind contribution that benefits multiple candidates, each candidate must report the estimated benefit received per person.

D. Goods, such as facilities, equipment, or supplies, are valued at the price the item or facility would have cost, given its age and condition, at the time the contribution was made.

E. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the candidate or committee.

[1.10.13.18 NMAC - N, 10/10/2017]

1.10.13.19 VOLUNTEERS:

A. Volunteer work performed for a candidate or committee is not considered a contribution. An individual may volunteer his or her own personal services to a campaign or candidate if the services are not compensated by the candidate, campaign or any other person. If a third party pays a person to volunteer for a candidate or committee, the payment constitutes an in-kind contribution to the campaign committee which must be reported by the campaign committee.

B. Individuals may use their own homes, recreation or

meeting rooms of complexes, or other facilities to conduct volunteer activities for a campaign committee without reporting the rental value of the premises as a contribution.

C. Candidates and campaigns may reimburse volunteers for out of pocket expenses other than the value of their time. Any expense reimbursed by the candidate or committee must be reported by the candidate or committee.

[1.10.13.19 NMAC - N, 10/10/2017]

1.10.13.20 CONTRIBUTIONS:

A. The entire amount paid by a donor to attend a political fundraiser or other political event or to purchase a fundraising item sold by a candidate is a contribution and counts against the donor's limit for political contributions, except for special events pursuant to Subsection C of Section 1-19-34 NMSA 1978.

B. Contributions received as a result of special events shall be reported cumulatively on the special events form in CFIS. Reporting individuals shall report the sponsor of the event, the amount received (gross proceeds), the expenditures incurred, the estimated number of persons in attendance, and the net amount received after deducting the expenditures incurred in conducting the event (net proceeds).

C. For all other fundraising events at which the price of admission exceeds fifteen dollars (\$15), or which raise more than one thousand dollars (\$1,000) in net proceeds, the reporting individual must report each individual contribution pursuant to Section 1-19-31 NMSA 1978.

D. No single anonymous contribution may be accepted in excess of one hundred dollars (\$100). No more than five hundred dollars (\$500) may be accepted in aggregate anonymous contributions for any non-statewide candidate in a primary or general election cycle. No more than two thousand dollars (\$2000) may be accepted in aggregate anonymous contributions for any statewide campaign committee or political

committee in a primary or general election cycle.

E. A candidate's spouse and family are subject to the same contribution limits to the candidate's campaign as other contributors, provided, however, that a candidate may contribute from a joint account with a spouse or family member without limit if the funds would otherwise be available to the candidate in the regular course of business, or as community property or as a joint tenant.

F. The personal funds of a candidate include:

(1) assets which the candidate has the legal right of access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;

(2) income from employment, including self-employment;

(3) dividends and interest from, and proceeds from, sale or liquidation of stocks, real estate or other investments;

(4) income from trusts, if established before the commencement of a primary or general election cycle;

(5) bequests to the candidate, if established before the commencement of a primary or general election cycle;

(6) personal gifts that have been customarily received by the candidate prior to the commencement of a primary or general election cycle; and

(7) proceeds from lotteries or games of chance.

G. The reporting individual is responsible for ensuring that all contributions are lawful. If the reporting individual has reason to suspect that a contribution is excessive or prohibited, he or she must, within ten days of receiving the contribution, validate the legality of the contribution and correct any discrepancy, if necessary, in order to comply with the law.

[1.10.13.20 NMAC - N, 10/10/2017]

1.10.13.21 CANDIDATE

DESIGNATIONS OF CONTRIBUTIONS OVER THE LIMIT:

A. When a person makes a contribution above the contribution limits to a candidate in the primary cycle, the candidate may re-designate the excessive portion to the general election cycle if the contribution:

- (1) is made during that candidate’s primary election cycle;
- (2) is not designated in writing for a particular election;
- (3) would be excessive if treated as a primary election contribution; and
- (4) if re-designated, does not cause the contributor to exceed any contribution limit.

B. If a candidate receives a contribution for the general election prior to the start of the general election cycle that candidate must segregate those funds and not use them until the start of the general election cycle.

C. A candidate who receives funds in the primary election cycle that are designated for use in the general election cycle and who loses the primary election must return the funds to the original donor or must donate the excessive contribution to the public election fund. A candidate or committee must disclose refunds of contributions in reports filed in CFIS using the refund contributions option. [1.10.13.21 NMAC - N, 10/10/2017]

1.10.13.22 EXCESSIVE OR PROHIBITED CONTRIBUTIONS:

A. Excessive or prohibited contributions may be returned to the donor, without penalty to the reporting individual, if the candidate or committee voluntarily returns the contribution without a finding of violation by the secretary of state. If the secretary of state makes a formal finding that an excessive or illegal contribution has been received by a candidate or committee, the candidate or committee shall forfeit the excessive or illegal contribution

in accordance with Subsection D of Section 1-19-34 NMSA 1978 or Subsection E of Section 1-19-34.7 NMSA 1978.

B. The reporting individual must check committee records regularly to reasonably ensure that aggregate contributions from one contributor do not exceed the contribution limits of the Campaign Reporting Act.

C. When an excessive contribution is made via written instrument with more than one individual’s name on it, but only has one signature, the permissible portion may be attributed to the signer and the excessive portion may be attributed to the other individual whose name is printed on the written instrument, without obtaining a second signature. This may be done so long as the reattribution does not cause the other contributor to exceed any contribution limit.

D. An excessive contribution which is not designated for either the primary or general election cycle, and which is made after the primary, but before the general election, may be applied to the outstanding debts from the primary election cycle if the campaign committee has more net debts outstanding from the primary election cycle than the excessive portion of the contribution. The re-designation must not cause the contributor to exceed any contribution limits.

E. Contributions and donations may not be solicited, accepted, received from, or made directly or indirectly by, foreign nationals who do not have permanent residence in the United States. [1.10.13.22 NMAC - N, 10/10/2017]

1.10.13.23 DATE CONTRIBUTION IS MADE VS DATE OF RECEIPT:

A. A contribution is “made” by the contributor when the contributor relinquishes control over it. If the contributor hand delivers a contribution, the contribution is made on the delivery date. If mailed, a contribution is made on the date of the postmark. An in-kind contribution

is made on the date that the goods or services are provided by the contributor. A contribution made via the internet is considered made on the date the contributor electronically confirms the transaction.

B. The date of receipt is the date the candidate, committee or person acting on the committee’s behalf, actually receives the contribution. This is the date that shall be used to report the contribution. The date of deposit is not used for reporting or contribution limit purposes.

C. When a contribution is received through debit or credit card charges, the date of receipt is the date on which the contributor’s signed or electronic authorization to charge the contribution is received by the candidate, committee or a person acting on the committee’s behalf.

D. The date of receipt of in-kind contributions is the date the goods or services are provided to the recipient. [1.10.13.23 NMAC - N, 10/10/2017]

1.10.13.24 EARMARKING:

A. It is unlawful for a person to make a contribution in the name of another person and no reporting entity shall knowingly accept a contribution from one person in the name of another person.

B. A reporting individual shall not knowingly accept a contribution which was earmarked by an original donor for contribution from a subsequent donor to the candidate or committee unless the original donor is disclosed in the committee’s reporting.

C. All contributions made by a person, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person, shall be treated as contributions from the person who originally made the contribution. [1.10.13.24 NMAC - N, 10/10/2017]

1.10.13.25 CANDIDATE EXPENDITURES:

A. Candidates who use the candidate’s own personal funds

for expenditures of the campaign committee must report the funds as either contributions to the campaign committee, which cannot be repaid to the candidate, or as loans to the campaign committee, which can be repaid from other campaign contributions received by the campaign committee. A candidate may also pay for expenditures of the campaign committee out of personal funds and obtain reimbursement from the campaign committee, but the campaign committee must itemize the expenditures reimbursed. A candidate may not, for instance, report a single payment to a credit card in lieu of reporting each individual expenditure paid for out of personal funds. Use of a credit card specifically designated for campaign expenses is permissible but expenditures must be itemized when reported.

B. Permissible Expenditures.

(1) Use of campaign funds must be in accordance with Section 1-19-29.1 NMSA 1978. Candidates and committees must provide a purpose or description detailed enough to associate the expense to the campaign. For example, an expense of “taxi” is not appropriately descriptive to determine that it is related to a campaign. Such an expense should be reported as “taxi for travel to campaign meeting.”

(2) Expenditures that are reasonably attributable to the candidate’s campaign and not to personal use or personal living expenses are permissible campaign expenditures. Personal use of campaign funds is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate’s campaign or responsibilities as a legislator. If the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure.

(3) Legal expenses specifically related to

the campaign or legislative office are permissible uses of campaign funds. Such expenses include, but are not limited to, presenting a legal challenge to an opponent’s qualifications for election, participating in such a challenge or defending such a challenge. Permissible legal expenditures also include defending or filing a complaint with the office of secretary of state or any ethics authority.

(4) Candidates and public officials shall not use campaign funds to pay any fine or penalty imposed by the secretary of state or any court of competent jurisdiction.

(5) Political committees may use campaign funds to pay fines and penalties imposed by the secretary of state.

(6) Wear and tear on a vehicle is a permissible expense of the campaign and candidates shall claim mileage rather than actual repairs for travel solely related to the campaign. Mileage shall be calculated at no more than the published rate pursuant to the Mileage and Per Diem Act. Candidates must keep a log for the candidate’s own records regarding miles traveled for campaign purposes and calculate the per diem based on this log. Mileage rates are meant to account for both wear and tear on a vehicle as well as costs for gas; therefore, candidates may not charge for both gas and mileage.

(7) A candidate, candidate’s agent, or committee’s agent may seek an agency opinion or declaratory ruling from the secretary of state on the lawfulness of expenditures made prior to the campaign committee facing an enforcement action. A declaratory ruling made by the secretary of state shall be issued in accordance with the Administrative Procedures Act, Section 12-8-9 NMSA 1978. To the extent that an expenditure is determined unlawful pursuant to an agency declaratory ruling, the campaign committee shall be given the opportunity to amend any inconsistent reports and take

other necessary steps to come into voluntary compliance.
[1.10.13.25 NMAC - N, 10/10/2017]

1.10.13.26 CHARITABLE DONATIONS:

A. Donations to charity from campaign funds permitted under Paragraph (4) of Subsection A of Section 1-19-29.1 NMSA 1978 may be paid only to organizations recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986.

B. The candidate or committee making a charitable donation is responsible for determining whether the charity has the permissible tax status prior to making the donation.
[1.10.13.26 NMAC - N, 10/10/2017]

1.10.13.27 PRIMARY AND GENERAL ELECTION CYCLES FOR PURPOSES OF CONTRIBUTION LIMITS

A. For state representatives and any other two year office holders, the primary election cycle begins the day after each general election and ends at midnight on the day of the primary election. The general election cycle begins on the day after each primary election and ends at midnight on the day of the general election.

B. For statewide office holders and any other four year office holders and for political committees, the primary election cycle begins on the day after the general election in which the office is on the ballot, or included in governor’s primary election proclamation, and ends at midnight on the day of the primary election in which the office appears on the ballot. The general election cycle begins on the day after the applicable primary election and ends at midnight on the day of the general election.
[1.10.13.27 NMAC - N, 10/10/2017]

1.10.13.28 COORDINATED EXPENDITURES:

A. A coordinated expenditure shall be treated as an in-kind contribution from the

person who made the expenditure to the candidate or committee at whose request or suggestion, or in cooperation, consultation or concert with whom, the expenditure was made, and shall be subject to all the limits, prohibitions and reporting requirements that are applicable to such contributions under the Campaign Reporting Act.

B. Candidates for office may endorse other candidates. Endorsements do not constitute a coordinated expenditure unless the endorser pays for an advertisement that constitutes a coordinated expenditure.

C. A candidate's or committee's response to an inquiry or questionnaire about that candidate's positions on legislative or policy issues, which does not include discussion of campaign plans, projects, activities or needs, does not constitute a coordinated expenditure.

D. Persons may use publicly available information and materials in creating, producing or distributing an advertisement, and such use does not, in and of itself, constitute coordination with the candidate or campaign. However, expenditures funding the republication of materials produced by a candidate's campaign shall be reported as coordinated expenditures subject to contribution limits.

E. The following is a non-exhaustive list of scenarios in which an expenditure will be deemed coordinated:

(1) whether the person making the expenditure is also an agent of the candidate or committee receiving the contribution;

(2) whether any person authorized to accept receipts or make expenditures for the person making the expenditure is also an agent of the candidate or committee receiving the contribution;

(3) whether the person making the expenditure has been established, financed, maintained, or controlled by any of the same persons that have established, financed, maintained, or controlled a political committee

authorized by the candidate;

(4) whether the reporting individual shares or rents space for a campaign-related purpose with or from the person making the expenditure;

(5) whether the reporting individual, or any public or private office held or entity controlled by the reporting individual, including any governmental agency, division, or office, has retained the professional services of the person making the expenditure or a principal member or professional or managerial employee of the entity making the expenditure, during the same election cycle, either primary or general, in which the expenditure is made; or

(6) whether the reporting individual and the person making the expenditure have each consulted or otherwise been in communication with the same third party or parties, if the reporting individual knew or should have known that the reporting individual's communication or relationship to the third party or parties would inform or result in expenditures to benefit the reporting individual.

[1.10.13.28 NMAC - N, 10/10/2017]

1.10.13.29 RECORDS RETENTION:

A. A reporting individual shall obtain and preserve all records, including bank statements and receipts, necessary to substantiate the campaign finance reports required pursuant to the Campaign Reporting Act for a period of two years from the date of the filing of the report containing such items.

B. A reporting individual shall make such records available to the secretary of state, attorney general or district attorney upon written request.
[1.10.13.29 NMAC - N, 10/10/2017]

1.10.13.30 RANDOM REPORT SELECTION AND REPORT REVIEW PROCESS:

A. Pursuant to Section 1-19-32.1 NMSA 1978, a randomly selected list of current and past candidates and political committees is

computer generated by the secretary of state.

B. The secretary of state conducts a review of the reports filed during the election year or reporting period being reviewed for compliance with 1.10.13 NMAC and the Campaign Reporting Act. Areas of review during the report examination include:

(1) Campaign committees or political committees who fail to register or fail to register timely.

(2) Contributions, including loans and anonymous contributions, which exceed allowable contribution limits.

(3) Expenditures that may not be permissible.

(4) To the extent possible, cross checking with other reporting entities including those filing under the Lobbyist Regulation Act.

C. Pursuant to Section 1-19-32.1 NMSA 1978, the secretary of state shall notify potential violators that a possible discrepancy has been found and allow the candidates or committees 10 working days from the date of the notice to submit a written explanation.

D. After a written response is received, the secretary of state will issue a notice of final action which may include dismissal of the finding upon explanation or correction or could include a penalty pursuant to Section 1-19-34.4 NMSA 1978.

E. Upon completion of the random review, the secretary of state shall generate a report that details the findings and actions taken by the candidates, committees, and the secretary of state which shall be made publicly available.
[1.10.13.30 NMAC - N, 10/10/2017]

1.10.13.31 DISCLAIMER NOTICES ON ADVERTISEMENTS:

A. The disclaimers on campaign advertising mandated by Sections 1-19-16 and 1-19-17 NMSA 1978 will be required only for:

(1)

advertisements that are disseminated by a candidate, a campaign committee or a political committee registered pursuant to 1.10.13.8 NMAC, or at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, a candidate's campaign committee or a political committee registered pursuant to 1.10.13.8 NMAC; and

(2)

advertisements that are disseminated by a person who has made independent expenditures in an aggregate amount exceeding one thousand dollars (\$1,000) during the current election cycle, and that either:

(a)

expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot measure, or

(b)

refer to a clearly identified candidate or ballot measure and are disseminated to the relevant electorate within 30 days before the primary election or 60 days before the general election at which the candidate or ballot measure is on the ballot.

B. The requirements of Subsection A of this section do not apply to the following:

(1) bumper

stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed; or

(2) skywriting,

water towers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impractical.

C. The disclaimer statements required by Subsection A of this section shall be set forth legibly on any advertisement that is disseminated or displayed by visual media. If the advertisement is transmitted by audio media, the statement shall be clearly spoken during the advertisement. If the advertisement is transmitted by audiovisual media, the statement shall be both written legibly and spoken clearly during the advertisement.

[1.10.13.31 NMAC - N, 10/10/2017]

HISTORY OF 1.10.13 NMAC:

[RESERVED]

End of Adopted Rules

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Other Material Related To Administrative Law

OFFICE OF STATE ENGINEER

Notice of Minor, Non-Substantive Correction

19.25.20 NMAC, Nambe-Pojoaque-Tesuque Water Master District: Active Water Resource Management, filed on August 31, 2017, published on September 12, 2017.

Pursuant to the authority granted under State Rules Act, Paragraph D of Section 14-4-4 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the above rule:

1) Original Subsection A of 19.25.20.121 NMAC was deleted (due to lack of a Subsection B):

The Section has been re-formatted to read:

19.25.20.121 ALTERNATIVE ADMINISTRATION OF THE PUEBLO OF TESUQUE'S EXISTING BASIN USE RIGHTS:

Under alternative administration of the first priority of the Pueblo of Tesuque's existing basin use rights, the curtailment of non-Pueblo surface water rights entitled to protection under section 4 of the settlement agreement whose points of diversion on the Rio Tesuque are upstream from the Pueblo of Tesuque's southern boundary ("upstream acequias"), shall be limited to the extent necessary to provide a diversion amount by the Pueblo of Tesuque from the Rio Tesuque for irrigation of 71 acres of Pueblo land (71 acres x 4.65 AFA/Y=330.15 AFY). To ensure that the Pueblo of Tesuque receives the 330.15 AFY, the Pueblo of Tesuque and the upstream acequias have agreed that:

A. Upstream acequias may proceed with lawful diversions if, for a period of more than 48 hours:

(1) the USGS 08302500 Tesuque Creek Above

Diversions gage indicates a flow of 3 cubic feet per second ("cfs") or more, or

(2) the USGS No.08308050 Rio Tesuque Below Diversions gage, at or near the Pueblo's southern boundary, indicates a flow of 1.5 cfs or more.

B. Upstream acequias shall reduce or cease their diversions as specified by the water master if the USGS 08302500 Tesuque Creek Above Diversions gage indicates a flow of less than 3 cfs and the USGS No. 08308050 Rio Tesuque Below Diversions gage, at or near the Pueblo's southern boundary indicates a flow of less than 1.5 cfs but more than 0.8 cfs.

C. Upstream acequias will cease all diversions and will allow all water in the Rio Tesuque to flow down to the Pueblo boundary if for a period of 48 hours, the USGS 08302500 Tesuque Creek Above Diversions gage indicates a flow of less than 1.5 cfs, or the USGS No. 08308050 gage, at or near the Pueblo's southern boundary, indicates a flow of less than 0.8 cfs.

A copy of this Notification will be filed with the official version of the above rule.

End of Other Material Related To Administrative Law

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Submittal Deadlines and Publication Dates

Volume XXVII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 17
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	April 27	May 16
Issue 10	May 18	May 30
Issue 11	June 1	June 13
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Issue 19	September 28	October 17
Issue 20	October 19	October 31
Issue 21	November 2	November 14
Issue 22	November 16	November 28
Issue 23	November 30	December 12
Issue 24	December 14	December 26

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

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