

New Mexico Register

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

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

AGING AND LONG-TERM SERVICES DEPARTMENT

NOTICE OF PUBLIC HEARING ON PROPOSED RULEMAKING

The Aging & Long-Term Services Department ("Department") hereby gives notice that the written comment period for the proposed repeal and replace of 9.2.19 NMAC, Long Term Care Ombudsman is reopened.

The public hearing will be held on November 22, 2017 at 9:00 a.m., in Hearing Room 2 on the second floor of the Toney Anaya building located at 2550 Cerrillos Road in Santa Fe, New Mexico.

Rule Change Summary and

Explanation: The purpose of the proposed rules change is to revise 9.2.19 NMAC, Long Term Care Ombudsman, to be consistent with recent amendments to both the Older Americans Act of 1965, 42 USC 3001, *et seq.*, as amended, and the New Mexico Long-Term Care Ombudsman Act, New Mexico Statutes Annotated 28-17-1 *et seq.* The proposed changes to the rules will take effect December 29, 2017.

The purpose of some of the changes to the rules include a new definition for informed consent and clarifying language outlining the duties of ombudsman to report on suspected or witnessed abuse. The amendments to the rule set standards by which ombudsman are required to report suspected abuse based on whether a resident of a long-term care facility can provide informed consent. Further standards are set for situations where the resident is unable to provide informed consent and when there is no surrogate decision-maker. The new rule also adds the definition of surrogate decision-maker to include guardians, legal representatives, fiduciaries authorized by law to act on the resident's behalf, and individuals chosen by the resident to act on their behalf.

Statutory Authorizations: Older Americans Act of 1965, 42 USC 3001, *et seq.*, as amended, and the New Mexico Long-Term Care Ombudsman Act, New Mexico Statutes Annotated 28-17-1 *et seq.*

Public Comment: Interested individuals may submit written comments to Melissa B. Sisneros, State Long-Term Ombudsman, via email at Melissa.Sisneros@state.nm.us; fax (505) 476-4910; or directed to Melissa B. Sisneros, State Long-Term Ombudsman, c/o Aging Long-Term Services Department 2550 Cerrillos Road, Santa Fe, New Mexico 87505. The written public comment period will be open from October 17, 2017 through the November 21, 2017 at 5 p.m. (MDT).

Copies of the Proposed Rule:

Copies of the full text of the proposed rule may be accessed on the Department's website (<http://www.nmaging.state.nm.us/>) under the Special Event link, or obtained from Melissa Sisneros at Melissa.Sisneros@state.nm.us at (505) 476-4810.

Individuals with disabilities who require this information in an alternative are asked to contact Irene Rubio by telephone at 505-476-4708. The Department requests at least ten days advance notice to provide requested special accommodations or as soon as possible prior to the hearing.

CULTURAL AFFAIRS, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Museum of New Mexico Board of Regents (BOR) and the Department of Cultural Affairs (DCA) will hold a public hearing on Friday, November 17, 2017, at 10:00 A.M. in Room 238, the Old Senate Chambers, of

the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, New Mexico 87501. The purpose of the hearing is to receive oral and written comments on proposed rule repeals and on a proposed new rule.

The BOR and the DCA are proposing to repeal the following parts contained in Title 4, Chapter 51, of the NMAC: 4.51.1, 4.51.4, 4.51.8, 4.51.9, 4.51.10, 4.51.13, 4.51.14, 4.51.17, 4.51.20, 4.51.24, 4.51.26, 4.51.27, 4.51.29, 4.51.30, 4.51.31, 4.51.32, 4.51.36, 4.51.38, 4.51.39, 4.51.40, 4.51.42, 4.51.43, 4.51.45, 4.51.46, 4.51.47, 4.51.48, 4.51.51, 4.51.52, 4.51.53, 4.51.54, 4.51.55, 4.51.58, and 4.51.59 NMAC.

Parts 1 and 4 contain outdated provisions or historical background that is not rule material. The subject matter of Parts 14, 17, 20, 26, 30, 38, 40, 42, 47, 51, and 54, is more appropriately addressed in policy, as it does not directly impact agencies or persons outside the DCA. Similarly, the subject matter of Parts 1, 8, 9, 10, 13, 27, 28, 29, 31, 32, 36, 39, 43, 48, 55, and 59 is addressed in the Museum of New Mexico (MONM) Collections Policy, the MONM Code of Ethics or other MONM policies. The subject matter in Parts 36, 52 and 53 is covered in contracts or leases. Provisions of parts 45 and 46 are suggestive and non-binding. Part 24 recites state statute.

The BOR and the DCA are proposing to replace 4.51.1 NMAC with a new rule in order to establish procedures for BOR meetings, including the election of officers, officer duties, annual and regular meeting schedules, and submission of agenda items. The proposed rule also sets forth the duties and responsibilities of the BOR, and provisions on organization of the museum and acquisition and control of real property and collections. The BOR and DCA are proposing these rule changes pursuant to Subsection E of Section 9-4A-6 NMSA 1978 and Subsection G of Section 18-3-3

NMSA 1978.

The proposed rule is available at the DCA website: <http://www.newmexicoculture.org>. To request that a copy of the proposed rule be mailed to you, submit your request in writing to Shirley Lujan, Museum Resources Center, Dept. of Cultural Affairs, 725 Camino Lejo, Santa Fe, New Mexico 87504, or by email to Shirley.Lujan@state.nm.us.

Any person may appear at the hearing and make oral comments, or submit written comments, or both. Written comments may also be submitted by mail or email to Shirley Lujan at the addresses noted above. Written comments are due by 10:00 a.m. on November 17, 2017. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 17, 2017.

Individuals 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 should contact Shirley Lujan at 505-476-1126 at least five business days prior to the hearing.

GAME AND FISH, DEPARTMENT OF

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Thursday, November 16, 2017, beginning at 9:00 a.m., at Elephant Butte Inn Banquet Facility, 401 NM-195, Elephant Butte, New Mexico, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Guide and Outfitter rule;

Repeal:

19.30.8 NMAC Guide and Outfitter Registration

Replace:

19.30.8 NMAC Guide and Outfitter Registration

Synopsis:

The purpose is to repeal and replace the new Guide and Outfitter rule to update and clarify rule language/ definitions.

The proposed new rule (19.30.8 NMAC) will include some general formatting to clarify rule language/ definitions, adding and removing changes to definitions, removing, adding, and clarifying language to general registration procedures and requirements, adding language to additional requirements to become a New Mexico Outfitter, adding and removing language to outfitter insurance requirements, removing additional qualifications for guide registration and moving this language to registration requirements, adding, removing, and clarifying language to registration fees, adding, removing and clarifying language to contract section, adding, removing, and clarifying language to outfitter or guide misconduct section, renaming additional prohibitions section to criminal violations while adding, removing, and clarifying language to new criminal violations section, and deleting applying in the special draw pool section and moving this section to newly named criminal violations section. A full text of changes will be available on the Department's website.

Interested persons may submit comments on the proposed changes to the Guide and Outfitter rule at dgf-fieldopscomments@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 9:00 a.m. on November 16, 2017 when the final rule amendments will be voted on by the Commission during a public meeting on November 16, 2017. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 16, 2017. Full copies of text of the proposed new

rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, P.O. Box 25112, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission Section 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations Section 17-1-26, et seq. NMSA 1978.

GAME AND FISH, DEPARTMENT OF

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Thursday, November 16, 2017, beginning at 9:00 a.m., at Elephant Butte Inn Banquet Facility, 401 NM-195, Elephant Butte, New Mexico, to hear and consider action as appropriate on the following:

Presentation of proposed changed to Manner and Method and Fisheries rules;

Amend:

19.31.10 NMAC Hunting and Fishing-Manner and Method of Taking
 19.31.12 NMAC Barbary Sheep, Oryx, and Persian Ibex
 19.31.13 NMAC Deer
 19.31.14 NMAC Elk
 19.31.15 NMAC Pronghorn Antelope
 19.31.16 NMAC Turkey
 19.31.17 NMAC Bighorn Sheep
 19.31.21 NMAC Javelina
 19.30.9 NMAC Game and Fish Licenses/Permits

Synopsis:

The purpose is to amend Manner and Method, Game and Fish Licenses/Permits and associated game rules with some modifications as described below to change the current carcass tagging requirements for big game species and turkey.

The proposed changes to 19.31.10 NMAC will include removing the current language regarding existing tagging requirements, adding language that allows for the use of a physical paper carcass tag issued by the Department and describes the manner and method in which the issued carcass tag will be affixed to the animal upon harvest. The proposed changes also define illegal acts associated with improperly tagging a harvested animal.

The proposed changes to 19.31.12, 19.31.13, 19.31.14, 19.31.15, 19.31.16, 19.31.17 and 19.31.21 NMAC will clarify when an improperly tagged big game species and turkey may be legally seized.

The proposed changes to 19.30.9 NMAC will establish license vendor financial liability and dollar value owed to the department for unaccounted carcass tags.

Interested persons may submit comments on the proposed changes to the Game and Fish License/

Permits, Manner and Method of Taking and related species rules at dgf-fieldopscomments@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 9:00 a.m. on November 16, 2017 when the final rule amendments will be voted on by the Commission during a public meeting on November 16, 2017. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 16, 2017. Full copies of text of the proposed rule changes, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, P.O. Box 25112, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505)476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

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Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission Section 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations Section 17-1-26, et seq. NMSA 1978.

**GAME AND FISH,
DEPARTMENT OF**

**STATE GAME COMMISSION
MEETING AND RULE MAKING
NOTICE**

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Thursday, November 16, 2017, beginning at 9:00 a.m., at Elephant Butte Inn Banquet Facility, 401 NM-195, Elephant Butte, New Mexico, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Hunting and Fishing License Revocation rule;

Repeal:

19.31.2 NMAC Hunting and Fishing License Revocation

Replace:

19.31.2 NMAC Hunting and Fishing License Revocation

Synopsis:

The purpose is to repeal and replace the Hunting and Fishing License Revocation rule to generally update and propose specific timelines for the revocation process and add additional categories of point violations as well as increase and decrease certain point values of violations.

The proposed new rule (19.31.2 NMAC) will include some general formatting to clarify rule language, adding and removing different violations in point categories, creating new point categories to better fit violation types, adding and clarifying language in notice of contemplated action, Parental Responsibility Act, penalty assessment and civil damages.

The proposed changes of 19.31.2 NMAC include adding and removing violation/convictions, adding and removing violations from 20 point violations, creating a 17 point violation category, adding and removing violations from 15 point violations, adding and removing violations from the 10 point

violations, adding and removing violations from 7 point violations, clarifying violations from the 5 point violations, creating a 3 point violations category, adding language to notice of contemplated action, adding language to wildlife violator compact suspension and revocations, adding and removing language to notice procedures and default orders for failure to request a hearing under Parental Responsibility Act, deleting language to notice procedures and default orders under failure to pay penalty assessment or civil damage, and adding some language to clarify revocation processes and time frames. A full copy of proposed changes will be available on the Department's website.

Interested persons may submit comments on the proposed changes to the Hunting and Fishing License Revocation rule at dgf-fieldopscomments@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 9:00 a.m. on November 16, 2017 when the final rule amendments will be voted on by the Commission during a public meeting on November 16, 2017. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 16, 2017. Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, P.O. Box 25112, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

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

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission Section 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations Section 17-1-26, et seq. NMSA 1978.

GAME AND FISH, DEPARTMENT OF

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Thursday, November 16, 2017, beginning at 9:00 a.m., at Elephant Butte Inn Banquet Facility, 401 NM-195, Elephant Butte, New Mexico, to hear and consider action as appropriate on the following: Presentation of proposed changed to Manner and Method and Fisheries rules;

Amend:

19.31.10 NMAC Hunting and Fishing-Manner and Method of Taking

Rule expires March 31, 2018:

19.31.4 NMAC Fisheries

Proposed new rule becomes effective April 1, 2018:

19.31.4 NMAC Fisheries

Synopsis:

The proposal is to adopt a new Fisheries rule that will become effective April 1, 2018 and amend the

Manner and Method rule with some modifications as described below. The current Fisheries rule is set to expire March 31, 2018.

The proposed new rule (19.31.4 NMAC) will include some general formatting to clarify rule language, adding and removing waters to the trout and winter trout water designation, reducing the Special Trout Water types, adding and removing waters to the Special Trout Water designation, allowing unlimited harvest of non-native trout on certain waters designated for native trout emphasis, removing the catch-and-release only rule on Brantley Reservoir, removing age and disabilities restrictions on Grants Riverwalk Pond, and reducing daily bag and possession limit on Clayton Lake, Lake Roberts, and Bill Evans Lake.

The proposed changes of 19.31.10 NMAC include some general formatting to clarify rule language, adding and removing waters to the tackle restrictions for Special Trout Waters, restricting bow and spear fishing for largemouth bass on Clayton Lake, Lake Roberts, and Bill Evans Lake, removing waters no longer open to the public or that no longer exist, and adding some language to clarify unlawful acts.

Interested persons may submit comments on the proposed changes to the Fisheries and Manner and Method rules at DGF-FisheriesRule@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 9:00 a.m. on November 16, 2017 when the final rule amendments will be voted on by the Commission during a public meeting on November 16, 2017. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 16, 2017. Full copies of text of the proposed rule changes and proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the

Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, P.O. Box 25112, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505)476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

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Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission Section 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations Section 17-1-26, et seq. NMSA 1978.

GAME AND FISH, DEPARTMENT OF

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Thursday, November 16, 2017, beginning at 9:00 a.m., at Elephant Butte Inn Banquet Facility, 401 NM-195, Elephant Butte, New Mexico, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Manner and Method of Taking rule;

Amend:

19.31.10 NMAC Hunting and Fishing-Manner and Method of Taking

Synopsis:

The purpose is to amend Manner and Method rule to add a new section to the rule to establish a certification process by which landowners can register their legally-posted property(s) with the department. This is a result from new language in statute Section 17-4-6 NMSA 1978 which was passed in the 2015 legislative session.

The proposed amended rule (19.31.10 NMAC) will include some general formatting to clarify rule language and better organize the definition section, and add language for the Department to establish a formal certification process by which landowners can submit to the Department an application which will recognize certain waters found on private property as non-navigable public waters and therefore trespass is not lawful unless prior written permission is received from the landowner. Full text of changes will be available on the Department's website (below).

Interested persons may submit comments on the proposed changes to the Hunting and Fishing-Manner and Method rules at dgf-fieldopscomments@state.nm.us ; or individuals may submit written comments to the physical address below. Comments are due by 9:00 a.m. on November 16, 2017 when the final rule amendments will be voted on by the Commission during a public meeting on November 16, 2017.

Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 16, 2017. Full copies of text of the proposed rule amendments, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, P.O. Box 25112,

Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission Section 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations Section 17-1-26, et seq. NMSA 1978.

GENERAL SERVICES DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The New Mexico General Services Department, State Purchasing Division, ("Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on repealing and replacing 1.4.1.94 NMAC CHIEF PROCUREMENT OFFICER REGISTRATION AND CERTIFICATION ("current rule") and replacing it with the following:

1.4.1.94 NMAC CHIEF PROCUREMENT OFFICER REGISTRATION, CERTIFICATION AND RECERTIFICATION PROGRAM

SUMMARY AND PURPOSE OF THE PROPOSED RULE: The current rule addressed Chief Procurement Officer (“CPO”) registration, certification, recertification, and duties. The new rule provides additional detail to address situations not outlined in the original rule, including:

1. Defining terms;
 2. Clarifying scope and procedures;
 3. Accommodating certain CPO circumstances (e.g. absence or emergencies);
 4. For appeals, outlining due process procedures and reinstatement; and
 5. Identifies enforcement consequences for non-compliance.
- Empirical examples identified over the last several years necessitate the need for CPO rule revisions. However, no technical information serves as a basis for this proposed rule.

PUBLICATION: The proposed rules and hearing agenda have been published and are also posted for public view on the State Purchasing Division website: <http://www.generalservices.state.nm.us/statepurchasing/>. A public hearing regarding the rules will be held on Wednesday, November 22, 2017 at 1:30 P.M. in the Auditorium in the Harold Runnels Building, 1190 S. St. Francis Drive, Santa Fe, New Mexico 87505.

HOW TO COMMENT ON THE PROPOSED RULE: Interested individuals may testify regarding the proposed rulemaking relating to 1.4.1.94 NMAC CHIEF PROCUREMENT OFFICER REGISTRATION, CERTIFICATION AND RE-CERTIFICATION PROGRAM at the public hearing scheduled on Wednesday, November 22, 2017 in the Auditorium in the Harold Runnels Building, 1190 S. St. Francis Drive, Santa Fe, New Mexico 87505. Written comments may also be submitted no later than Wednesday, November 22, 2017, the date of the

public hearing, to: Mark Hayden, Bureau Chief, State Purchasing Division, New Mexico General Services Department, Room 2016, 1100 St. Francis Drive, Santa Fe, New Mexico 87505 or Mark.Hayden@state.nm.us.

PROPOSED RULE COPIES: The public hearing agenda and the full text of the proposed rule may be accessed on the State Purchasing Division website: <http://www.generalservices.state.nm.us/statepurchasing/> or obtained from Mark Hayden by request to: Mark Hayden, Bureau Chief, State Purchasing Division, New Mexico General Services Department, Room 2016, 1100 St. Francis Drive, Santa Fe, New Mexico 87505 or Mark.Hayden@state.nm.us, or Phone 505-827-2331, or Fax 505-827-2484.

SPECIAL NEEDS: Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact State Purchasing Bureau Chief, Mark Hayden (contact information provided above). The Department requests at least seven days advanced notice (by close of business 5:00 P.M. on Wednesday, November 15, 2017) for all requests regarding special accommodations.

STATUTORY AUTHORITY: Section 9-17-5 NMSA 1978, and Procurement Code, Sections 13-1-1 et seq NMSA 1978.

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the adoption of a new rule, 7.1.29 NMAC, “Health Information System Public Access Website.” The hearing will be held on November 20, 2017 at 9:00 a.m. in the auditorium of the Harold Runnels Building, located at 1190 St. Francis Drive in Santa Fe,

New Mexico.

This hearing will be conducted to receive public comment regarding the proposed adoption of a new rule concerning the requirements of a public access website that will host health care cost and quality data. The website will assist in carrying out some of the requirements of the Health Information System Act, an act that was created to assist in the collection, analysis, and dissemination of health information to New Mexico residents. The rule proposes to require that the website:

- 1) be accessible through the sunshine portal;
- 2) allow a person who has Internet access to use the website without paying a fee;
- 3) allow the public to search for healthcare cost and quality data;
- 4) have a unique and simplified website address; and
- 5) be directly accessible via the main page of the official department website.

The legal authority authorizing the proposed rule and the adoption of the rule by the Department is at Subsection E of 9-7-6 and 24-6A-6.1 NMSA 1978.

A free copy of the full text of the proposed rule can be obtained from the Department’s website at <http://nmhealth.org/about/erd/>, or from:

Victoria Dirmyer
Epidemiology and Response Division
New Mexico Department of Health
1190 St. Francis Drive, Suite N-1300
Santa Fe, New Mexico 87502
(505) 476-3572
Victoria.Dirmyer@state.nm.us

Please submit any written comments regarding the proposed rule to the attention of Victoria Dirmyer at the above mailing address or e-mail address prior to the hearing. 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 Victoria Dirmyer by telephone

at (505) 476-3572. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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 or e-mail address above.

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The Human Services Department (the Department), Medical Assistance Division (MAD), is amending/ repealing/replacing the following rules that are part of the New Mexico Administrative Code (NMAC):

8.308.2 NMAC, Managed Care Program, Provider Network
8.308.6 NMAC, Managed Care Program, Eligibility
8.308.7 NMAC, Managed Care Program, Enrollment and Disenrollment
8.308.8 NMAC, Managed Care Program, Member Education
8.308.9 NMAC, Managed Care Program, Benefit Package
8.308.10 NMAC, Managed Care Program, Care Coordination
8.308.11 NMAC, Managed Care Program, Transition of Care
8.308.13 NMAC, Managed Care Program, Member Rewards
8.308.15 NMAC, Managed Care Program, Grievances and Appeals
8.308.21 NMAC, Managed Care Program, Quality Management
8.302.3 NMAC, Medicaid General Provider Policies, Third Party Liability Provider Responsibilities

NM Statute Section 9-8-6 (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.

Notice Date: October 17, 2017
Hearing Date: November 20, 2017
Adoption Date: Proposed as February 1, 2018
Technical Citations: 42 CFR 438 Subparts A through J

These changes are being proposed to match the requirements of federal rules. The Centers for Medicare and Medicaid Services (CMS) published federal rules, effective July 5, 2016, that updated Medicaid managed care requirements which the Department must now implement. The federal rules align the requirements governing Medicaid managed care programs, where feasible, with those of other major sources of health care coverage, including Qualified Health Plans and Medicare Advantage plans. The citation for the federal rule is 42 CFR 438 Subparts A through J.

MAD reviewed the current rules related to managed care to assure they will be in compliance with federal requirements. They were also reviewed for currency and clarity. Necessary changes are being proposed as amendments to the existing managed care organizations (MCO) rules listed above. Also, amendments are being proposed to 8.302.2 NMAC, Medicaid General Provider Policies, Third Party Liability Provider Responsibilities, because of its relationship to managed care organizations.

8.308.2 NMAC MANAGED CARE PROGRAM - PROVIDER NETWORK

Significant proposed changes include: (1) clarifications and new responsibilities for provider enrollment to meet federal requirements; (2) adds MCO provider access standards; (3) adds a section regarding MCOs contracting with the Indian health service, tribally operated facilities, and urban Indian clinics; (4) adds standards for MCOs regarding credentialing providers. No proposed changes are new limits on services

or eligibility, or otherwise negatively impact managed care members.

8.308.6 NMAC MANAGED CARE PROGRAM - ELIGIBILITY

Significant proposed changes include: (1) a correction to the list of Medicaid recipient categories that are not enrolled in managed care. This is a correction only and does not change who is actually enrolled in managed care; (2) replaces "12 months" with "13 months", pursuant to a federal rule that specifies a newborn is enrolled for 13 months starting with the month of birth.

8.308.7 NMAC MANAGED CARE PROGRAM - ENROLLMENT AND DISENROLLMENT

Significant proposed changes include: (1) Changes the auto assignment eligibility period from two months to six months or less; (2) includes language clarifying the retroactive span of eligibility considered for enrollment in managed care "to not to exceed two years" and deleted references to time periods prior to January 1, 2014; (3) adds language clarifying member enrollment periods prior to changing MCO and the time period for issuance of a member identification card by an MCO is changed to 20 calendar days following notification of enrollment. This time period was previously 30 days.

8.308.8 NMAC MANAGED CARE - MEMBER EDUCATION

Significant proposed changes include: (1) changing the title to read "Member Rights, Responsibilities, and Education; (2) language was added to assure that MCOs comply with federal requirements with regard to supplying informational and educational materials to members and for the civil rights and other rights that MCOs are required to provide to members of an MCO.

8.308.9 NMAC MANAGED CARE - BENEFIT PACKAGE

Significant proposed changes include: (1) language was added to assure MCOs follow federal requirements regarding providing benefits, citing

applicable federal citations; (2) added language to require that MCOs meet all behavioral health parity requirements; (3) added the benefit of health home services; (4) wording was added to physical health benefits to include birth center benefits, licensed birthing center benefits and other covered delivery services; a change is being made stating that routine vision care is not a benefit for a member 21 years and older whose eligibility is as an Alternative Benefit Plan beneficiary. Previously the rule stated that one routine eye exam per member was allowed every 36 months. This change is consistent with the federal requirements regarding Alternative Benefit Plan coverage; (5) added additional information regarding the MCOs' responsibility to cover pharmacy services; (6) added the MCOs' responsibility to cover plan B and long acting reversible contraception items; (7) included crisis services and opioid treatment programs as behavioral health services that MCOs are to cover; (8) a new section incorporates wording from the federal rule on emergency services and stabilization to assure a member has adequate care during an emergency situation; and (9) a new section incorporates wording from the federal rule with regard medical necessity, authorization requirements, and comparability to fee-for-service Medicaid coverage which generally assures the MCO provides necessary services to members.

8.308.10 NMAC MANAGED CARE PROGRAM - CARE COORDINATION

A significant proposed change adds language to clarify the MCO requirement to employ or contract with a Native American care coordinator or contract with a community health representative to serve as a care coordinator.

8.308.11 NMAC MANAGED CARE PROGRAM - TRANSITION OF CARE

A significant proposed change adds information clarifying the

circumstances under which a member will be provided care coordination and information regarding MCO identification of members who transition from institutional care to the community.

8.308.13 NMAC MANAGED CARE PROGRAM - MEMBER REWARDS

A significant proposed change adds clarifying language that a member may participate in a managed care member rewards program.

8.308.15 NMAC MANAGED CARE PROGRAM - GRIEVANCES AND APPEALS

Significant proposed changes include: (1) changes to the rule to assure that the federal requirements regarding grievances and appeals relating to MCOs and their members will be followed in the New Mexico Medicaid program; (2) proposed wording to clarify who may file a grievance or appeal and who may request an administrative hearing, and expanding the extent to which an "authorized provider" may represent a member in the process; (3) proposed wording was added to clearly differentiate between provider appeals and grievances vs. member appeals and grievances and to differentiate between the requirements for expedited appeals vs. standard appeals; (4) language was added to assure an MCO provides sufficient information to a provider or member to better explain why an adverse action is being taken; that an MCO seeks additional information from a provider prior to making a final decision; and provides information explaining the adverse decision; (5) proposed wording states a provider or a member may file a grievance at any time rather than within 30 calendar days of the event triggering the grievance; (6) the rule clarifies a grievance cannot be filed regarding an adverse benefit determination or the MCOs final grievance decision which is a federal provision; (7) new language states an appeal must be filed within 60 calendar days of the notice of adverse action - previously

the time frame was 90 days for a standard appeal and 30 days for an expedited appeal; (8) new language clarifies what constitutes a MCO adverse action against a member, incorporating the federal definition of Adverse Benefit Determination; (9) many other definitions are added or expanded for clarity including new wording to allow a member's treating provider to act as the member's authorized representative when the member is medically incapacitated or when the member's authorized representative cannot be located, and the member requires immediate medical care until such time as the member appoints an authorized representative or the member's current authorized representative is located; (10) the proposed rule also specifies that the MCO expedited member appeal process must be concluded and a final decision made by the MCO within 72 hours after a request is made with provisions for extending the time frame when necessary; (11) language specifies the MCO standard member appeal process must be concluded and a final decision made by the MCO within 30 calendar days of the request for the appeal with provisions for the extending the time frame when necessary.

8.308.21 NMAC MANAGED CARE PROGRAM - QUALITY MANAGEMENT

A proposed change provides additional information and requirements regarding the quality management programs, including additional criteria for mandatory and optional External Quality Review Organization activities.

8.302.3 NMAC THIRD PARTY LIABILITY PROVIDER RESPONSIBILITIES

Significant proposed changes include clarifying when claims must be denied due to the recipient having other insurance resources or third party liability and when claims cannot be denied; and specifying that MCOs must follow these requirements established by federal regulation.

This proposed amendments will be contained in 8.308.2 NMAC; 8.308.6 NMAC; 8.308.7 NMAC; 8.308.8 NMAC; 8.308.9 NMAC; 8.308.10 NMAC; 8.308.11 NMAC; 8.308.13 NMAC; 8.308.15 NMAC; 8.308.21 NMAC; and 8.302.3 NMAC.

The register and proposed rule amendments are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <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 register and rule may be requested by contacting MAD at 505-827-6252.

The Department proposes to implement these rules effective February 1, 2018. A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, on November 20, 2017, from 10 a.m. to 12 p.m., Mountain Daylight Time (MDT).

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 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by 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.

Interested persons may submit written to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division
Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded oral 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, on November 20, 2017.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Tuesday, November 21, 2017, from 9:00 a.m. to 11:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed repeal and replace of 6.61.12 NMAC - Licensure in Early Childhood Education, Pre K - Grade 3. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to speak will be given three (3) minutes to make a statement concerning the rule changes on record. Written comment will also be accepted at the hearing.

Rule Change Information. The purpose of the proposed rule change is to update semester hour requirements to reflect legislative changes made in 2015 to 22-10A-6 NMSA 1978: Educational requirements for licensure.

The statutory authorizations include the following:

Subsection J of Section 22-2-2 NMSA 1978 authorizes PED to determine the qualifications for and issue licenses to teachers, instructional support providers, and school administrators according to law and according to a system of classification adopted and promulgated by rules of

the department.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment on the proposed repeal and replacement of this state rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments. The public comment period is from October 17, 2017 to November 17, 2017 at 5 p.m. (MDT).

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF EMERGENCY RULEMAKING

Public Notice. The New Mexico Public Education Department (PED)

gives notice that on 9/29/2017 it adopted 6.41.4.14 NMAC, USING SPORT UTILITY VEHICLES (SUVS) FOR TO-AND-FROM TRANSPORTATION as an emergency rule adoption. The amendment to 6.41.4 NMAC is in response to new statute, Section 22-16-4 NMSA, School bus routes; limitations; exceptions; and minimum requirements. The amendment to 6.41.4 NMAC is implemented as an emergency rule. The Department finds that following the non-emergency rulemaking procedures in enacting regulation of SUVs for to-and-from transportation causes imminent peril to the public health, safety, and welfare, pursuant to Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency rule.

Rule Information. The purpose of this rule is to establish standards for the safe use of SUV's for to-and-from transportation.

The statutory authorizations include the following:

Section 22-2-1 NMSA 1978 grants the authority of the secretary to adopt, promulgate, and enforce rules.

Section 22-2-2 NMSA 1978 grants the Public Education Department the authority to properly and uniformly enforce the provisions of the Public School Code.

Section 22-8-26 NMSA 1978 grants the authority to use money in the transportation distribution of the public school fund to make payments to each school or district or state-chartered charter school for the to-and-from transportation costs of students.

Section 22-10A-5 NMSA 1978 grants the authority to conduct background checks on district employees.

Section 22-16-2 NMSA 1978 grants the authority to establish standards and procedures for school bus transportation.

Section 22-16-4 NMSA 1978 grants the authority to transport students to and from school using an SUV.

No technical information served as a basis for this proposed rule change.

A public comment period and a public hearing, pursuant to Section 14-4-5.3 NMSA 1978, State Rules Act, Public Participation, Comments, and Rule Hearings, will be held in order to adopt a permanent rule within 180 days of the effective date of 6.41.4.14 NMAC, pursuant to Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency rule.

Copies of the rule may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format are asked to contact Jamie Gonzales at (505) 827-7889.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on November 20, 2017, from 2:00 p.m. to 4:00 p.m. (MDT). The purpose of the public hearing is to receive public input on the proposed repeal of 6.19.6 NMAC TITLE I SUPPLEMENTAL EDUCATIONAL SERVICES. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to speak will be given three (3) minutes to make a statement concerning the rule changes on record. Written comment will also be accepted at the hearing.

Rule Change Information. The purpose of this proposed rule change is to align NMAC rules with the adoption of the Every Student

Succeeds Act (ESSA). Under No Child Left Behind states were required to implement supplemental education services (SES). ESSA does not require SES, making rule 6.19.6 NMAC unnecessary.

The statutory authorizations include the following:

Section 22-2-1 and 22-2-2 NMSA 1978 authorize PED to adopt, promulgate, and enforce rules and to determine policy for the operation of all public schools in the state.

Public Comment. Interested parties may provide comment on the proposed repeal of this state rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments. The public comment period is from October 17 to November 17 at 5 p.m. (MDT).

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

PUBLIC SAFETY, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Law Enforcement Academy (NMLEA) Board will hold a public hearing to allow public comment on the proposed amendment of Title 10 Public Safety and Law Enforcement, Chapter 29 Law Enforcement Academy of the New Mexico Administrative Code. The Board, under the statutory authority granted by Section 29-7-4 NMSA 1978, is proposing amendments to the following: 10.29.1 NMAC General Provisions, 10.29.5 NMAC Regional/Satellite Police Officer Academies, 10.29.7 NMAC In-Service Training Requirements, 10.29.9 Police Officer, and 10.29.10 NMAC Public Safety Telecommunicator. The hearing will be held on Friday, November 17, 2017, from 9:00 a.m. to 12:00 p.m., at the New Mexico Law Enforcement Academy (NMLEA) Main Building, Classroom TBD, 4491 Cerrillos Road, Santa Fe, NM.

The proposed regulations changes are available on the NMLEA Board's website at: <http://nmlea.dps.state.nm.us/index.php/lea-board/>. Individuals wishing to testify or comment, or who wish to request a copy of the proposed regulations, should contact: Layla Reyes at the New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, NM 87507, or by calling 505-827-9255 no later than November 10, 2017.

10.29.1 NMAC General Provisions change summary: Part 1 includes amendments that would bring the Board into compliance with the new requirements of House Bill 58 and the State Rules Act, which includes a more detailed process for future rule-making proceedings. The proposed changes also increase the time for the public to submit requests for agenda items to 30 days, which is a reasonable time to accommodate meeting and agenda preparation. There are further details added in

the process for summary suspension of a license when an officer or telecommunicator is arrested or indicted on any felony charge. There are also updates to the Board's investigative and disciplinary process, including the addition of investigative subpoena authority for the director and clarifying the default process when an individual does not respond to allegations.

10.29.5 NMAC Regional/Satellite Police Officer Academies change summary: The proposed rule updates and clarifies the implementation, application process and operations of a Regional Basic Law Enforcement Training program and Public Safety Telecommunicator training program. The proposed rule adds a definitions section to clarify the language within the rule. The proposed rule clarifies the certification and approval of a regional training academy. The proposed rule adds a new section (10.29.5.10) Regional Satellite Academy Police Officer and Telecommunicator basic training applications for admission and certification with timelines. These rules codify the current practices by inclusion into this section. The proposed rule outline the requirements for completion of a Regional Basic Training program, with some additional guidance for a self-sponsored candidate who successfully completes a Basic Training program. The proposed rules align with the statutory requirements listed in Chapter 29, article 7, Law Enforcement Training Act and article 7C, Public Safety Telecommunicator Training. Assures candidates receive timely and relevant training and attain certification requirements unique to the New Mexico. Increase transparency in the Regional Basic Law Enforcement or Telecommunicator Basic Training requirements by including the requirements in Title 10, Chapter 29, Part 5 NMAC. These proposed rules will then be reviewed by the NMLEA Board with an opportunity for public input at both the Board meeting(s) as well as the Public Rule making

hearings.

10.29.7 NMAC In-Service Training Requirements change summary:

The proposed change brings New Mexico Law Enforcement Academy into current standards for In-Service training for New Mexico Police Officer or Telecommunicator re-certification requirements. The proposed rules clarify the in-service training requirements for Police Officers and Telecommunicators for the 2018-2019 In-Service Training Cycle. The proposed rules align with the statutory requirements listed in Chapter 29. Assures candidates receive timely and relevant training and re-certification requirements unique to the New Mexico, while allowing for remaining training hours to provide each Agency, Officer or Telecommunicator the opportunity to receive training specific to their assignments or location. Applicants will have clear and concise guidelines and qualifications for meeting the re-certification standards every 2 years. Increase transparency in both the training requirements by including the requirements in Title 10, Chapter 29, Part 7 NMAC. These requirements will be reviewed every 2 years by the NMLEA Board with an opportunity for public input at both the Board meeting(s) as well as the Public Rule making hearings.

10.29.9 NMAC Police Officer change summary: It brings New Mexico Law Enforcement Academy into current standards for Basic Police Officer application for Certification and training requirements for Police Officers. The proposed rules clarify requirements by listing the new statutory language of House Bill 9, Tourniquet & Trauma Kits and training in the core basic training curriculum which adds two additional training hours. The proposed rule adds an additional training on the topics of search and seizure, sexual assault biological DNA evidence and off highway vehicle act bringing the total basic training academy minimum required hours for certification to 677 hours. The proposed rule

updates the applicant fingerprinting technology into the 21st century and reduces some redundancy in the language. The proposed rules align with the statutory requirements listed in Chapter 29. Assures candidates receive timely and relevant training and attain certification requirements unique to the New Mexico. Increase transparency in both the application for admission and Basic Academy Training requirements by including the requirements in Title 10, Chapter 29, Part 9 NMAC. These proposed rules will then be reviewed by the NMLEA Board with an opportunity for public input at both the Board meeting(s) as well as the Public Rule making hearings.

10.29.10 NMAC Telecommunicator summary change: The proposed rules update and clarify curriculum topics under block 6 (NCIC) of the Public Safety Telecommunicator training program. The proposed rule updates the applicant fingerprinting technology into the 21st century and reduces some redundancy in the language. The proposed rule clarifies the medical review procedures for the certified medical professional conducting the examinations, additional testing at the 3000 hz levels and provides for an appeal and medical review process. The proposed rules align with the statutory requirements listed article 7C, Public Safety Telecommunicator Training. Assures candidates receive timely and relevant training and attain certification requirements unique to the New Mexico. Increase transparency in the Telecommunicator Basic Training requirements by including the requirements in Title 10, Chapter 29, Part 10 NMAC. These proposed rules will then be reviewed by the NMLEA Board with an opportunity for public input at both the Board meeting(s) as well as the Public Rule making hearings.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any NMLEA public hearing,

program, or service, please contact: Layla Reyes at the New Mexico Law Enforcement Academy. The Academy requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written comments which must be received by 4:30 p.m. on Friday, November 17, 2017. Please send comments to:

New Mexico Law Enforcement Academy
c/o Layla Reyes - NMAC
4491 Cerrillos Road
Santa Fe, New Mexico 87507

You may also send comments electronically to: laylad.reyes@state.nm.us

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent"), and the New Mexico Office of Superintendent of Insurance ("OSI"), pursuant to the New Mexico Insurance Code, Section 59A-1-1 *et seq.* NMSA 1978 ("Insurance Code"), proposes a new rule pertaining to continuing education requirements for persons licensed by OSI, to be codified in the New Mexico Administrative Code, 13.4.7 NMAC - Licensing of Insurance Professionals – Continuing Education Requirements.

The purpose of this proposed rule is to repeal and replace the continuing education requirements for adjusters, resident insurance producers, limited surety agents, bail bond solicitors and property bondsmen who are licensed by the Superintendent to transact insurance business, bail bonds business or to act as adjusters in this state and to specify requirements for persons wishing to be qualified as continuing education providers.

Nonresident insurance producers whose home state requires continuing education and who are compliant with the home state requirements are exempt from the requirements. As a result of statutory changes which became effective on July 1, 2017, continuing education requirements now adopt a biennial schedule that is consistent with the new biennial license renewal schedule. OSI has also moved to an electronic registration and credit tracking system which is explained in the rule. The proposed rule is intended to provide guidance for persons currently licensed or wishing to become licensed by OSI, and for persons seeking to provide continuing education courses.

Statutory authority for promulgation of this rule is found at Sections 59A-2-9, 59A-6-1, 59A-11-10, 59A-11-23, 59A-12-16, 59A-12-26, 59A-13-12, 59A-44-33, and 59A-51-4.1 NMSA 1978.

The proposed rule may be found on the OSI website at <http://www.osi.state.nm.us/>, under the "Rulemaking" tab and is incorporated by reference into this NOPR. A copy of the full text of the proposed rule is available by electronic download from the OSI website or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501.

OSI staff, all insurers, licensees, insurance business entities, other persons transacting insurance business in New Mexico, and the members of the public are encouraged to provide comments or file any written proposals or comments according to the criteria and schedule set forth as follows: (a) oral comments will be accepted at the public hearing from any interested parties; (b) written statements, proposals or comments may be submitted for the record, in lieu of providing oral testimony at the hearing are due no later than 4:00 p.m. on **Friday November 17, 2017.**

Written comments, proposals, or responsive comments may be submitted via email to mariano.romero@state.nm.us or may be filed by sending original copies to: OSI Records & Docketing NM Office of Superintendent of Insurance
Attention: Mariano Romero, Room 331
1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689

Only signed statements, proposals or comments will be accepted. Scanned or facsimile signatures or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday except on state holidays. Any filings after 4:30 will be filed to the docket the next business day.

The Superintendent will hold a public comment hearing beginning at **10:00 a.m. on Thursday, November 16, 2017**, at the Office of Superintendent of Insurance, Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. Deputy Superintendent Robert Doucette will be the designated hearing examiner in this case. The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses. The record shall be closed at **4:00 p.m. on Friday, November 17, 2017**.

Any person with a disability requiring special assistance in order to participate in a hearing should contact Melissa Martinez, at 505-476-0333 at least 48 hours prior to the commencement of the hearing. **DONE AND ORDERED** this 28th day of September, 2017.

S/JOHN G. FRANCHINI

TRANSPORTATION, DEPARTMENT OF NOTICE OF PROPOSED RULEMAKING

PROPOSED REPEAL OF 18.31.4 NMAC

The New Mexico Department of Transportation (NMDOT) is proposing to repeal 18.31.4NMAC, Litter Control and Beautification Requirements.

Approval of the initial rulemaking action for the repeal of 18.31.4 NMAC, was granted to NMDOT by the New Mexico State Transportation Commission on September 21, 2017, pursuant to Sections 9-5-1, 67-3-8 and 67-3-11 NMSA 1978. The legal authority authorizing this rulemaking is Sections 67-16-1 NMSA 1978 et seq.

18.31.4 NMAC establishes the application process and guidelines governing the use of state grant funds as mandated under the New Mexico Litter Control and Beautification Act, Sections 67-16-1 NMSA 1978 et seq. In 2001, the New Mexico Legislature transferred the management of the state grant funds under the New Mexico Litter Control and Beautification Act from NMDOT to New Mexico Department of Tourism.

Copy of the full text of the proposed rule may be found on the NMDOT website at the following Internet link: <http://dot.state.nm.us/content/nmdot/en/public-notice.html>. To obtain a printed copy of the proposed repeal, you may visit the General Office of the New Mexico Department of Transportation at 1120 Cerrillos Road, Santa Fe, New Mexico 87504 or contact Phillip Montoya at: Telephone (505) 827-5205 or Email: phillip.montoya@state.nm.us. A reasonable fee may be charged by the NMDOT for printed copies.

NMDOT will hold a public hearing for the purpose of receiving oral and written public comment from

interested parties on the proposed repeal of 18.31.4 NMAC. The hearing is scheduled on December 4, 2017, from 1:00 pm to 4:00 pm at 1120 Cerrillos Road, Santa Fe, New Mexico.

To submit written views and comments on or before December 4, 2017, please send to: Phillip Montoya, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504, Telephone (505) 827-5205; Email: phillip.montoya@state.nm.us. Written and oral comments will be accepted through the date this notice is published in the New Mexico Register, before and at the scheduled hearing, and until the close of the final hearing scheduled in this rulemaking. If you plan to submit written comments, argument or data at the hearing, please make sure any documentation contains your name, phone number and email address, and please bring (3) copies of any documents to the hearing. If submitting written comments by email, please indicate the rule number in the subject line. Oral comments will be accepted at the rule hearing subject to time limitations. After the close of the final hearing scheduled in this rulemaking, no other comments will be accepted.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule revisions in an accessible form may contact Phillip Montoya at (505) 827-5205 at least ten days before the hearing.

End of Notices of Rulemaking and Proposed Rules

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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 2.82.5 NMAC, Sections 3, 8, 10, 11 and 15 effective 10-17-2017.

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

2.82.5.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to ~~[22-11-53;]~~ 22-11-55 NMSA 1978. [6-30-99; 2.82.5.3 NMAC - Rn, 2 NMAC 82.5.3, 11-30-2001; A, 10-17-2017]

2.82.5.8 ELIGIBILITY:
A. A member shall not be considered eligible to retire unless he shall have completed at least ~~[one year]~~ five years of contributory employment even though such member might otherwise be eligible by reason of age and service, and tender of payment for contributory employment.

B. A school bus owner-driver shall not be eligible to retire unless he/she terminates the owner-driver contract with the public schools. [6-30-99; 2.82.5.8 NMAC - Rn, 2 NMAC 82.5.8, 11-30-2001; A, 10-17-2017]

2.82.5.10 COMPUTATION AND COMMENCEMENT OF RETIREMENT BENEFITS:

A. Upon retirement, the following procedures shall apply with regard to commencement of the member's benefit:

(1) If the retiring member's employment terminated at least 90 days prior to the effective date of retirement, the

benefit may be commenced at the end of the month following the effective date of retirement.

(2) If the retiring member's employment terminated within 90 days prior to the effective date of retirement, the retiring member's benefit may be estimated by the director and commenced at the end of the month following the effective date of retirement.

(3) After the employer report is received from the administrative unit, reporting the retiring member's final earnings, the director shall determine whether or not the estimated benefit is correct. If the estimated benefit is incorrect, the director shall make the appropriate adjustment to the member's benefit, retroactive to the effective date of the benefit. This adjustment, if required, shall be made at the earliest practical date. The retiring member shall be advised regarding the nature of any such adjustment. An adjustment will be made in this manner if and only if the adjustment based upon the member's actual earnings would result in a monthly benefit which differs more than \$1 from the estimated benefit.

B. Whenever a retiring member completes the academic or fiscal year prior to July 1, he shall not be entitled to retirement benefits for the months of July or August if he returns to employment at the beginning of the next following academic or fiscal year. If a member shall have received benefits for such months, he shall be required by the director to return the sums received, to the educational retirement fund, in accordance with Section 22-11-40 NMSA 1978.

C. The retiring member shall be furnished with copies of all computations including

a listing of his service credit, and he shall have 90 days after receipt of same in which to file notice of correction with the director, after which time the computations and service may not be corrected by the member.

D. A member's average annual salary as defined in Section 22-11-30 NMSA 1978 shall be the average annual earnings of the member in the last 20 calendar quarters in which there were earnings preceding retirement or the average annual earnings of any 20 consecutive calendar quarters in which there were earnings, whichever is greater.

E. ~~[No member covered under the Educational Retirement Act prior to July 1, 1957 may receive a benefit computed under the terms of Section 22-11-44 unless such member shall have fulfilled all of the requirements of the retirement law repealed by the Educational Retirement Act; however, in determining whether the member has five years of service consecutive and immediately prior to the date of retirement, the director may allow an interruption of such service of not to exceed one calendar quarter.~~

F. ~~In] When~~ determining a member's last five-year average annual salary (last 20 calendar quarters), the director shall use the reported earnings on which ~~[contribution has]~~ contributions have been made by the member during the 20 quarters of employment immediately preceding the member's date of termination, except that if a member's last employment terminated at least one month prior to the close of the calendar quarter (or one month prior to the close of the academic year if such ends in May), his last five years' earnings shall be the reported earnings upon which contributions have been made

by the member during the five years of employment preceding the end of the month in which termination occurs. In such cases, any earnings in a calendar quarter shall be considered as earnings for the full quarter, except for the first quarter and the last quarter of the last five years of employment.

[G.] **E.** When the member's application for benefits has been approved and his effective date of retirement has been reached, the member shall then be retired.

[H.] **G.** Benefits shall not be commenced until the retiring member has elected the retirement benefit as provided in Section 22-11-30 NMSA 1978, or an optional benefit pursuant to Section 22-11-29 NMSA 1978.

[I.] **H.** Re-retirement benefits shall be computed in the following manner:

(1) The re-retirement benefit will be calculated in the same way as his last benefit and will be based on the last five-year average or the highest consecutive five-year average, whichever is greater, for which contributions were made, and his total service at re-retirement. The retirement benefit formula will be the same as at last retirement unless the member returns to employment for at least four quarters after the effective date of change in the formula. If this occurs, the benefit computation will be based on the benefit formula in effect at the time of re-retirement.

(2) The re-retirement benefit calculated above is reduced under the following conditions:

(a) At re-retirement the member's retirement age shall be his chronological age less any period of time(s) during which benefits were received while in retirement. If this age is under 60 and his total service is under 25 years, his benefit is reduced by six-tenths percent for each quarter year under 60, down to age 55, plus one and eight-tenths percent for each quarter year this age is under 55.

(b) If the last benefit was payable as a reduced benefit under the terms of an

option, the same terms and reduction shall apply to the re-retirement benefit.

(c) In no case can his re-retirement benefit be less than he was receiving when he returned to employment. [6-30-99; 2.82.5.10 NMAC - Rn, 2 NMAC 82.5.10, 11-30-2001; A, 10-31-2002; A, 10-17-2017]

2.82.5.11 EFFECTIVE DATE OF BENEFIT:

A. Whenever a retiring member completes the academic year for which he has been contracted or employed, his effective date of retirement shall be July 1, provided that application is made as stipulated in Subsection B of 2.82.5.11 NMAC. Whenever a retiring member terminates at a time other than at the end of the academic year for which he has been contracted or employed, the effective date may be the first day of the month following termination, provided that application must be as stipulated in Subsection B of 2.82.5.11 NMAC.

B. The effective date of benefits cannot in any case be earlier than the first day of the month following receipt of the completed application forms (as provided by the director) from the member or his employer, except as provided in Subsection D of 2.82.5.11 NMAC.

C. Section 22-11-28 NMSA 1978 shall be construed to mean that the effective date of benefits shall be in accordance with Section D, [Paragraph (1) and (2)] of this rule, and further that on concurrence of the local administrative unit for retirement on a date other than July 1 has been given when the local administrative unit certifies the member's termination on the application form.

D. If a member's application for benefits is received after the effective date desired by the member, and such desired effective date would otherwise be in accordance with the law and rules of the board, the director may commence the member's benefit as of such date, only if the delay in filing was due

to delay in processing by the local administrative unit, and not due to any fault or wish of the member.

The director shall also consider an application to have been duly filed in this office on the date postmarked if the application is mailed.

[6-30-99; 2.82.5.11 NMAC - Rn, 2 NMAC 82.5.11, 11-30-2001; A, 10-17-2017]

2.82.5.15 RETURN TO WORK PROGRAM:

A. In order to qualify to return to employment (hereinafter "return to work") as provided for in Subsections A and E of Section 22-11-25.1 NMSA 1978, a retired member must have a period of at least 12 consecutive months in which they have not been employed as an employee or independent contractor by a local administrative unit (hereinafter, a "break in service").

(1) To satisfy the requirements of a "break in service," the retired member must not have rendered service of any nature whatsoever to a local administrative unit for the 12 consecutive month period. "Service" shall be defined to include, without limitation, all employment whether full time, part-time including service allowed under [Paragraph (1) of] Subsection B of 2.82.2.11 NMAC, substitute teaching, performing duties as a volunteer, which would otherwise be, or in the past have been, performed for the local administrative unit by a paid employee or independent contractor, or services rendered as an independent contractor, an employee of an independent contractor, or any other employment as described in Subsections A through D of 2.82.2.11 NMAC. A "local administrative unit" shall include any entity controlled by or subject to the control of a local administrative unit, including without limitation, a corporation or other entity regardless of legal form and of whether such corporation or entity is created for profit or non-profit purposes.

(2) The break in service must have commenced after the effective date of retirement

and been completed prior to the first day of re-employment, but need not have been the 12 consecutive months immediately prior to the first day of such re-employment (i.e. the break in service could have occurred at any time during the period after the effective date of retirement and before the first day of re-employment but must have been at least 12 consecutive months within that period). ~~[After completing a 12-consecutive month break in service, a retired member may work .25 FTE or less as provided by Paragraph (1) of Subsection B of 2.82.5.16 NMAC, without affecting that member's eligibility for the return to work program.]~~

B. In addition to a break in service of at least 12 consecutive months, in order to satisfy the provisions of Subsection E of Section 22-11-25.1 NMSA 1978, a member who retired on or before January 1, 2001, and who subsequently removed him or herself from retirement (also referred to as "suspending retirement") pursuant to Section 22-11-25 NMSA 1978, and thereafter re-retired, must complete an additional period of at least 90 days after the re-retirement, during which the retired member has not been employed as an employee or an independent contractor by a local administrative unit. During the 90-day period, the retired member must satisfy the same requirements regarding employment by a local administrative unit as must be satisfied for a 12 consecutive month break in service. The 90-day period shall not include any portion of the period used to satisfy the 12 consecutive month break in service. In addition, the 90-day period shall not include any scheduled breaks, vacations, paid administrative or sick leave, or holidays consisting of more than two business days.

C. Any and all time that a retired member has provided service to a local administrative unit under the return to work program cannot be used in the calculation of retirement benefits and a retired member is not entitled to acquire

service credit or to acquire or purchase service credit in the future for the period of the retired member's re-employment with a local administrative unit under the return to work program.

D. No retired member is eligible for the return to work program until the member submits a completed, signed and notarized return to work form as supplied by ERB, (the "return to work application"), verifying their eligibility for the return to work program.

E. The date of suspension of retirement for any retired member shall be the last day of the month in which the member suspended retirement.

F. Any retired member who is participating in the return to work program who has violated the provisions of the program, failed to submit the required return to work application, or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to the ERB that they have terminated any and all employment that would disqualify them from retirement under the Educational Retirement Act. To re-qualify for the return to work program, the retired member must complete the minimum break in service as described in Subsection A of ~~[2.82.5.15]~~ 2.82.5.15 NMAC, calculated from the date of reinstatement of retirement.

G. A retired member is qualified under Subsection B of Section 22-11-25.1 NMSA 1978 to return to full time employment without being required to suspend retirement benefits if the member:

- (1) retired on or before January 1, 2001; and
- (2) did not work more than .25 FTE at any time

after January 1, 2001 or provide any other service to a local administrative unit after that date that would have required the member to suspend retirement benefits under the act; and

(3) did not suspend retirement after January 1, 2001; and

(4) completed a return to work application with ERB.

H. Member's qualifying under Subsection B of Section 22-11-25.1 NMSA 1978 may begin full time employment immediately after ERB approval without any additional waiting period. [2.82.5.15 NMAC - N, 11-30-2001; A, 12-14-2001; A, 10-31-2002; A, 7-15-2003; A, 12-31-2008; A, 6-16-2015; A, 10-17-2017]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.7 NMAC, Sections 3, 8 and 9, effective 10-17-2017.

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

2.82.7.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to ~~[22-11-53;]~~ 22-11-55 NMSA 1978. [2.82.7.3 NMAC - Rp, 2 NMAC 82.7.3, 6-16-2015; A, 10-17-2017]

2.82.7.8 BENEFIT PAYMENTS:

A. After the initial payment of benefits, payments shall be processed or mailed monthly, not later than the last day of the month for which they are paid.

B. At the time of death, a retired member's benefit shall be paid in accordance with the option selected, or if none was selected, the member's beneficiary who shall have been named at the time of retirement, shall receive the benefit for the month of the member's death or the excess of total contributions over total

benefits received by the member, whichever is greater.

C. Upon the death of a member who is receiving disability benefits and who has rejected the coverage of option B, the member's surviving beneficiary shall receive the benefit due the member from the first day of the month of death to the date of death, inclusive, or the excess of total contributions over total benefits received by the member, whichever is greater.

(1) A member eligible to receive disability benefits, shall receive unmodified benefits as set forth in Section 22-11-37 NMSA 1978, until the member attains age 60, at which time the benefit will be modified in accordance with option selected at that time, if any, and the modifications will be based upon the then attained ages of the member and beneficiary.

(2) Upon the death prior to age 60 of a member receiving disability benefits who has option B coverage, the beneficiary of such member shall be entitled to the benefits provided by Subsection D of Section 22-11-29 NMSA 1978.

~~**D.** Upon the request of a member receiving retirement or disability benefits, the director may deposit the member's monthly benefit payments directly to member's bank account provided the bank is located within the state of New Mexico, and to out-of-state banks only if officials of the bank sign the depository agreement approved by the board.~~

[2.82.7.8 NMAC - Rp, 2 NMAC 82.7.8, 6-16-2015; A, 10-17-2017]

2.82.7.9 EMPLOYMENT:

A. Once each calendar quarter, administrative units shall be required to report to the educational retirement board "the full-time equivalency" of members retired for age or service and members receiving disability benefits.

B. A member receiving disability benefits may engage in employment in the same manner and such employment shall be considered as partial evidence of ability to return to regular employment, and

this, together with medical evidence, may be considered by the board in determining whether the member's disability benefit should continue.

C. Members retired for age or service may reside anywhere they choose, and engage in any employment which is not covered by the Educational Retirement Act, without affect to their retirement status.

D. If a member who returns to employment and is removed from a retirement status wishes to retire again, he may do so in accordance with ~~[the statute and 2-NMAC 82.5.9.4 now]~~ Section 22-11-25 NMSA 1978 and Subsection D of 2.82.5.9 NMAC.

E. Retired members who perform services for local administrative units as an independent contractor must meet the criteria set forth for an independent contractor in ~~[2 NMAC 82.2.11.4 now]~~ Subsection D of 2.82.2.11 NMAC.

[2.82.7.9 NMAC - Rp, 2 NMAC 82.7.9, 6-16-2015; A, 10-17-2017]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.11 NMAC, Sections 3 and 8, effective 10-17-2017.

2.82.11.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to ~~[22-11-53]~~, 22-11-55 NMSA 1978, [the Retirement Reciprocity Act, Sections 10-13A-2 to 10-13A-3]. [6/30/99; 2.82.11.3 NMAC - Rn, 2 NMAC 82.11.3, 3-14-2008; A, 10-17-2017]

2.82.11.8 GENERAL PROVISIONS:

A. A final written decision of the director which results in a denial of a claim for retirement-related benefits or a recommendation of the medical review committee for a denial of an application for disability or termination of disability benefits may be appealed by an affected member.

B. The appeal shall be initiated by the affected party serving on the director a notice of appeal within 30 days of the date of the letter in which the member received notice of the final decision or recommendation. The notice of appeal must state the reasons for claiming the decision or recommendation is improper. If the claimant fails to submit a notice of appeal as provided herein, the decision or recommendation shall become final.

C. The appeal shall be heard by a hearing officer designated by the board, unless otherwise provided by the board.

D. Procedure.

(1) The office of general counsel will establish internal procedures for processing appeals within the parameters set by this rule.

(2) Discovery and evidence.

(a) Following the filing of an appeal, the parties must submit to the hearing officer, with a copy to the other parties, including copies separately addressed to the educational retirement board's (ERB) office of general counsel, at least 15 days prior to the scheduled hearing, any documentary evidence a party may wish to present for consideration at the de novo hearing. The hearing officer may grant a request for extension of time to submit documentary evidence for good cause, if such extension is not prejudicial to another party. This documentary evidence shall include all documents that will be introduced as exhibits at the hearing. Failure to comply with the requirements of this provision may result in the appeal proceeding without consideration of the documentary evidence.

(b) At the same time documentary evidence is due to be submitted, the ERB may, but is not required to, file a written response to claimant's notice of appeal.

(c) The parties shall provide to the other parties the names and addresses

of persons that may be called as witnesses at the hearing.

(d)

Upon the written request of any party, pre-hearing discovery permitted by the rules of civil procedure for the state district courts in New Mexico may be allowed as authorized by the hearing officer.

(e)

Upon request, the claimant shall provide to the director authorizations for the release of records regarding employment (whether self-employed or as an employee or an independent contractor) and, in the case of a disability appeal, the claimant's health care records.

(f)

The rules of evidence do not apply, but the hearing officer may admit all relevant evidence which in the hearing officer's opinion is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability and trustworthiness. Such evidence shall be given the weight the hearing officer deems appropriate.

(g)

The hearing officer may, upon good cause shown, remand the matter back to the director or the medical review committee for reconsideration.

(3) Hearing.

(a)

A hearing shall be held within 90 days of receipt of the notice of appeal unless the parties agree to an extension of time and the extension is approved in writing by the hearing officer. The hearing officer also may grant an extension upon good cause shown by one party, without the agreement of other parties. The parties shall be given at least 30 days written notice of the scheduled hearing. The hearing shall be held in Santa Fe.

(b)

A hearing involving the denial of disability benefits shall not be open to the public.

(c)

The board's authority to administer oaths is delegated to the hearing officer for the purpose of conducting the hearing.

(d)

The parties have the right to present argument and evidence orally, to present or cross-examine witnesses, and to be accompanied by ~~counsel~~ a New Mexico licensed attorney.

(e)

The parties shall appear in person at the hearing, except as provided in this rule. The claimant may appear by telephone or video conference when it is difficult or impossible for the claimant to appear in person. A claimant who wishes to appear by telephone or video conference shall submit a written request to the hearing officer at least five days prior to the hearing stating the reason(s) why it is difficult or impossible for the claimant to appear in person. Failure of the party bringing the appeal or that party's representative to appear in person or by telephone or video conference at the hearing, without prior approval from the hearing officer, shall result in automatic final denial of the appeal and any claims previously asserted. Witnesses may appear by telephone or video conference if approved by the hearing officer.

(f)

If the party bringing the appeal or that party's representative requests rescheduling of a hearing so close to the time of the hearing that additional costs are incurred, any such additional costs may be assessed against that party, such as court reporting or other costs.

(4) Burden

of persuasion. Unless otherwise established by law, the party bringing the appeal has the burden of proving by a preponderance of the evidence the facts relied upon to show that such party is entitled to relief or the benefit denied.

(5) Record.

The hearing shall be recorded, and copies of all evidence offered shall be maintained by the director for a period of five years. Any party desiring a transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such transcript. A party appealing the decision of the board to the district court shall make

arrangements with the director for the preparation of transcripts for that appeal.

(6) Written

closing arguments. If any party requests permission to file a written closing argument, the hearing officer may permit all parties to file written closing arguments and shall set a time for the simultaneous filing of written closing arguments.

~~(6)~~ (7)

Recommended decision.

(a)

The hearing officer shall prepare a recommended decision for the board's consideration. The hearing officer shall provide the parties a copy of the recommended decision upon its completion. The hearing officer's recommended decision shall be based upon the evidence adduced at the hearing and shall be issued within 60 days following the close of the record.

(b)

The hearing officer shall propose findings of fact and conclusions of law as part of the recommended decision.

~~(7)~~ (8) Exceptions

to recommended decision.

(a)

The parties may file exceptions to the hearing officer's recommended decision with the board within 15 days of the date of issuance of the recommended decision. Any other party may file a response to exceptions within 15 days of the date such exceptions were filed. Upon the written request of a party, and for good cause shown, the hearing officer may extend the time to file exceptions and responses.

(b)

Copies of such exceptions and any briefs shall be served on all parties and the hearing officer, and a statement of such service shall be filed with the exceptions.

(c)

Exceptions to a hearing officer's recommended decision shall cite the precise substantive or procedural issue to which exceptions are taken and shall be based solely on the evidence and arguments presented at the hearing. Any exception that

fails to comply with the foregoing requirements may be disregarded.

(d)

The hearing officer may file with the board a response to any exceptions filed within 15 days of the date of filing of the exceptions and shall serve copies of the response on all parties.

E. Final action by the board.

(1) The board shall consider the hearing officer's recommended decision, any exceptions to the recommended decision together with supporting briefs, and the hearing officer's response to the exceptions, if any. The board may review all of the record made before the hearing officer.

(2) The board shall not consider any additional oral argument, evidence or affidavits not in the record before the hearing officer, or pleadings not filed in accordance with these rules.

(3) The board may request that the hearing officer be present at the time the board reviews a recommended decision and may discuss the recommended decision with the hearing officer. Board deliberations regarding the recommended decision and consultations with counsel to the board shall occur in closed session in accordance with the Open Meetings Act.

(4) The board's final action shall be rendered in an open meeting no later than 180 days after the date the hearing officer's recommended decision was issued. Board members who need additional time to review the record before taking final action may ask the board chairman for additional time to complete the review. If additional time is requested, the deadline for the board's final action shall be extended until the next regularly scheduled board meeting.

(5) Ex parte communication with board members or the hearing officer concerning a decision that is on appeal is prohibited.

(6) The board may remand a recommended decision

to the hearing officer for additional findings, conclusions, clarification or the taking of additional evidence. Such a remand shall restart the time frames contained in this rule.

(7) The board shall approve, disapprove or modify the recommended decision, and shall enter a final order concerning the matter being appealed. The board may modify the proposed conclusions of law based on the proposed findings of fact. If the board wishes to modify the proposed findings of fact, it may do so only after review of the record before the hearing officer. The board shall provide a reasoned basis for changing the hearing officer's recommendation.

F. A refund of a member's contributions pending appeal shall result in the forfeiture of service credit and the automatic dismissal of an appeal and issuance of a notice of dismissal. [6/30/99; 2.82.11.8 NMAC - Rn, 2 NMAC 82.11.8, 3-14-2008; Repealed, 6-16-2015; 2.82.11.8 NMAC - N, 6-16-2015; A, 10-17-2017]

FINANCE, STATE BOARD OF

This is an amendment to 2.1.2 NMAC, Sections 7 through 12, effective 10/17/2017.

2.1.2.7 DEFINITIONS:

A. "Board" means state board of finance.

B. "New Mexico register" means the official publication for all notices of rule makings and filings of adopted rules, including emergency rules, by agencies and is published by the state records administrator.

C. "NMAC" means New Mexico administrative code.

D. "Records center" means the New Mexico commission of public records, state records center and archives.

~~E. "Rule" means any regulation, order, standard or statement of policy of the board including amendments and repeals that affects one or more agencies~~

~~besides the board or affects persons not members or employees of such board.]~~

[2.1.2.7 NMAC - N, 1/15/2001; A, 10/17/2017]

2.1.2.8 RULEMAKING NOTICE:

A. The board shall distribute a notice of proposed rulemaking at least 30 days before the hearing on the rule change by:

(1) posting the notice on the board website;

(2) posting the notice on the sunshine portal;

(3) making the notice available in the board's offices;

(4) sending the notice by mail or electronic mail to persons who have made a written request to the board for advance notice of hearings and who have provided a mail or an electronic mail address to the board;

(5) providing the notice to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and

(6) publishing the notice in the New Mexico register and in a newspaper of general circulation in the state.

B. Content - The notice shall include:

(1) a summary of the full text of the proposed rule;

(2) a short explanation of the purpose of the proposed rule;

(3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;

(4) information on how a copy of the full text of the proposed rule may be obtained, including an internet link to the full text;

(5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;

(6) information on where and when a public rule hearing will be held and

how a person may participate in the hearing; and

(7) a citation of technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

[2.1.2.8 NMAC - N, 10/17/2017]

2.1.2.9 COMMENTS ON RULEMAKING:

A. The public comment period shall commence upon publication of the notice required by Section 2.1.2.8 NMAC and end as provided for in the notice.

B. A person may submit written or electronic comments on a proposed rule change, and those comments shall be made part of the hearing record. Individuals or entities shall provide written comments on the proposed rule change to the board administrator through the end of the public comment period, unless the board president or the board extends the time for filing comments. The board president or the board may extend the time for filing written or electronic comments by making an announcement at the hearing or by posting notice on the board's website. The board administrator shall post copies of written or electronic comments that persons have filed with the board administrator on the board's website as soon as practicable after they are filed.

[2.1.2.9 NMAC - N, 10/17/2017]

[2.1.2.8] 2.1.2.10 PROCESS OF ADOPTION OF RULES:

A. [Prior to adoption (including amendment or repeal) of any rule, the board shall, within the time specified by law, or within at least thirty days prior to its proposed action, publish notice of its proposed action in the manner specified by law. If no manner is specified, then notice should be published in the New Mexico register, and in at least one newspaper, trade, industrial or professional publications, if applicable, to give public notice to interested persons. The minimum following information should be listed

in the notice:

(1) ending date for public comment period, the deadline being no shorter than 30 days from time of notice.

(2) brief general description of rule.

(3) location of where proposed rule can be obtained.

(4) location of and person to whom written comments should be submitted.

(5) time, date and place of board meeting at which proposed rule will be considered for adoption.

B. A notice of the public comment period for a rule shall be announced at a board meeting coinciding with the notice being published in the New Mexico register.

C. All public comments must be submitted in written form.

D.] Upon completion of the public [notice] comment period, the board shall fully consider all submissions of public comments, and the findings and recommendations of a board committee or staff at a [board meeting] public hearing following the public comment period. After the public hearing, [The] the board may:

(1) adopt the proposed rule without revision;

(2) revise and adopt the proposed rule;

(3) revise the proposed rule and seek additional comments;

(4) reject the proposed rule; or

(5) repeal the rule.

B. At the time it adopts the rule, the board shall provide to the public a concise explanatory statement containing:

(1) the date the agency adopted the rule;

(2) a reference to the specific statutory or other authority authorizing the rule; and

(3) any findings required by a provision of law for adoption of the rule.

[2.1.2.10 NMAC - N, 1/15/2001; A & Rn, 10/17/2017]

[2.1.2.9] 2.1.2.11 FILING AND PUBLICATION; EFFECTIVE DATE:

A. [Upon approval by the board] Within 15 days after the adoption of a rule, the board staff shall [deliver one original paper copy and one electronic copy of the rule in NMAC form to] file the adopted rule with the records center and shall provide to the public the adopted rule. [The records center shall note the date and hour of filing and shall maintain the original copy as a permanent record open to public inspection.

B. The records center shall publish the rule in a timely manner.

C.] B. Except as provided in 2.1.2.10 NMAC, no rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico register.

[D] C. Relevant rules may be posted on the board's [web site] website, as determined by board staff. [2.1.2.11 NMAC - N, 1/15/2000; A & Rn, 10/17/2017]

[2.1.2.10] 2.1.2.12 EMERGENCY RULES:

A. If the board determines that an emergency exists which requires immediate action to [protect the public peace, health, welfare, safety, or substantial financial gain or loss to the state] prevent an imminent peril to public health, safety or welfare, the unanticipated loss of funding for a an agency program, or a violation of federal law, it may adopt a rule or amendment or repeal thereof, and the emergency rule shall become effective immediately upon its filing [under] in accordance with the State Rules Act. The emergency rule shall be published in the New Mexico register within [thirty] 30 days of this filing.

B. [The reason for the emergency shall be stated in the emergency rule.] The board shall

provide to the public a record of any finding pursuant to Subsection A of this section and a detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the board may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable.

C. The emergency rule shall not continue in effect longer than ~~[forty-five]~~ 45 days unless within that time the board commences proceedings to adopt the rule by issuing the notice required in Section 2.1.2.8 NMAC.

D. If the board commences proceedings under Section 2.1.2.8 NMAC, the emergency rule shall remain in effect until a permanent rule takes effect or until the procedures are otherwise completed.

E. In no event shall any emergency rule remain in effect for more than ~~[one hundred twenty]~~ 120 days.
[2.1.2.12 NMAC - N, 1/15/2001; A & Rn, 10/17/2017]

End Of Adopted Rules

2017 New Mexico Register

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
Issue 12	June 15	June 27
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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

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