

New Mexico Register

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

Volume XXVIII - Issue 24 - December 26, 2017

COPYRIGHT © 2017
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205

Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

New Mexico Register

Volume XXVIII, Issue 24

December 26, 2017

Table of Contents

Notices of Rulemaking and Proposed Rules

Commission of Public Records	
Notice of Regular Meeting and of Rulemaking.....	1289
Dental Health Care, Board of	
Public Rule Hearing And Regular Board Meeting.....	1289
Finance and Administration, Department of	
Notice of Proposed Rulemaking.....	1290
Health, Department of	
Notice of Public Hearing.....	1291
Racing Commission	
Notice of Public Meeting and Rule-Making Hearing.....	1291
Superintendent of Insurance, Office of	
Notice of Proposed Rulemaking.....	1292
Transportation, Department of	
Notice of Proposed Rulemaking.....	1293

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

Aging and Long-Term Services Department			
9.2.19 NMAC	R	Long Term Care Ombudsman.....	1295
9.2.19 NMAC	N	Long Term Care Ombudsman.....	1295
Finance and Administration, Department of			
2 NMAC 110.3	R	Law Enforcement Protection Fund Distribution.....	1305
2.110.3 NMAC	N	Law Enforcement Protection Fund Distribution.....	1305
Higher Education Department			
5.100.2 NMAC	R	Private Post-Secondary Institutions Operating Under The Post-Secondary Educational Institution Act.....	1307
5.100.3 NMAC	R	Private Post-Secondary Institutions Operating Under The Out-Of-State Proprietary School Act.....	1307
5.100.4 NMAC	R	Advisory Committee For Private Post-Secondary Education.....	1307
5.99.1 NMAC	N	Public and Private Post-Secondary Institutions Operating Under The Interstate Distance Education Act.....	1307
5.100.5 NMAC	N	Exemption Under The Post-Secondary Educational Institution Act.....	1312

Higher Education Department continued

5.100.6 NMAC	N	Registration Under The Post Secondary Educational Institution Act.....	1313
5.100.7 NMAC	N	Licensure Under The Post-Secondary Educational Institution Act.....	1321
5.100.8 NMAC	N	Closure Or Substantial Change To Location Under The Post-Secondary Educational Institution Act.....	1337

Health, Department of

7.1.29 NMAC	N	Health Information System Public Access Website.....	1339
-------------	---	--	------

Human Services Department**Medical Assistance Division**

8.311.3 NMAC	A	Methods And Standards For Establishing Payment-Inpatient Hospital Services.....	1340
--------------	---	---	------

Public Regulation Commission

17.11.10 NMAC	R	State Rural Universal Service Fund.....	1340
17.11.10 NMAC	N	State Rural Universal Service Fund.....	1340

Real Estate Commission

16.61.3 NMAC	R	Real Estate Broker's License.....	1353
16.61.3 NMAC	N	Real Estate Broker's License.....	1353
16.61.1 NMAC	A	General Provisions.....	1357
16.61.15 NMAC	A	Real Estate Courses.....	1357
16.61.16 NMAC	A	Qualifying Broker.....	1358
16.61.19 NMAC	A	Broker Duties.....	1359

Other Material Related To Administrative Law**Attorney General, Office of the**

Notice of Final Form.....			1361
---------------------------	--	--	------

Health, Department of

Notification of Minor, Non-Substantive Correction.....			1365
--	--	--	------

Professional Engineers and Professional Land Surveyors, Board of Licensure for

Notification of Minor, Non-Substantive Correction.....			1365
--	--	--	------

Notices of Rulemaking and Proposed Rules

COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records (CPR) has scheduled a regular meeting and rule hearing for Tuesday, February 20, 2018, at 10:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Georgette Chavez at 476-7926 by February 6, 2018, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NOTICE OF RULEMAKING

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

Amend:

- 1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule)
- 1.13.10 NMAC Records Storage and Access (SRA Only)
- 1.13.30 NMAC Disposition of Public Records and Non-Records (Joint CPR & SRA Rule)

Synopsis:

The proposed amendment of 1.21.2 NMAC consists of the following modification: Section 644 is being added to allow for the classification of attorney legal case files for cases which have been dismissed in court. The proposed amendment of 1.13.10 NMAC consists of the following modification: Section 7 is being amended to reflect the correct reference citations. The proposed amendment of 1.13.30

NMAC consists of the following modification: Section 7 is being amended to reflect the correct reference citations.

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

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5 p.m. on February 2, 2018. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments.

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

The Commission may vote on the proposed rules during the meeting on February 20, 2018. The State Records Administrator may take action on those rules at the close of the public rulemaking hearing. A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the Commission's website (www.nmcpr.state.nm.us) or by contacting Melissa Salazar at Melissa.Salazar@state.nm.us, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505 or 476-7911.

A copy of the agenda for the combined meeting and rule hearing is also available on the Commission website and at the office of the State Records Administrator located at the State Records Center and Archives at 1209 Camino Carlos Rey, Santa Fe, NM. The agenda is subject to change up to 72 hours prior to the meeting. Legal authority for this rulemaking can be found in the Public Records

Act, Section 14-3-1, et seq. and in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

DENTAL HEALTH CARE, BOARD OF

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

LEGAL NOTICE

The New Mexico Board of Dental Health Care ("Board") will hold a rule hearing on Friday, February 9, 2018, at 8:30 A.M. Following the rule hearing, the Board will convene a board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, located at 2550 Cerrillos Road, 2nd Floor, Rio Grande Conference Room, in Santa Fe, NM 87504.

The purpose of the rule hearing is to consider proposed amendments to include: (1) revision of definitions for sedation, (2) updates to the rules in alignment with the revised definitions for sedation, (3) amendments and clarification of rules for the administration of anesthesia/sedation, including educational requirements for initial certification, (4) better descriptions of the application and licensing process and final certification, (5) revision of continuing education hours for anesthesia/sedation providers, (6) amendments to clarify CODA and EFDA educational requirements, and (7) correction of grammatical errors and reformatting to improve organization of the rule. The amendments are intended to update definitions, bring rules in alignment with the 2016 ADA guidelines, provide better patient care and safety procedures, improve education and training requirements and provide clarity and uniformity in the application, licensing and rule requirements to the following rules:

16.5.5 NMAC - Dentists, Fees;

16.5.15 NMAC - Dentists, Anesthesia/Sedation Administration; 16.5.16 NMAC - Dentists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions; 16.5.28 NMAC - Dental Hygienists, Local Anesthesia Certification; and 16.5.42 NMAC - Expanded Function Dental Auxiliary, Requirements for Certification.

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

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Roberta Perea, Board Administrator via electronic mail at dental.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Monday, January 22, 2018. Persons wishing to present their written comments at the rule hearing will need to provide 15 copies of any written comment or proposed language change for distribution to the Board members and staff.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact: Roberta Perea, Board Administrator 505.476.4622.

Statutory Authority: Sections 61-5A-4, 61-5A-5, 61-5A-6, 61-5A-6.1, 61-5A-10, 61-5A-20, 61-5A-21 and 61-5A-22, NMSA 1978.

Summary of Proposed Changes:

16.5.5.8 NMAC, Subsection H, Paragraph (2) replaces "conscious" with "minimal" and deletes "I".

16.5.5.8 NMAC, Subsection H, Paragraph (3) replaces "conscious" with "moderate" and deletes "II".

16.5.15 NMAC, Part 15 is repealed and replaced with definitions that align with the 2016 ADA guidelines, updates to rules for the administration of anesthesia/sedation, education and permit, registration and reporting requirements. The replacement reformats this section to improve the organization of Part 15.

16.5.16.10 NMAC, Subsection B, Paragraph (6), Subparagraph (d), Line (i) is a grammatical correction replacing "front" with "font".

16.5.28.9 NMAC, Subsection A, Paragraph (2) inserts "Certification by Curriculum" and deletes reference to the western regional examining board.

16.5.28.9 NMAC, Subsection A, Paragraph (3) inserts "Certification by Examination", "board approved", and deletes reference to the western regional examining board.

16.5.42.9 NMAC, Subsection A, deletes "accredited by the board or joint commission on dental accreditation" and inserts clarifying language that "the dental assisting program is accredited by the joint commission dental accreditation and approved by the board; and certified in all 4 expanded functions as defined in 16.5.33 NMAC by a date no later than July 1, 2019."

16.5.42.10 NMAC, Subsection A, adds "as defined in 16.5.42.9(A)".

16.5.42.10 NMAC, Subsection A, Paragraph 5 adds "proof of certifications in all 4 expanded functions as defined in 16.5.33 NMAC no later than July 1, 2019."

16.5.42.10 NMAC, Subsection B, deletes "not graduated from an accredited expanded function dental auxiliary program" and inserts "not graduated from a program as defined in 16.5.42.9(A) NMAC" and inserts a reference to "C".

16.5.42.12 NMAC, adds a new section "Timeline for Previously Issued EFDA permits and Expanded

Functions: All current EFDA certification permit holders must have all four expanded functions as defined in 16.5.33 NMAC no later than July 1, 2019. EFDA permits will suspend automatically if such expanded functions certifications are not current. Once those expanded functions are certified, the EFDA permit will become valid until its regular expiration period."

FINANCE AND ADMINISTRATION, DEPARTMENT OF NOTICE OF PROPOSED RULEMAKING

The State of New Mexico Department of Finance and Administration (hereinafter "DFA") hereby gives notice, pursuant to law and rules, of the following meeting and public hearing to be held at 10:00 am on Tuesday, February 27, 2018 in the Red Room (Room 238) at 407 Galisteo, Santa Fe NM 87501. DFA will hold a hearing to repeal and replace 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services. Pursuant to Subsection E of 9-1-5 and 9-6-5 NMSA 1978, DFA promulgates these rules to administer the duties of the department of finance and administration and its divisions.

The proposed amendment of 2.40.2 NMAC is to update administrative language to comply with statutory language directives in the Procurement Code, and to clarify certain procedures and citations thereto.

Interested individuals are encouraged to submit comments during the Public Comment Period, which runs from December 26, 2017 through January 26, 2018. Written comments may be submitted to Clinton Nicley, Deputy General Counsel, DFA, via email at Clinton.Nicley@state.nm.us, fax (505) 827-4984, or directed to Mr. Nicley at Department of Finance and Administration, Office of the

Secretary, 407 Galisteo St. #180B,
Santa Fe, New Mexico 87501.

Copies of the proposed rule may be accessed on the Department's website at <http://www.nmdfa.state.nm.us/>, or obtained from Mr. Nicley by calling (505) 827-3013.

Individuals with disabilities who require this information in an alternative format, or need any form of auxiliary aid to submit comments, are asked to contact Mr. Nicley as soon as possible. DFA requires at least ten (10) days advance notice to provide requested special accommodations.

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, 7.30.13 NMAC, "Crisis Triage Centers". The hearing will be held on January 31, 2018 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 licensing requirements for a new type of health facility known as Crisis Triage Centers.

A Crisis Triage Center (CTC) provides stabilization of behavioral health crises including outpatient stabilization and short-term residential stabilization in a residential rather than institutional setting. The CTC provides emergency behavioral health triage, evaluation, and admission 24 hours a day, 7 days a week on a voluntary basis. The CTC may serve individuals 14 years or age or older who meet admission criteria. The CTC offers services to manage individuals at high risk of suicide or intentional self-harm and may offer drug and alcohol detox services.

The legal authority authorizing the proposed rule and the adoption of the rule by the Department is at Subsection E of Sections 9-7-6, Subsections B-D of Section 24-1-2, Subsection J of Section 24-1-3 and Section 24-1-5, NMSA 1978.

A free copy of the full text of the proposed rule can be obtained from the Department's website at <https://nmhealth.org/publication/regulation/>

Joseph T. Foxhood, LNHA
Division Director, Health Improvement
New Mexico Department of Health
2040 S. Pacheco,
Santa Fe, NM 87505
Joseph.Foxhood@state.nm.us

Please submit any written comments regarding the proposed rule to the attention of Joseph Foxhood 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 Samantha Baca by telephone at (505) 827-2997. 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.

RACING COMMISSION

NOTICE OF PUBLIC MEETING AND RULE-MAKING HEARING

The New Mexico Racing Commission (Commission) will hold a Public Meeting and Rule-Making Hearing on February 22, 2018. The Rule-Making hearing will be held during the Commission's regular business

meeting with the public session beginning at 9:30 a.m. in the Mt. Cristo Rey Room located in Sunland Park Racetrack, at 1200 Futurity Drive, Sunland Park, NM. Copies of the **tentative** agenda may be obtained ten (10) days prior to the meeting from Tina Arce, Paralegal, New Mexico Racing Commission, 4900 Alameda Blvd. NE, Albuquerque, New Mexico 87113, (505) 222-0714, Tina.Arce@state.nm.us. The **final** agenda will be available seventy-two (72) hours prior to the meeting. A copy of the **final** agenda may be obtained from Tina Arce or from the Commission's website, nmrc.state.nm.us.

The purpose of the Rule-Making Hearing is to consider adoption of the proposed amendment to the Rules Governing Horse Racing in New Mexico. Sections 60-1A-1 through 60-1A-30 NMSA 1978 authorize the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing.

The purpose of the proposed amendment of Subsection B of 15.2.1.9 NMAC is to allow the Racing Commission the ability to assess a fine for an appealing party who fails to appear at a noticed hearing.

The purpose of the proposed amendment of 15.2.1.10 NMAC is to conform to Sections 14-4-1 through 14-4-11 NMSA 1978 (State Rules Act).

The purpose of the proposed amendment of 15.2.5.6 NMAC is to refer to the correct "Part"; thus, "Part 5" will replace "Part 4".

The purpose of the proposed amendment of 15.2.5.9 NMAC is to avoid unnecessary scratches and eliminating the possibility of a horse entering prior to the seven calendar days expiring.

The purpose of the proposed amendment of 15.2.5.11 NMAC is to eliminate the requirement for horses

to work around the turn.

The purpose of the proposed amendment of 15.2.6.9 NMAC is to reference the current version of the ARCI's document, "Uniform Classification Guidelines for Foreign Substances and Recommended Penalties" and "Model Rule".

The purpose of the proposed amendment of Subsection B of 15.2.6.9 NMAC is to ensure compliance with Section 60-1A-11 NMSA 1978 by inserting the verbiage "365-day period" in Paragraph (2), amending the levels in Paragraph (4) and including language regarding penalties for the use of prohibited substances published by the Association of Racing Commissioners, International.

The purpose of the proposed amendment of 15.2.6.10 NMAC is to show consistency and clarity throughout Paragraph D by adding the verbiage "or other secured mechanism" in the first sentence.

The purpose of the proposed amendment of Subsection P of 15.2.1.7 NMAC is to add a definition for a Program Trainer.

The purpose of the proposed amendment to Subsection V of 16.47.1.8 NMAC is to update an antiquated rule regarding the use of cellular phones.

The purpose of the proposed amendment to Subsection D of 16.47.1.10 NMAC is to eliminate the transfer of horses by a trainer that has been involved or notified of a drug or rule violation.

The purpose of the proposed amendment to Subsection F of 16.47.1.10 NMAC will allow the New Mexico Racing Commission to have a broader ability to investigate and determine an actual program trainer.

All comments submitted and discussion heard during the Rule-Making Hearing will be considered and discussed by the Commission

during the open meeting following the Rule-Making Hearing. The Commission will vote on the proposed rules during the public meeting.

A copy of the proposed rule may also be found on <http://nmrc.state.nm.us/rules-regulations.aspx>. Interested persons may submit their written comments on the proposed rules to the Commission at the address below and/or may appear at the scheduled meeting and make a brief verbal presentation of their view. The written comment period closes at 5:00 p.m. on February 15, 2018. The Commission must receive all written comments at that time. Please submit comments to:

Rosemary Garley, Manager
New Mexico Racing Commission
4900 Alameda Blvd. NE
Albuquerque, NM 87113
Telephone: 505.222.0704
Fax: 505.222.0713
Email: rosemary.garley@state.nm.us

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

SUPERINTENDENT OF INSURANCE, OFFICE OF NOTICE OF PROPOSED RULE MAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent"), New Mexico Office of Superintendent of Insurance ("OSI"), upon the motion of the American Council of Life Insurers ("ACLI") and proceeding pursuant to the New Mexico Insurance Code, Section 59A-1-1 et seq. NMSA 1978 ("Insurance Code"), proposes a new rule, 13.6.1 NMAC entitled LIFE AND HEALTH MATRIX POLICY FORM FILING, pertaining to the use of "matrix" forms, which are insurance forms consisting of multiple sections previously filed separately.

The purpose of this rule is to clarify

the circumstances in which the continued use of matrix forms by health and life insurers is permitted. The rule provides applicable definitions, generally prohibits the use of such forms and provides for exceptions to that prohibition.

Statutory authority for promulgation of this rule is found at Sections 59A-1-10 through 59A-1-17; 59A-2-7 through 59A-2-9; 59A-5-10; 59A-6-1; 59A-18-12; 59A-18-13.2; 59A-18-16.1; 59A-18-16.2; 59A-21-1 et seq.; 59A-22-1 et seq. 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 Notice of Proposed Rulemaking ("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:

Oral comments will be accepted at the public hearing from any interested parties including ACLI and Life and Health staff of the New Mexico Office of Superintendent of Insurance and their members and employees (the "Designated Parties"). Written statements, proposals or comments may be submitted for the record, in lieu of, or in addition to, providing oral testimony at the hearing and are due no later than **4:00 p.m. on Friday, January 26, 2018**. The Designated Parties must file written comments by January 5, 2018 and responses to comments of others by February 2, 2018.

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 and 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 **Docket
No.: 17-00050-RULE-LH**

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 4:00 p.m., Monday through Friday except on state holidays. Any filings after 4:00 p.m. will be filed to the docket the next business day.

The Superintendent will hold a public comment hearing beginning at **9:00 a.m. on Monday, January 29, 2018** at the NM Office of Superintendent of Insurance, 4th Floor Hearing Room, Old PERA Building, 1120 Paseo de Peralta, and Santa Fe, New Mexico. Deputy Superintendent Robert Doucette will be the designated hearing officer in this case. Any person with a disability requiring special assistance in order to participate in the hearing should contact Melissa Martinez, Law Clerk, General Counsel, at 505-476-0333 at least 48 hours prior to the commencement of the hearing.

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, February 2, 2018.**
DONE AND ORDERED this 26th day of December, 2017.
S/JOHN G. FRANCHINI

TRANSPORTATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

PROPOSED REVISIONS TO 18.27.2 NMAC, Division 100-General Provisions Standard Specifications for Highway and Bridge Construction.

Approval of the initial rulemaking action for the proposed rule revisions was granted to New Mexico Department of Transportation by the New Mexico State Transportation Commission on July 20, 2017, pursuant to Sections 9-5-1, 67-3-8 and 67-3-11 NMSA 1978. This rulemaking is authorized by Sections 67-3-43, 13-1-99, 13-1-170 and 13-1-174 NMSA 1978.

The revisions to proposed Rule 18.27.2 NMAC, incorporate the New Mexico Department of Transportation's contract administration and general provisions of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, Division 100.

The purpose of the proposed rule revisions is to address the agreement between the New Mexico Department of Transportation and Federal Highway Administration, to periodically review and update the Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction. Changes and modifications to the New Mexico Department of Transportation Division 100 have not been made since 2014.

Copy of the full text of the proposed rule may be found on the NMDOT website, under the *Public Notices* tab, at the following Internet link: <http://dot.state.nm.us/content/nmdot/en/public-notices.html>. To obtain a printed copy of the proposed amended rule contact Juan Rael at the Construction and Civil Rights Bureau of the New Mexico Department of Transportation, 1570 Pacheco Street, Suite A-10, Santa Fe, New Mexico

87505, Email: juan.rael@state.nm.us, Telephone (505) 629-7654. A reasonable fee may be charged 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 rule revisions to 18.27.2 NMAC. The hearing is scheduled on January 31, 2018, from 9:00 a.m. to 4:00 p.m. at the New Mexico Department of Transportation, 1120 Cerrillos Rd, Santa Fe, NM 87504, Training Rooms 1 and 2.

To submit written views and comments please send to: Juan Rael, Construction and Civil Rights Bureau of the New Mexico Department of Transportation, 1570 Pacheco Street, Suite A-10, Santa Fe, New Mexico 87505, Email: juan.rael@state.nm.us, Telephone (505) 629-7654. Written comments will be accepted from the date this notice is published in the New Mexico Register, before and at the scheduled hearing(s), and until the close of the 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 only be accepted at the rule hearing, and may be subject to time limitations. After the close of the 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 the juan.rael@state.nm.us, Telephone (505) 629-7654, at least ten days before the hearing.

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

This Page Intentionally Left Blank

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.

AGING AND LONG-TERM SERVICES DEPARTMENT

The New Mexico Aging and Long Term Services Department approved, at its 11/22/2017 hearing, to repeal its rule 9.2.19 NMAC, Aging - Long Term Care Ombudsman (filed 1/16/2001) and replace it with 9.2.19 NMAC, Aging - Long Term Care Ombudsman, adopted on 12/13/2017 and effective 12/29/2017.

AGING AND LONG-TERM SERVICES DEPARTMENT

Draft as Revised: Nov. 17, 2000

TITLE 9 HUMAN RIGHTS CHAPTER 2 AGING PART 19 LONG TERM CARE OMBUDSMAN

9.2.19.1 ISSUING AGENCY: New Mexico Aging and Long-Term Services Department.
[9.2.19.1 NMAC - Rp, 9.2.19.1 NMAC, 12/29/2017]

9.2.19.2 SCOPE: These rules apply to the department, its office of the state-term care ombudsman (office ombudsmen), ombudsmen, including the state long-term care ombudsman (state ombudsman) certified staff and volunteers, provider agencies, private nonprofit organizations and area agencies on aging.
[9.2.19.2 NMAC - Rp, 9.2.19.2 NMAC, 12/29/2017]

9.2.19.3 STATUTORY AUTHORITY: Older Americans Act of 1965 (OAA), 42 USC 3001, *et seq.*, as amended; New Mexico Long-Term Care Ombudsman Act, New Mexico Statutes Annotated 28-17-1 *et seq.*
[9.2.19.3 NMAC - Rp, 9.2.19.3 NMAC, 12/29/2017]

9.2.19.4 DURATION:
Permanent.
[9.2.19.4 NMAC - Rp, 9.2.19.4 NMAC, 12/29/2017]

9.2.19.5 EFFECTIVE DATE: December 29, 2017 unless a later date is stated at the end of a section.
[9.2.19.5 NMAC - Rp, 9.2.19.5 NMAC, 12/29/2017]

9.2.19.6 OBJECTIVE:
These rules govern the conduct of the office in fulfilling its duties under the OAA and the New Mexico Long-Term Care Ombudsman Act by protecting the health, safety, welfare and rights of residents of long-term care facilities in this state, to investigate and resolve complaints of such residents, and to report on conditions of long-term care facilities. The department shall establish and operate the office either directly or by contract or other arrangement with a public agency or non-profit private organization. The office is a distinct entity, separately identifiable, located within or connected to the department, and, in the event the department enters into contract or other arrangement with a public agency or non-profit organization, that agency or organization shall establish a separately identifiable, distinct entity as the office.
[9.2.19.6 NMAC - Rp, 9.2.19.6 NMAC, 12/29/2017]

9.2.19.7 DEFINITIONS:
A. "Area agency on aging" (AAA) means an agency designated by the department to arrange for the provision of aging services in its planning and service area pursuant to an area plan.

B. "Certification"
means the designation provided by the state ombudsman to an individual

who meets minimum qualifications, is free of conflicts of interest, and has successfully completed training and other criteria stipulated in 9.2.19.13 NMAC hereof, which authorizes such individual to act as a representative of the long-term care ombudsman program (program) in the capacity for which he or she is certified.

C. "Complaint"
means information regarding action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of residents which is raised by or brought to the attention of an ombudsman.

D. "Guardian" means the person or entity appointed by a court to exercise the legal rights and powers of another individual.

E. "Immediate family" means those persons related to an individual as a spouse, child, sibling, or parent.

F. "Informed consent" means an agreement by a resident or a resident's surrogate decision-maker to allow a disclosure of information, made with full knowledge of the risks involved and the available alternatives, that is made in writing or through the use of auxiliary aids and services or communicated by a resident or a resident's surrogate decision-maker orally, visually or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the office.

G. "Long term care facility" means any residential facility that provides care services to one or more persons unrelated to the owner or operator of the facility, including, but not limited to, those facilities enumerated in Subsection F of Section 28-17-3 NMSA 1978.

H. "Long-term care ombudsman program (LTCO)"

means the program through which functions and duties of the office are carried out, consisting of the state ombudsman, the office headed by the state ombudsman and the representatives of the office.

I. "Provider agency"

means the entity designated by the state ombudsman to provide ombudsman services in a particular service area.

J. "Representatives"

means the employees or volunteers designated by the state ombudsman to fulfill the duties set forth in 45 CFR 1324.19(a), whether personnel supervision is provided by the state ombudsman or his or her designee.

K. "Resident" means any patient, client or person residing in and receiving care in a facility.

L. "State long-term care ombudsman" means the individual who heads the office and is responsible to personally, or through representatives of the office, fulfill the functions, responsibilities and duties as set forth in 45 CFR 1324.13 and 1324.19.

M. "Surrogate decision maker" means a legally appointed agent, guardian or surrogate who is authorized to act on behalf of a resident to include the duties enumerated in Subsection O of Section 28-17-3 NMSA 1978. [9.2.19.7 NMAC - Rp, 9.2.19.7 NMAC, 12/29/2017]

9.2.19.8 PHILOSOPHY:

The program is a resident-centered advocacy program. The long-term care facility resident or applicant for residency is the client, regardless of the source of the complaint or request for service. The office shall assist residents by protecting their health, safety, welfare and rights, to investigate and resolve complaints of such residents, and to report on conditions of long-term care facilities. [9.2.19.8 NMAC - Rp, 9.2.19.8 NMAC, 12/29/2017]

9.2.19.9 OFFICE

RULE: The state ombudsman shall assure that all residents of long-term care facilities in the state

have access to program services.

The state ombudsman may fulfill its responsibilities through the department either directly or by a department contract or other arrangement with a public agency or non-profit private organization. Any such agency or non-profit entity that contracts with the department to provide ombudsman services must employ a full-time state ombudsman. [9.2.19.9 NMAC - Rp, 9.2.19.9 NMAC, 12/29/2017]

9.2.19.10 [RESERVED]

9.2.19.11 [RESERVED]

9.2.19.12 QUALIFICATION AND CERTIFICATION OF LONG-TERM CARE OMBUDSMAN:

A. Under the OAA, the department's cabinet secretary is mandated to select the state ombudsman. In upholding this responsibility, he or she shall ensure that the state ombudsman meets minimum qualifications, which shall include, but not be limited to, demonstrated expertise in:

(1) long-term services and supports or other direct services for older adults or individuals with disabilities;

(2) consumer-oriented public policy advocacy;

(3) satisfactorily complete the applicable training requirements set forth below.

B. To be qualified to act as a facility ombudsman, an individual must:

(1) demonstrate the capability to carry out the responsibilities of a facility ombudsman;

(2) participate in and complete all sections of the standard new volunteer training, as prescribed by the SLTCO; and

(3) leadership and program management skills;

(4) Negotiation and problem resolution skills; and

(5) any other qualifications that the department's cabinet secretary deems necessary for

the state ombudsman to fulfill his or her responsibility to assist residents of long-term care facilities in the assertion of their civil and human rights, including, but not limited to, supervisory and budget experience.

C. The state ombudsman certifies an individual as an ombudsman to participate in the program, to represent the office, and for other purposes in support of the program. An individual may be certified as an ombudsman for limited purposes, depending on the degree of certification given and the role such individual assumes. The state ombudsman or his or her designee may undertake such investigations and require from the applicant such references as he or she reasonably deems necessary.

[9.2.19.12 NMAC - Rp, 9.2.19.12 NMAC, 12/29/2017]

9.2.19.13 ADDITIONAL REQUIREMENTS:

In order to be certified as a facility ombudsman, an individual must (in addition to meeting the qualifications set forth in 9.2.19.12 NMAC) complete an evaluation period of between three and six months after placement in a facility, during which the individual:

A. visits an assigned facility or facilities regularly;

B. submits regular monthly reports;

C. submits appropriately written complaints, or successfully completes part II of the ombudsman certification exam;

D. is responsive to the needs and concerns of long term care facility residents; and

E. is evaluated in the field by the supervising regional coordinator;

F. a new facility ombudsman who has met the qualifications for facility ombudsman set forth in 9.2.19.12 NMAC may be provisionally certified as a facility ombudsman for and during the three to six month evaluation period.

A provisionally certified facility ombudsman enjoys all of the duties and protections of a long-term care ombudsman under the New Mexico

Long Term Care Ombudsman Act;
G. any person certified as a regional coordinator or other SLTCOP staff with programmatic responsibilities will be deemed certified as a facility ombudsman as well, with all the privileges and protections of a facility ombudsman under these regulations and the New Mexico Long Term Care Ombudsman Act. SLTCOP staff with programmatic responsibilities may be provisionally certified during the first year of employment;

H. the director of the SAOA and deputy directors of the SAOA shall each be certified to act with the authority of a regional coordinator upon completion of the standard new volunteer training program.
 [9.2.19.13 NMAC - Rp, 9.2.19.13 NMAC, 12/29/2017]

9.2.19.14 ADDITIONAL CERTIFICATIONS: The state ombudsman may create such other categories of ombudsmen and the requirements for certification thereof as he or she may decide, by filing a written procedure describing the duties and certification requirements of such ombudsmen with the department's cabinet secretary.
 [9.2.19.14 NMAC - Rp, 9.2.19.14 NMAC, 12/29/2017]

9.2.19.15 NOTIFICATION OF CERTIFICATION: The state ombudsman shall send written notification of an individual's certification as an ombudsman to the individual being certified, the area agency on aging (AAA), applicable provider agency or the private non-profit organization, within 30 days of the determination.
 [9.2.19.15 NMAC - Rp, 9.2.19.15 NMAC, 12/29/2017]

9.2.19.16 RECERTIFICATION: Ombudsmen must be recertified each calendar year. The state ombudsman shall determine recertification requirements. As part of the recertification, the state ombudsman shall verify that the ombudsman seeking recertification

has successfully:

- A.** visited his or her assigned facility or facilities regularly;
 - B.** submitted regular monthly reports;
 - C.** submitted appropriately written complaints;
 - D.** demonstrated responsiveness to the needs and concerns of long-term care facility residents; and
 - E.** demonstrated evidence of receiving appropriate continuing education.
- [9.2.19.16 NMAC - Rp, 9.2.19.16 NMAC, 12/29/2017]

9.2.19.17 NON-CERTIFICATION AND DECERTIFICATION: The state ombudsman may refuse to certify or may de-certify an individual as an ombudsman, for any of the following reasons:

- A.** failure of the individual to meet or maintain the criteria for certification set forth in 9.2.19.12 NMAC;
- B.** existence of an unremedied conflict of interest;
- C.** deliberate failure of the individual to disclose any conflict of interest;
- D.** of the confidentiality requirements of these regulations, the OAA, or the act;
- E.** failure to provide adequate and appropriate services to long-term care residents;
- F.** falsifying records;
- G.** change in employment duties which is incompatible with those of an ombudsman;
- H.** separation from the program, to include, for example, removal from employment by the department or other provider agency or an extended absence not protected by state or federal law that prevents the ombudsman from fulfilling his or her job responsibilities;
- I.** failure to act in accordance with applicable federal and state laws, rules, regulations, and policies; or
- J.** such other

cause that the state ombudsman may determine would render the individual unsuitable for service as an ombudsman.
 [9.2.19.17 NMAC - Rp, 9.2.19.17 NMAC, 12/29/2017]

9.2.19.18 NEW MEXICO AGING AND LONG TERM SERVICES DEPARTMENT RESPONSIBILITIES:

- A.** Establish and operate the office either directly or by contract or other arrangement with a public agency or non-profit private organization, consistent with the options provided under state and federal law.
- B.** The cabinet secretary of the department shall designate who shall serve as the full-time state ombudsman.
- C.** Provide for adequate legal counsel for the office (which may be through the office of the New Mexico attorney general) on behalf of the office or any representative of the office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the office or of such representative.
- D.** Provide support to the state ombudsman to enable him or her to fulfill responsibilities consistent with all applicable federal and state laws, regulations, and policies.
- E.** Administer any program service contracts between the department, AAAs, provider agencies or private non-profit organizations.
- F.** Administer the program in accordance with all applicable federal and state laws, regulations, and policies.
- G.** Pursuant to 45 CFR 1324.13, determine the use of fiscal resources appropriated or otherwise available for the operation of the office. The state ombudsman shall determine that program budgets and expenditures of the office and local ombudsman entities are consistent with laws, policies and procedures governing the program.
- H.** Develop and provide final approval of an annual

report as set forth in Section 712(h)(1) of the OAA. Such report shall:

- (1) describe the activities carried out by the office in the year for which the report is prepared;
- (2) contain analysis of program data;
- (3) describe evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;
- (4) contain policy, regulatory and legislative recommendations for improving the quality of care and life of the residents; protecting the health, safety, welfare and rights of the residents; and resolving resident complaints and identified problems or barriers;
- (5) contain analysis of the success of the program, including success in providing services to residents of assisted living, board and care facilities and other similar adult care facilities; and
- (6) describe barriers that prevent the optimal operation of the program.

I. Establish mechanisms to ensure the program is performing all of the functions, responsibilities and duties set forth in 9.2.19.22 NMAC, as well as action steps as required in the event these functions are not performed. Although the program is both independent and autonomous, 45 CFR 1324.15 specifically grants the department the responsibility to monitor the performance of all programs and activities of the office for quality and effectiveness.

J. Pursuant to 45 CFR 1324.15, provide personnel supervision and management for the state ombudsman and representatives of the office who are employees of the department. Such management shall include an assessment of whether the office is performing all of its functions under the OAA and the act.

K. Provide monitoring, as required by 45 CFR 1324.15(b), including but not limited to fiscal monitoring, where the office or local ombudsman entity is located within

an agency or private non-profit organization with the department. Such monitoring shall include an assessment of whether the program is performing all of the functions, responsibilities and duties set forth in 45 CFR 1324.13 and 1324.19. Further, the department shall make reasonable requests of reports, including aggregated data regarding program activities, to meet the requirements of these provisions.

L. Ensure that any review of files, records or other information maintained by the program is consistent with the disclosure limitations set forth in 45 CFR 1324.11(e)(3) and 45 CFR 1324.13(e) as well as state law. [9.2.19.18 NMAC - Rp, 9.2.19.18 NMAC, 12/29/2017]

9.2.19.19 [RESERVED]

9.2.19.20 [RESERVED]

9.2.19.21 [RESERVED]

9.2.19.22 STATE LONG-TERM CARE OMBUDSMAN RESPONSIBILITIES:

A. Adhere to the rules of confidentiality and propriety set forth in these regulations and in the resource manual for new volunteer training, if applicable.

B. Protect access to ombudsman records, in accordance with 9.2.19.36 NMAC through 9.2.19.38 NMAC of this rule.

C. Carry out other activities that the state ombudsman reasonably deems appropriate to the certification of ombudsmen.

D. Perform each responsibility in accordance with all applicable federal and state law, rules, regulations, and policies.

E. Analyze, comment on, and monitor the development and implementation of federal, state and local laws, regulations and other governmental policies and actions that pertain to the health, safety, welfare and rights of residents with respect to the adequacy of long-term care facilities and seniors in the state.

F. Recommend any changes in such laws, regulations, policies, and actions as the office

determines to be appropriate.

G. Facilitate public comment on the laws, regulations, policies, and actions.

H. Provide leadership to statewide systems advocacy efforts of the office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the office.

I. Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

J. Establish policies and procedures for the office, in consultation with the department, to carry out the program in accordance with the OAA. In accordance with 45 CFR 1324.11 (e), such policies and procedures regarding program administration must include, but not be limited to:

(1) A requirement that the department or any agency or private non-profit organization provide specific exemptions to ombudsmen, staff and volunteers from any requirements that prohibit ombudsmen from performing functions and responsibilities of the ombudsmen, as set forth in 45 CFR 1324.13 or from adhering to the requirements of Section 712 of the OAA, including that:

(a) the department or any agency or non-profit organization provide exemptions to its internal policies and procedures which prohibit any ombudsman from performing the functions and responsibilities of an ombudsman; provided, however, that nothing in this provision shall prohibit the department from requiring that the state ombudsman, or other employees or volunteers of the office, adhere to all other policies and procedures of the department;

(b) the state ombudsman monitor the performance of local ombudsman entities which the state ombudsman has designated to carry out the duties

of the office; and

(c) the process by which the agencies hosting local ombudsman entities will coordinate with the state ombudsman in the employment or appointment of representatives of the office.

(2) Standards to assure prompt response to complaints by the office which prioritize abuse, neglect, exploitation and time-sensitive complaints and which consider the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through the provision of program services.

(3) Procedures for access to facilities, residents, and appropriate records, to include:

(a) access to enter all long-term care facilities at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated;

(b) access to all residents to perform the functions and duties set forth in 45 CFR 1324.13 and 1324.19;

(c) access to the name and contact information of the surrogate decision maker, if any, where needed to perform the functions and duties as set forth in 45 CFR 1324.13 and 1324.19;

(d) access to review resident records provided:

(i) the resident or surrogate decision maker communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;

(ii) the resident or surrogate decision maker communicates informed consent orally, visually or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the office in accordance with program procedures; and

(iii) access is necessary in order to investigate a complaint, including one of abuse, neglect or exploitation, the surrogate decision maker refuses to consent to the access, a representative of the office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the office obtains approval of the state ombudsman; and

(e) access to the administrative records, policies and documents, to which the residents have, or the general public has access, of long-term care facilities;

(f) access of the state ombudsman to, upon request, copies of all licensing and certification records maintained by the state with respect to long-term care facilities.

(4) Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 Privacy Rule, 45 CFR 160 and 45 CFR 164, Subparts A and E, does not preclude release by long-term care facilities of resident private health information or other resident identifying information to the office or any representative of the office, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a state or federal survey or inspection process.

(5) Policies and procedures regarding disclosure of files, records and other information maintained by the program must include, but not be limited to:

(a) provision that the files, records and information maintained by the program may be disclosed only at the discretion of the state ombudsman or designee for such purpose and in accordance with the criteria developed by the program, as required by 45 CFR 1324.13(e);

(b) prohibition of the disclosure of identifying information of any resident with respect to whom the

program maintains files, records or information except as otherwise provided by CFR 1324.19(b)(5) through (8), unless:

(i) the resident or surrogate decision maker communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(ii) the resident or surrogate decision maker communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the office in accordance with such procedures; or

(iii) the disclosure is required by court order.

(c) prohibition of the disclosure of identifying information of any complainant with respect to whom the program maintains files, records or information, unless:

(i) the complainant communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(ii) the complainant communicates informed consent orally, visually or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(iii) the disclosure is required by court order.

(d) exclusion of the ombudsman and representatives of the office from abuse reporting requirements, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in 45 CFR 1324.19(b)(5) though (8);

(e) policies and procedures regarding conflicts of interest must establish

mechanisms to identify and remove or remedy conflicts of interest as provided in 45 CFR 1324.21;

(f)

requiring that other agencies in which the office or local ombudsman entities are organizationally located have policies in place to prohibit the employment or appointment of an ombudsman or representatives of the office with a conflict that cannot be adequately removed or remedied;

(i)

requiring that the state ombudsman take reasonable steps to refuse, suspend or remove designation of an individual who has a conflict of interest, or who has a member of the immediate family with a conflict of interest, which cannot be adequately removed or remedied;

(ii)

establishing the methods by which the office and the department periodically review and identify conflicts of the state ombudsman and representatives of the office; and

(iii)

establishing the actions the office and state agency will require the ombudsman or representatives of the office to take in order to remedy or remove such conflicts;

(iv)

ensuring that no individual, or member of the immediate family of an individual, involved in the employment or appointment of the state ombudsman is subject to a conflict of interest;

(v)

policies and procedures related to systems advocacy must assure that the office is required and has sufficient authority to carry out its responsibility to analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the office determines to be appropriate;

(vi)

such procedures must exclude the

state ombudsman and representatives of the office from any state lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the OAA;

(vii)

nothing in this section shall prohibit the state ombudsman or the department or other agency or private non-profit organization in which the office is organizationally located from establishing policies which promote consultation regarding the determinations of the office related to recommended changes in laws, regulations, and policies. However, such a policy shall not require a right to review or pre-approve positions or communications of the office. That being said, such communication is strongly encouraged as per the OAA;

(viii)

policies and procedures related to designation must establish the criteria and process by which the state ombudsman shall designate and refuse, suspend or remove designation of local ombudsman entities and representatives of the office;

(ix)

such criteria should include, but not be limited to, the authority to refuse, suspend or remove designation of a local ombudsman entity or representative of the office in situations in which an identified conflict of interest cannot be adequately removed or remedied as set forth in 45 CFR 1324.21;

(x)

policies and procedures related to grievances must establish a grievance process for the receipt and review of grievances regarding the determinations or actions of the state ombudsman and representatives of the office. Such process shall include an opportunity for reconsideration of the state ombudsman decision to refuse, suspend, or remove designation of a local ombudsman entity or representative of the office. Notwithstanding the grievance process, the state ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a local ombudsman entity or representative

of the office;

(xi)

policies and procedures related to the determinations of the office must ensure that the state ombudsman, as head of the office, shall be able to independently make determinations and establish positions of the office, without necessarily representing the determinations or positions of the department or other agency or private non-profit organization in which the office is organizationally located;

(xii)

disclosure of information maintained by the program within the limitations set forth in Section 712(d) of the OAA;

(xiii)

recommendations to changes in federal, state and local laws, regulations, policies and actions pertaining to the health, safety, welfare, and rights of residents; and

(xiv)

provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

K.

Pursuant 45 CFR 1324.13(h), through the adoption of memoranda of understanding and other means, the state ombudsman shall lead state-level coordination and support appropriate local ombudsman entity coordination, between the program and other entities with responsibilities relevant to the health, safety, well-being or rights of residents of long-term care facilities including, but not limited to:

(1) AAA

programs;

(2) aging and

disability resource centers;

(3) adult

protective services programs;

(4) protection

and advocacy systems, as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 USC 15001 et seq.);

(5) facility

and long-term care licensure and certification programs;

(6) the state medicaid fraud control unit, as defined in Section 1903(q) of the Social Security Act (42 USC 1396b(q));

(7) victim assistance programs;

(8) state and local law enforcement agencies;

(9) courts of competent jurisdiction; and

(10) the state legal assistance developer and legal assistance programs, including those provided under Section 306(a)(2)(C) of the OAA.

L. The state ombudsman and representatives of the office assist residents in seeking administrative, legal and other appropriate remedies. In so doing, the state ombudsman shall coordinate with the legal services developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents.

[9.2.19.22 NMAC - Rp, 9.2.19.22 NMAC, 12/29/2017]

9.2.19.23 FACILITY OMBUDSMAN RESPONSIBILITIES: In addition to the responsibilities set forth in 9.2.19.22 NMAC, each facility ombudsman shall be responsible for:

A. providing LTCO services to assist in the protection of the health, safety, welfare and rights of residents in accordance with the provisions of the federal and state laws governing the LTCO and consistent with their respective certifications and duties for which they are responsible for thereby, as set forth in this part;

B. documenting LTCO activities and case work, if any, as required by the SLTCO;

C. visiting his or her assigned facility or facilities regularly;

D. submitting regular monthly reports;

E. submitting appropriately written complaints;

F. being responsive to the needs and concerns of long term care facility residents; and

G. participating in appropriate continuing education.

[9.2.19.23 NMAC - Rp, 9.2.19.23 NMAC, 12/29/2017]

9.2.19.24 RESOURCE OMBUDSMAN

RESPONSIBILITIES: In addition to the responsibilities set forth in 9.2.19.22 NMAC, a resource ombudsman shall be authorized and responsible only for complaint intake and processing, research, specialized training, or such other responsibility or responsibilities (not including, however, the taking and on-site investigation of complaints from residents) as the SLTCO may authorize and direct. A resource ombudsman may visit long-term care facilities as ombudsman under the direction of a certified facility ombudsman.

[9.2.19.24 NMAC - Rp, 9.2.19.24 NMAC, 12/29/2017]

9.2.19.25 RESPONSIBILITIES OF STAFF AND VOLUNTEERS NOT CERTIFIED AS OMBUDSMAN:

Persons who are employed by or volunteering at the SAOA or the office of the SLTCO, or who have volunteered as LTCOs but who have not completed the new volunteer training program may assist in the provision of LTCO services, other than complaint processing, under the direct supervision of a certified LTCO, but they may not have sole responsibility for the provision of any LTCO service.

[9.2.19.25 NMAC - Rp, 9.2.19.25 NMAC, 12/29/2017]

9.2.19.26 CONFLICTS OF INTEREST POLICY:

The organizational placement of the program and the individuals who carry out the duties of the program must be free from conflicts of interest.

[9.2.19.26 NMAC - Rp, 9.2.19.26 NMAC, 12/29/2017]

9.2.19.27 CONFLICT OF INTEREST IDENTIFICATION:

A conflict of interest exists in the program or with respect to an individual providing program

services when other interests intrude upon, interfere with, or threaten to negate the ability of the program to advocate without compromise on behalf of long-term care facility residents. Types of conflict of interest include: conflicts of loyalty where incentives, often related to financial or employment considerations, shape one's judgment or behavior in ways that are contrary to the interest of residents; conflicts of commitment where goals or obligations that direct one's time or attention away from the interest of residents; and conflicts of control where limitations or restrictions are imposed that effectively foreclose one's ability to take actions to advocate for the interest of residents.

[9.2.19.27 NMAC - Rp, 9.2.19.27 NMAC, 12/29/2017]

9.2.19.28 ORGANIZATIONAL CONFLICTS:

An organizational conflict may arise when program placement is made in an agency which has not identified and taken steps to remove or remedy conflicts of interest between the office and the state agency and notified the assistant secretary of the federal health and human services department of its plan for removing the conflict, pursuant to 45 CFR 1324.21(b)(1). An organizational conflict of interest exists where the office:

A. has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;

B. provides long-term care services, including the provision of personnel for long-term care facilities or the operation of programs that control services for or residents' access to long-term care facilities;

C. has governing board members with ownership, investment or employment interest in long-term care facilities; or

D. has direct involvement in the licensing or certification of a long-term care facility or long-term care services.

[9.2.19.28 NMAC - Rp, 9.2.19.28 NMAC, 12/29/2017]

9.2.19.29 INDIVIDUAL OMBUDSMAN CONFLICTS:

Conflicts for any ombudsman, including the state ombudsman, staff and volunteers, include, but are not limited to, the following:

A. employment of the individual by a long-term care facility in the state or by the owner or operator of any long-term care facility in the state within one year before the date the determination is being made;

B. participation in the management of a long-term care facility by the individual or a member of his or her immediate family or household within one year before the date the determination is being made. For purposes of this paragraph, "household" means all persons residing at a single dwelling and contributing to the household income;

C. ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by the individual or a member of his or her immediate family;

D. involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by the individual or a member of his or her immediate family;

E. receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by the individual or to the individual through a member of his or her immediate family;

F. accepting any gifts or gratuities from a long-term care facility or resident or resident representative; an ombudsman must adequately compensate a facility for food provided by the facility with the exception of courtesy beverages and sample portions of food tested as part of an investigative process;

G. accepting money or any other consideration from anyone other than the provider agency or other entity designated by the office for the performance of an act in the regular course of an ombudsman's

duties;

H. having management responsibility for, or operating under the supervision of an individual with management responsibility for, adult protective services;

I. serving as a surrogate decision maker or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity);

J. provision of services with conflicting responsibilities while serving as an ombudsman; or

K. otherwise participating in activities which negatively impact on the ability of the ombudsman to serve residents, or are likely to create a perception that the ombudsman's primary interest is other than as a resident advocate.

[9.2.19.29 NMAC - Rp, 9.2.19.29 NMAC, 12/29/2017]

9.2.19.30 EXCEPTION FOR PUBLICLY TRADED POOLED INVESTMENTS:

Notwithstanding the foregoing provisions of 9.2.19.31 NMAC, ownership of shares in a mutual fund or other publicly traded pooled investment fund whose assets may include publicly traded securities of long-term care facilities or service organizations shall not generally constitute a conflict of interest, unless the investments of such fund is limited to such facilities or service organizations, or such investments normally form a large percentage of such fund.

[9.2.19.30 NMAC - Rp, 9.2.19.30 NMAC, 12/29/2017]

9.2.19.31 REPORTING POTENTIAL CONFLICT:

A. All ombudsmen and agents of the AAAs, provider agencies and private non-profit organizations shall notify the department's cabinet secretary of any actual or potential conflict of interest within the program of which they have knowledge.

B. The state ombudsman shall determine whether

the situation rises to the level of a conflict and, if so, whether appropriate actions must be taken to sufficiently remedy the conflict. A conflict can be sufficiently remedied only where the existence of the conflict does not interfere with any duties of the program, and where the conflict is not likely to alter the perception of the program as an independent advocate for residents. [9.2.19.31 NMAC - Rp, 9.2.19.31 NMAC, 12/29/2017]

9.2.19.32 REMEDYING ORGANIZATIONAL CONFLICT:

A. An organization (with the exception of the department, which steps for remedying any perceived conflict are set forth in 9.2.19.28 NMAC) within which the conflict has been identified shall submit to the state ombudsman a written remedial plan within 30 calendar days of identification of the conflict to the office. The remedial plan must identify the conflict and provide assurances that minimize to the greatest extent possible the negative impact of the conflict on the program. Examples of such assurances may include:

(1) the program will investigate complaints in an unbiased manner and independently determine actions to be taken in their resolution; or

(2) no provider agency employee or governing board member with a conflict of interest will be involved with or influence any decision to hire or terminate the employment of an ombudsman;

(3) governing board members of the provider agency, AAA or private non-profit entity who have a conflict of interest:

(a) must disclose the conflict to the governing board and to the state ombudsman;

(b) May have no involvement with ombudsman activities concerning the entity which is the source of the conflict; and

(c) must abstain from voting on issues

related to the operation of the program.

(4) the provider agency's policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that the ombudsmen fulfill their duties without interference;

(5) a memorandum of agreement exists between the program and another program which provides services with conflicting responsibilities. Such a memorandum must adequately set forth the roles, responsibilities, and appropriate working relationships of the respective programs. [9.2.19.32 NMAC - Rp, 9.2.19.32 NMAC, 12/29/2017]

9.2.19.33 REMEDYING INDIVIDUAL OMBUDSMAN CONFLICTS: Where individual conflicts have been identified, the following steps shall be taken where the conflict may be sufficiently remedied:

A. Where the individual is an applicant for certification as an ombudsman, a written plan shall be developed, submitted to the state ombudsman and agreed upon before the individual takes any actions on behalf of the program.

B. Where the individual is already an ombudsman, a written plan shall be developed, submitted to the state ombudsman and agreed upon within 30 calendar days of identification of the conflict to the state ombudsman.

C. The remedial plan must identify the conflict and provide assurances to minimize to the greatest extent possible the negative impact of the conflict on the program, which may include a prohibition of the ombudsman with a conflict of interest from serving the residents of the facility with which he or she has a conflict and arranging for another ombudsman to serve those residents. Where appropriate, this arrangement may be time-limited.

D. The remedial plan must be mutually agreed upon

and signed by the ombudsman or applicant with the conflict of interest, and the state ombudsman. [9.2.19.33 NMAC - Rp, 9.2.19.3 NMAC, 12/29/2017]

9.2.19.34 PROCEDURES TO AVOID CONFLICTS OF INTEREST:

A. All persons seeking certification as ombudsman shall disclose to state ombudsman all information relevant to past employment, membership, or interests that may affect, or could reasonably be expected to affect, that individual's ability to carry out duties of an ombudsman without conflicting interest.

B. In order to avoid confusion and possible conflicts between the program and other department personnel in communicating with the press, broadcast media and other public media, the state ombudsman or his or her representative are encouraged to apprise and summarize the intended communication for the cabinet secretary or public information officer prior to any such communication or other dissemination or release of public information from or concerning the program, provided that neither the cabinet secretary nor public information officer has an individual conflict, as set forth, above. [9.2.19.34 NMAC - Rp, 9.2.19.34 NMAC, 12/29/2017]

9.2.19.35 FAILURE TO IDENTIFY OR REMEDY A CONFLICT OF INTEREST:

A. Failure on the part of an ombudsman or provider agency to identify and report to the state ombudsman a known conflict of interest shall be sufficient grounds for refusal to designate or for de-designation of the provider agency or for refusal to certify or for de-certification of the ombudsman.

B. Existence of an un-remedied conflict of interest shall be sufficient grounds for the de-designation of a provider agency or de-certification of an ombudsman.

C. Failure on the

part of an ombudsman to identify and report to the state ombudsman a known conflict of interest shall be sufficient grounds for the de-certification of the ombudsman. [9.2.19.35 NMAC - Rp, 9.2.19.35 NMAC, 12/29/2017]

9.2.19.36 LONG-TERM CARE OMBUDSMAN RECORDS POLICY: Records of the program shall be confidential and may be disclosed only in limited circumstances specifically provided by applicable law and these regulations. [9.2.19.36 NMAC - Rp, 9.2.19.36 NMAC, 12/29/2017]

9.2.19.37 ACCESS TO LONG-TERM CARE OMBUDSMAN RECORDS:

A. All program client records are the property of the office. The state ombudsman or designee shall have access to all program records at all times for any lawful purpose.

B. Ombudsmen are permitted access to such records as may be necessary to discharge their responsibilities in complaint processing or other responsibilities under these regulations.

C. All records of another agency participating in the joint protocol established under the provisions of Subsection L of Section 24-1-5 NMSA 1978 that may come into the possession of the program and that include identifying or otherwise confidential resident or complainant information shall be held and disclosed in the same manner as program records hereunder, except to the extent that such other agency imposes stricter requirements or restrictions for disclosure, to which extent the rules of such other agency shall be observed to the extent permitted by law.

D. All information concerning residents or complainants shall be handled with the utmost care and discretion. No ombudsman shall disclose any information or record that includes, implies or describes the identity of any complainant

or resident about whom the office maintains files or records unless:

(1) the complainant or resident or his or her surrogate decision maker consent in writing to the disclosure;

(2) the complainant or resident gives informed consent, which is documented immediately in writing by an ombudsman;

(3) disclosure is necessary for the provision of services to the resident or the resident is unable to provide informed consent; or

(4) disclosure is ordered by a court of competent jurisdiction.

[9.2.19.37 NMAC - Rp, 9.2.19.37 NMAC, 12/29/2017]

9.2.19.38 PROCEDURE FOR RELEASE:

A. Records maintained by the program may not be released, disclosed, duplicated, or removed to anyone who is not an ombudsman without the written permission of the state ombudsman. All requests made for ombudsman records shall be referred to the state ombudsman or designee.

B. The state ombudsman or designee shall determine whether to disclose all or part of the records as follows:

(1) The state ombudsman shall require that the request be made in writing and may require a copy of the request before determining the appropriate response. Where the request is made orally by a resident, complainant, or surrogate decision maker of the resident or complainant, the request must be documented immediately and filed as an ombudsman record by the ombudsman to whom informed consent was communicated in order to meet this requirement.

(2) The state ombudsman shall review the request to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s).

(3) The

state ombudsman shall notify the department's cabinet secretary and the state ombudsman's immediate supervisor (if the immediate supervisor is someone other than the cabinet secretary) of any public media request for records within 24 hours of the request.

(4) The state ombudsman or designee shall refer any request made by formal legal process to the program's legal counsel. The state ombudsman shall be responsible to ensure that a response is timely filed and endeavor to prevent any release that would be inconsistent with the interests of the resident(s).

(5) Any request for information made under the state Inspection of Public Records Act (IPRA) directly to the program shall be forwarded to the department's records custodian within 24 hours. The department's records custodian shall respond in writing within 15 days to the requestor after consulting with the state ombudsman and the department's general counsel or designee. The ombudsman shall make the final decision whether to disclose records in response to an IPRA request, keeping in mind that program records are not public records and are therefore exempt from IPRA. Notwithstanding the foregoing, the state ombudsman may release records provided they do not name or provide personally identifying information of residents or complainants as it deems appropriate, provided such disclosure is not made pursuant to an IPRA request.

[9.2.19.38 NMAC - Rp, 9.2.19.38 NMAC, 12/29/2017]

2.9.19.39 [RESERVED]

2.9.19.40 LEGAL COUNSEL:

A. Pursuant to 45 CFR 1324.15 (j), the department shall ensure that:

(1) legal counsel for the program is adequate, available, has competencies relevant to the legal needs of the program and of the residents, and is without

conflict of interest, in order to:

(a)

provide consultation and representation as needed in order for the program to protect the health, safety, welfare and rights of residents; and

(b)

provide consultation or representation as needed to assist the state ombudsman and representatives of the office in the performance of their official functions, responsibilities and duties, including complaint resolution and advocacy; and

(2) legal

representation, arranged by or with the approval of the state ombudsman, is provided to the state ombudsman or any representative of the office against whom suit or other legal action is brought or threatened to be brought in connect with the performance of the official duties;

(3) legal

representation of the program by the state ombudsman or representative of the office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel;

(4) the

communications between the state ombudsman and legal counsel are subject to attorney-client privilege. [9.2.19.40 NMAC - Rp, 9.2.19.40 NMAC, 12/29/2017]

9.2.19.41 ANONYMOUS EVALUATIONS:

A. Chapter 28, Articles 7 and 17 of the NMSA 1978 authorize and direct the department and the office to protect the health, safety, welfare and rights of the aged and other residents of long-term care facilities in this state, to investigate and resolve complaints of such residents, and to report on conditions of long-term care facilities. Subsection C of Section 28-4-6 NMSA 1978 specifically provides that the department may conduct unannounced evaluations of long-term care facilities by the use of undercover residents or employees. Pursuant to its authority as the parent agency of the office, the department may carry out such evaluations by and

through the office; however, under no circumstances shall federal funding be used for such anonymous evaluations.

B. The department shall conduct all undercover evaluations authorized by Subsection C of 28-4-6 NMSA 1978 in accordance with its procedures for the conduct of anonymous evaluations of long-term care facilities adopted pursuant to such authority and in consultation with the department's cabinet secretary.

[9.2.19.41 NMAC - Rp, 9.2.19.41 NMAC, 12/29/2017]

**HISTORY OF 9.2.19 NMAC:
[RESERVED]**

History of Repealed Material:
9.2.19 NMAC, Aging - Long Term Care Ombudsman, filed 1/16/2001 - Repealed effective 12/29/2017.

Other History:
9.2.19 NMAC, Aging - Long Term Care Ombudsman (filed 1/16/2001) was replaced by 9.2.19 NMAC, Aging - Long Term Care Ombudsman, effective 12/29/2017.

**FINANCE AND
ADMINISTRATION,
DEPARTMENT OF**

The Department of Finance, and Administration, Local Government Division approved, at its 12/07/2017 hearing, to repeal its rule 2 NMAC 110.3 - Law Enforcement Protection Fund Distribution (filed 9/17/1996) and replace it with 2.110.3 NMAC - Law Enforcement Protection Fund Distribution, adopted on 12/13/2017 and effective 12/27/2017.

**FINANCE AND
ADMINISTRATION,
DEPARTMENT OF**

**TITLE 2 PUBLIC
FINANCE
CHAPTER 110 LOCAL
GOVERNMENT GRANTS
PART 3 LAW
ENFORCEMENT PROTECTION
FUND DISTRIBUTION**

**2.110.3.1 ISSUING
AGENCY:** Department of Finance, and Administration, Local Government Division.
[2.110.3.1 NMAC - Rp, 2 NMAC 110.3.1, 12/27/2017]

2.110.3.2 SCOPE: These rules and regulations shall apply to all governmental entities that have participated in and received money from the fund or that expect to qualify to participate in the annual distribution of the fund.
[2.110.3.2 NMAC - Rp, 2 NMAC 110.3.2, 12/27/2017]

**2.110.3.3 STATUTORY
AUTHORITY:** The division makes these rules pursuant to the authority of the Law Enforcement Protection Fund Act, being Sections 29-13-1 through 29-13-9 NMSA 1978, as amended.
[2.110.3.3 NMAC - Rp, 2 NMAC 110.3.3, 12/27/2017]

2.110.3.4 DURATION:
Permanent.
[2.110.3.4 NMAC - Rp, 2 NMAC 110.3.4, 12/27/2017]

**2.110.3.5 EFFECTIVE
DATE:** December 27, 2017, unless a different date is cited at the end of a section or paragraph.
[2.110.3.5 NMAC - Rp, 2 NMAC 110.3.5, 12/27/2017]

2.110.3.6 OBJECTIVE:
These rules and regulations provide procedures for applying for participation in the annual distribution of the fund and clarify the eligible uses of the fund.
[2.110.3.6 NMAC - Rp, 2 NMAC 110.3.6, 12/27/2017]

2.110.3.7 DEFINITIONS:
A. "Academy" means the New Mexico law enforcement academy.
B. "Accumulation" means holding funds from year to year to create a balance at the governmental entity level.
C. "Applicant" means any governmental entity allowed by law to seek participation in the distribution from the fund.
D. "Carryover" means, with the written approval of the division, retaining an unexpended award amount remaining at the end of one fiscal year and applying it to the immediately succeeding fiscal year only.
E. "Division" means the local government division of the department of finance and administration.
F. "Fund" means the law enforcement protection fund created in the Law Enforcement Protection Fund Act, as amended.
G. "Governmental entity" means the academy, a municipality, university, tribe or pueblo located wholly or partly in New Mexico, or a county.
H. "Tribal police department" means any tribal or pueblo police department that has entered into an agreement with the department of public safety pursuant to Section 29-1-11 NMSA 1978. The law enforcement agencies of the bureau of Indian affairs do not qualify because they are federal agencies.
[2.110.3.7 NMAC - Rp, 2 NMAC 110.3.7, 12/27/2017]

**2.110.3.8 ELIGIBLE USES
OF FUND:**
A. The fund shall be used only for the purposes set forth in the Law Enforcement Protection Fund Act, as amended, including but not limited to Section 29-13-7 NMSA 1978.

B. Eligible expenditures may include but are not limited to:
(1) law enforcement equipment;
(2) guns,

holsters, surveillance equipment, vehicles, uniforms, belts, badges and related apparatus to be used by law enforcement personnel;

(3) computers, printers, phones, fax machines, copy machines, software and projectors which are used by sheriffs or police officers;

(4) advanced law enforcement training manuals;

(5) advanced law enforcement planning and training in New Mexico or out of New Mexico if a comparable level of training is not available;

(6) purchasing, certifying and training of dogs in K-9 units;

(7) purchase of law enforcement equipment, including protective vests, for police dogs;

(8) mileage and per diem for advanced law enforcement training or planning;

(9) conferences associated with advanced law enforcement training and planning; and

(10) for the academy, providing tourniquet and trauma kits and training on the use of tourniquet and trauma kits.

C. Ineligible expenditures include but are not limited to:

(1) operating expenses, including but not limited to maintenance agreements, paper and ink for fax or copy machines, phone bills or supplies;

(2) desks, chairs and file cabinets;

(3) educational costs not associated with advanced law enforcement training or planning;

(4) district attorney investigators and attorney general investigators; and

(5) kitchen appliances and bathroom accessories. [2.110.3.8 NMAC - Rp, 2 NMAC 110.3.8, 12/27/2017]

2.110.3.9 PROCEDURES FOR LAW ENFORCEMENT PROTECTION FUND DISTRIBUTION:

A. All applicants must use the forms prescribed by the division, which will be available on the division's website by March 1. It is the ultimate responsibility of each governmental entity to ensure they receive an application.

B. Every governmental entity seeking to participate in the distribution of the fund shall submit an application to the division by March 31. Late applications will not be considered absent a showing of unusual circumstances. The division director shall review the unusual circumstances associated with any late applications and determine whether the division will accept the late application.

C. Sufficient and accurate information shall be given on each application to establish the need and eligibility for funds. The division reserves the right to request further information if the division receives an incomplete application; however, the division is not obligated to make such requests. Incomplete applications shall be given 10 days from the date of notification from the division to complete the application. Late applications that are incomplete may be given less than 10 days from the date of notification to complete the application, if necessary for the division to comply with the timeline established in these rules, in the discretion of the division director.

D. The application must be signed by the chief law enforcement officer and head of the governmental entity certifying that the information is accurate.

E. On or before April 15, the division shall consider and determine the needs of the applicants.

F. On or before May 1, the division shall notify each applicant in writing of the amount of distribution the applicant will receive. The division's decision will be based on Section 29-13-4 NMSA 1978, as amended.

(1) Any applicant may appeal the division's decision by filing a written notice of appeal with the secretary of finance and administration no later than May 15.

(2)

The secretary of finance and administration shall review the division's determination in an informal and summary proceeding and shall certify the result of the appeal to the division no later than June 30. The division shall adjust its determination if the secretary of finance and administration approves the appeal.

(3) If no appeal is filed, the determination of the division shall be final and binding on May 15 and not subject to further review.

G. The division will certify and approve periodic allotments to be distributed from the fund by the state treasurer in accordance with Section 29-13-6 NMSA 1978, as amended. [2.110.3.9 NMAC - Rp, 2 NMAC 110.3.9, 12/27/2017]

2.110.3.10 LIMITATIONS OF USES:

A. Amounts distributed from the fund shall be:

(1) expended only for the specific purposes as stated in the approved application; and

(2) expended pursuant to approved budgets and upon duly executed vouchers.

B. Any changes to the budget require prior written approval by the division.

C. The distributions from the fund are to be expended, not accumulated, except as provided for the peace officers' survivors fund. Any unexpended award amount remaining at the end of a fiscal year may be carried over to a succeeding fiscal year only with prior written approval from the division. An applicant wishing to request such a carryover must submit a request in writing to the division by July 31 explaining the unusual circumstances requiring an unexpended amount to be carried over to the succeeding fiscal year. The division director will review the unusual circumstances associated with the unexpended amount and determine whether the

amount may be carried over.

D. Interest earned through a governmental entity's deposit of unexpended amounts distributed from the fund must be used only for purposes allowed under the Law Enforcement Protection Fund Act. Because the fund is not intended for accumulation, unexpended amounts distributed from the fund are not allowed for long-term investment purposes.

E. As a prerequisite to applying for an award from the fund, governmental entities agree that any consideration received from the sale or trade of any item purchased in whole or in part with monies distributed in any fiscal year from the fund shall revert to the governmental entity's fund within six months of the governmental entity's receipt of such consideration to be used for fund allowable purposes. A reversion is not required if the consideration was taken as a trade towards the purchase of items to be used for fund allowable purposes.

[2.110.3.10 NMAC - Rp, 2 NMAC 110.3.10, 12/27/2017]

HISTORY OF 2.110.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: LGD Rule 84-1, Relating to the Law Enforcement Protection Fund Act, filed 2/22/1984.

History of Repealed Material: 2 NMAC 110.3, Law Enforcement Protection Fund Distribution, filed 9/17/1996 - Repealed effective 12/27/2017.

Other History: 2 NMAC 110.3, Law Enforcement Protection Fund Distribution, (filed 9/17/1996) was replaced by 2.110.3 NMAC, Law Enforcement Protection Fund Distribution, effective 12/27/2017.

HIGHER EDUCATION DEPARTMENT

The New Mexico Higher Education Department approved *and adopted*, on 12/14/2017, to repeal its rule 5.100.2 NMAC, Private Post-Secondary Institutions Operating Under the Post-Secondary Educational Institution Act (Filed 07/31/2005), effective 12/26/2017.

The New Mexico Higher Education Department approved *and adopted*, on 12/14/2017, to repeal its rule 5.100.3 NMAC, Private Post-Secondary Institutions Operating Under the Out-Of-State Proprietary School Act (Filed 07/31/2005), effective 12/26/2017.

The New Mexico Higher Education Department approved *and adopted*, on 12/14/2017, to repeal its rule 5.100.4 NMAC, Advisory Committee For Private Post-Secondary Education (Filed 11/30/2006), effective 12/26/2017.

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 99 DISTANCE EDUCATION PART 1 PUBLIC AND PRIVATE POST-SECONDARY INSTITUTIONS OPERATING UNDER THE INTERSTATE DISTANCE EDUCATION ACT

5.99.1.1 ISSUING

AGENCY: New Mexico Higher Education Department.
[5.99.1.1 NMAC - N, 12/26/2017]

5.99.1.2 STATUTORY

AUTHORITY: The Interstate Distance Education Act, Sections 21-23B-1 through 21-23B-6 NMSA 1978 authorizes the New Mexico higher education department to adopt rules and regulations for the receipt of distance education by students in New Mexico and the provision

of distance education by New Mexico participating post-secondary educational institutions to students located outside New Mexico.
[5.99.1.2 NMAC - N, 12/26/2017]

5.99.1.3 SCOPE: Provisions of 5.99.1 NMAC apply to public and private post-secondary institutions offering distance education to any student within New Mexico and the provision of distance education by participating New Mexico post-secondary educational institutions to students in other states.

[5.99.1.3 NMAC - N, 12/26/2017]

5.99.1.4 DURATION: Permanent.

[5.99.1.4 NMAC - N, 12/26/2017]

5.99.1.5 EFFECTIVE DATE: December 26, 2017, unless a later date is cited at the end of a section.

[5.99.1.5 NMAC - N, 12/26/2017]

5.99.1.6 OBJECTIVES AND GENERAL PRINCIPLES:

A. Every post-secondary educational institution providing distance education from New Mexico shall be subject to the provisions of the Interstate Distance Education Act ("the act") unless exempted.

B. Every post-secondary educational institution providing distance education from a home state outside of New Mexico to a student located in New Mexico as defined in 5.99.1.8 NMAC shall be subject to the provisions of the act.

C. Post-secondary educational institutions must be accredited in order to apply for distance education authorization under the act.

D. Post-secondary educational institutions that do not have distance education authorization or do not meet the criteria for exemption, and are offering distance education, shall be notified by certified mail that they shall cease immediately to offer such education until they obtain a distance education authorization or are found to be

exempted by the department; the department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of the act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

[5.99.1.6 NMAC - N, 12/26/2017]

5.99.1.7 DEFINITIONS:

A. "Accreditation"

means a verified accreditation status with an accrediting agency recognized by the United States department of education.

B. "Asynchronous"

means instruction that does not occur in the same place or at the same time.

C. "Department"

means the higher education department.

D. "Distance

education" means instruction offered online or through correspondence or interactive video or other means enabling a student in one state to receive instruction from a higher education provider in another state.

E. "Distance

education authorization" means written authorization under the act that a post-secondary educational institution is authorized to provide educational activity or activities from:

(1) a New

Mexico location to students located outside New Mexico; or

(2) an out-

of-state post-secondary educational institution to a student located in New Mexico.

F. "Higher

education" means education or training beyond secondary education.

G. "Home state"

means a state or territory where the institution holds its legal domicile and accreditation. To operate under the act an institution must have a single home state.

H. "Operate"

means providing instruction, marketing, recruiting, tutoring, field experiences and other services for students in support of offering distance education.

I. "Out-of-state

public post-secondary institution" means a higher education institution outside of the geographical boundaries of the state of New Mexico primarily funded by public funds.

J. "Physical

presence" means engaging in educational activity, the ongoing occupation of a physical location in the state for, or the ongoing maintenance of an administrative office to support, the provision of higher education instruction unless expressly exempted under the act.

K. "Post-secondary educational institution" includes public post-secondary educational institutions and private post-secondary educational institutions.

L. "State

authorization reciprocity agreement" ("SARA") means an agreement, developed by the national council for state authorization reciprocity agreements that provides uniform standards and parameters for the interstate provision of post-secondary distance education courses and programs.

M. "Synchronous"

means instruction in which a group of students engage in learning at the same time.

[5.99.1.7 NMAC - N, 12/26/2017]

5.99.1.8 STUDENT

LOCATION: Student location will be determined based on the physical location in which the student engages in educational activity. The student's legal state of residence will not be a criteria for determining the student's physical location for purposes of the act.

[5.99.1.8 NMAC - N, 12/26/2017]

5.99.1.9 EDUCATIONAL

ACTIVITY: Engaging in one or more of the following factors constitutes educational activity:

A. offering courses to

individuals;

B. establishing a

physical location for students to receive synchronous or asynchronous instruction;

C. requiring students

to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;

D. establishing an administrative office;

E. providing student support services to enrolled students, from a physical site operated by or on behalf of the institution in the state;

F. obtaining office space for instructional or non-instructional staff;

G. maintaining a mailing address or phone exchange in a state;

H. holding proctored exams on behalf of the institution in the host state; or

I. carrying out field study or field research located at a field station, research station or other physical site at which a faculty member or other institutional employee or otherwise directs students in an activity which either bears academic credit or is a requirement for a course or program. [5.99.1.9 NMAC - N, 12/26/2017]

5.99.1.10 NON-

EDUCATIONAL ACTIVITY: The following is a non-exhaustive list of non-educational activity:

A. advertising to students whether through print, billboard, direct mail, internet, radio, television or other medium;

B. maintaining a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in that state);

C. having faculty, adjunct faculty, mentors, tutors, recruiters or other academic personnel residing in New Mexico and working from their homes or another private, non-institutional site, provided that such staff is not engaged in activities that would otherwise constitute physical presence as defined by these policies and standards; or

D. using recruiters in New Mexico.
[5.99.1.10 NMAC - N, 12/26/2017]

5.99.1.11 INSTITUTION EXEMPT FROM DISTANCE EDUCATION AUTHORIZATION:

An institution that meets one or more of the following criteria is exempted by the department from distance education authorization and is not required to submit an application for distance education authorization:

A. Institution is authorized to operate as a member institution under SARA.

B. Institution has a physical presence in New Mexico exclusively offering distance education or on-line courses to students located only in New Mexico, pursuant to criteria set out in 5.99.1.8 NMAC.

C. The department has entered into a reciprocal agreement pursuant to Subsection B of Section 21-23B-3 NMSA 1978.

D. Institution offers distance education courses on a military base or vessel if enrollment in such courses is limited to active and reserve military personnel and their dependents.

E. Institution has contractual arrangements in New Mexico for course offerings through consortium agreements and has notified the department of the agreement.

F. Institution is only offering distance education courses as a means of continuing education units. The continuing education units must meet the criteria set out by the professional organization or authority requiring the continuing education.
[5.99.1.11 NMAC - N, 12/26/2017]

5.99.1.12 SARA:

A. Non-home state SARA institutions: Non-home state SARA institutions providing distance education to students located in New Mexico shall be governed by guidelines set forth by the national council for state authorization reciprocity agreements and the applicable regional compact. Non-

home state SARA institutions that exceed the maximum of ten students from an individual academic program placed simultaneously at one clinical or practicum site in supervised field experiences in New Mexico shall notify the department and may be subject to additional requirements.

B. Home state SARA institutions providing distance education from New Mexico shall be governed by guidelines set forth by the national council for state authorization reciprocity agreements and the western interstate commission on higher education. Application fees for New Mexico home state SARA institutions apply, detailed in Section 5.99.1.15 NMAC.
[5.99.1.12 NMAC - N, 12/26/2017]

5.99.1.13 DISTANCE EDUCATION AUTHORIZATION REQUIREMENTS:

Institutions operating under the act shall apply for distance education authorization unless exempt as defined in 5.99.1.11 NMAC. The department shall promulgate forms and require the institution to meet criteria as applicable to each of the following sectors:

A. Public post-secondary educational institution must submit to department:

(1) a complete distance education authorization application set out by the department;

(2) certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;

(3) certification of compliance with the western interstate commission for higher education principles outlined in 5.99.1.20 NMAC;

(4) a surety bond or alternative form of surety in the amount of twenty percent of the gross New Mexico online tuition and fees revenue;

(5) current accreditation;

(6) proof that the institution has adopted a

complaint procedure that complies with the department's requirements in Subsection E of 5.99.1.16 NMAC; and

(7) a fully executed participation agreement with the department.

B. Private post-secondary educational institution must submit to the department:

(1) a complete distance education authorization application set out by the department;

(2) certification of compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commission;

(3) certification of compliance with the western interstate commission for higher education principles outlined in 5.99.1.20 NMAC;

(4) a surety bond or alternative form of surety in the amount of twenty percent of the gross New Mexico online tuition and fees revenue;

(5) current accreditation;

(6) financial responsibility composite score of 1.5 or above as assigned by the United States department of education in the institution's most recent fiscal report;

(7) proof that the institution has adopted a complaint procedure that complies with the department's requirements in Subsection E of 5.99.1.16 NMAC; and

(8) a fully executed participation agreement with the department.
[5.99.1.13 NMAC - N, 12/26/2017]

5.99.1.14 APPLICABLE DISTANCE EDUCATION AUTHORIZATION FEES AND SURETY BOND:

A. The department shall assess application and administrative fees and publish a fee schedule.

B. The department shall assess an application fee for providing the services associated with

application review and determination of eligibility for distance education authorization.

C. The department shall assess a fee upon determination that the institution has met all satisfactory conditions for distance education authorization.

D. The department shall assess an administrative fee for filing annual reporting; any costs associated with specialized review, program changes, and institution or administrative changes shall be assessed to the institution.

E. The department shall require institutions to obtain a surety bond as a condition of distance education authorization. Each institution holding distance education authorization by the department shall maintain in force a surety bond or alternative surety accepted by the department, in an amount set by the department, and payable to the department. The institution must have and adhere to the following requirements:

(1) the amount of the bond or alternative surety shall be sufficient to indemnify any student damaged as a result of fraud or misrepresentation by a distance education institution or as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted. If a distance education institution closes, the department may draw upon the bond to pay costs associated with preservation of student records. The bond must also meet the following criteria:

(a) the bond required for each institution shall be twenty percent of the institution's projected or actual gross annual New Mexico online tuition and fee revenue; and

(b) bonds provided by institutions must be accompanied by the name, office address and phone number of the issuing company representative;

(2) If an institution seeks to cancel a surety bond, written notice must be delivered to the department. The institution

may not cancel the surety bond until provided with written release by the department. The institution shall provide the department with a like surety or acceptable alternative in order to maintain distance education authorization.

(3) Alternative forms of surety: An institution may request a waiver from the bond requirement and provide to the department an explanation of the alternative form for which they are seeking approval. The department has the authority to accept or reject any request. Such alternative may be a cash deposit escrow account, irrevocable letter of credit, or similar alternative payable to the department in the amount equal to the bond requirement.

[5.99.1.14 NMAC - N, 12/26/2017]

5.99.1.15 APPLICABLE SARA FEES AND SURETY

BOND: Acting in the capacity of the state portal entity, the department will assess a non-refundable application fee for SARA home state applicants and publish a fee schedule. New Mexico home state institutions shall pay the state application fee prior to application or renewal application review by the portal entity. If an institution is approved by the portal entity, the institution shall pay fees set out by the national council for state authorization reciprocity agreements to become a member. The department may require SARA institutions to obtain a surety bond in the amount of twenty percent of the gross online tuition and fees revenue from students in SARA states as a condition of SARA approval.

[5.99.1.15 NMAC - N, 12/26/2017]

5.99.1.16 MONITORING; COMPLAINT RESOLUTION; SANCTIONS:

A. Any institution operating pursuant to the act shall be subject to Section 21-23B-5 NMSA 1978.

B. An institution found in violation of the act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per

violation.

C. An institution that does not submit an application for renewal within deadlines set by the department may have a lapse in distance education authorization.

D. The department shall provide notification for public viewing on the department's website if a distance education authorized institution has been sanctioned or penalized by their accreditor or the U.S. department of education or has a lapse in distance education authorization.

E. An institution shall provide proof of an adopted complaint procedure that complies with the minimum requirements set by the department. The institution shall have and make available to all students, the adopted complaint procedure that describes, in detail, how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

(1) requirement that students or other parties with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;

(2) a time frame within which the institution will investigate the complaint and respond to the complainant;

(3) assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;

(4) assurance that no adverse action will be taken against the complainant for registering the complaint; and

(5) identification of the higher education department as the agency to be contacted in cases where a complaint cannot be resolved.

[5.99.1.16 NMAC - N, 12/26/2017]

5.99.1.17 REPORTING FOR DISTANCE EDUCATION AUTHORIZED INSTITUTIONS:

A. Distance education authorized institutions shall annually submit a standard reporting form on a deadline set by the department.

B. The department shall promulgate a standard form for annual reporting to include curriculum and enrollment information.

C. An institution must comply with reporting requirements in order to be eligible for renewal. [5.99.1.17 NMAC - N, 12/26/2017]

5.99.1.18 REPORTING FOR SARA INSTITUTIONS:

Institutions authorized under SARA shall comply with the reporting requirements set out by the national council for state authorization reciprocity agreement.

[5.99.1.18 NMAC - N, 12/26/2017]

5.99.1.19 COMPLAINT TO THE DEPARTMENT:

A. A student or other party not satisfied with an institution's resolution of a complaint may submit a complaint to the department in writing on a form provided by the department. A student must file a complaint with the department within three years of their last date of enrollment.

B. Upon receipt of a written complaint, the department or its authorized representative shall verify that the complaint involves one or more standards for distance education authorization of the institution and is therefore a legitimate subject of complaint to the department. If the complaint is determined to be legitimate, the department or its authorized representative shall forward the complaint to the institution for a written response and shall facilitate possible resolution of the complaint between the student and the institution. The institution shall have 10 days to forward its response to the department. A copy of the institution's response will be forwarded to the student with a request that the student indicate

satisfaction or dissatisfaction with the response.

C. In attempting to resolve a complaint, the department or its authorized representative may, but is not obliged to, convene a hearing or meetings and shall give written notice to the institution and to all persons involved, regarding the time, date, and place of the hearing or meeting. Such hearings or meetings, if held, shall be informal and for the purpose of determining the facts surrounding the claim and if the parties can come to a resolution or compromise.

D. In the event that the institution refuses to respond or refuse to attend a hearing or meeting:

(1) The department shall make three attempts to contact the institution including at least one attempt through certified mail, to notify the institution of the complaint, request, action, hearing or meeting; and

(2) If the institution does not respond or fails to attend the hearing or meeting after three attempts to contact the institution by the department have been made, the department may invoke its powers to take such action as shall be necessary for the indemnification of the claimant.

[5.99.1.19 NMAC - N, 12/26/2017]

5.99.1.20 WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION PRINCIPLES: Principles of good practice for electronically offered academic degree and certificate programs: quality is an essential component of the department's agenda for higher education in New Mexico. The department endorses the principles of good practice established by the western interstate commission for higher education (WICHE). It is expected that all distance learning courses and programs meet the following principles:

A. each program of study results in learning outcomes appropriate to the rigor and breadth of the degree or certificate awarded;

B. an electronically offered degree or certificate program

is coherent and complete;

C. the program provides for appropriate real-time or delayed interaction between faculty and students and among students;

D. qualified faculty provide appropriate oversight of the program electronically offered;

E. the program is consistent with the institution's role and mission;

F. review and approval processes ensure the appropriateness of the technology being used to meet the program's objectives;

G. the program provides faculty support services specifically related to teaching via an electronic system;

H. the program provides training for faculty who teach via the use of technology;

I. the program ensures that appropriate learning resources are available to students;

J. the program provides students with clear, complete, and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technological competence and skills, technical equipment requirements, availability of academic support services and financial aid resources, and costs and payment policies;

K. enrolled students have reasonable and adequate access to the range of student services appropriate to support their learning;

L. accepted students have the background, knowledge and technical skills needed to undertake the program;

M. advertising, recruiting, and admissions materials clearly and accurately represent the program and the services available;

N. policies for faculty evaluation include appropriate consideration of teaching and scholarly activities related to electronically offered programs;

O. the institution demonstrates a commitment to ongoing support, both financial and technical, and to continuation of the program for a period sufficient to

enable students to complete a degree or certificate;

P. the institution evaluates the program's educational effectiveness, including assessments of student learning outcomes, student retention, and student and faculty satisfaction; students have access to such program evaluation data; and

Q. the institution provides for assessment and documentation of student achievement in each course and at completion of the program.
[5.99.1.20 NMAC - N, 12/26/2017]

History of 5.99.1 NMAC - [RESERVED]

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST- SECONDARY EDUCATION CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION PART 5 EXEMPTION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT

5.100.5.1 ISSUING
AGENCY: New Mexico Higher
Education Department.
[5.100.5.1 NMAC - N, 12/26/2017]

5.100.5.2 SCOPE: Provisions
of 5.100.5 NMAC apply to all post-
secondary institutions that meet the
standards set by the department to
obtain exempt status from the post-
secondary educational institution act
within the state of New Mexico.
[5.100.5.2 NMAC - N, 12/26/2017]

5.100.5.3 STATUTORY
AUTHORITY: The Post-Secondary
Educational Institution Act, Section
21-23-1 et seq. NMSA 1978
authorizes the New Mexico higher
education department ("department")
to establish standards to exempt post-
secondary educational institutions
from the act while operating in New
Mexico.
[5.100.5.3 NMAC - N, 12/26/2017]

5.100.5.4 DURATION:
Permanent
[5.100.5.4 NMAC - N, 12/26/2017]

5.100.5.5 EFFECTIVE
DATE: December 26, 2017 unless
a later date is cited at the end of a
section.
[5.100.5.5 NMAC - N, 12/26/2017]

5.100.5.6 OBJECTIVES
AND GENERAL PRINCIPLES:
A. Each private post-
secondary institution with a physical
presence in New Mexico shall be
classified by the department as either
subject to or exempt from provisions
of the Post-Secondary Educational
Institution Act ("the act").

B. A post-secondary
educational institution is subject to
the act unless expressly exempted
by the department. Post-secondary
educational institutions or programs
shall apply to the department to
receive formal exemption status.
Such institutions may use the
term exempt but may not refer to
their status with the department
using terms such as "authorized,"
"accredited," "licensed," "approved,"
or "endorsed."

C. Post-secondary
educational institutions that do not
have state authorization or have not
been granted express exemption
by the department, and meet the
definition of physical presence in New
Mexico, shall be notified by certified
mail that they shall cease immediately
to offer instruction until they obtain
a state authorization or exemption
from the department; the department
shall initiate appropriate legal
action if post-secondary educational
institutions fail to comply; whoever
violates any provision of Sections 21-
23-1 et seq. NMSA 1978 of the Post-
Secondary Educational Institution Act
may be assessed a civil penalty not
to exceed five hundred dollars (\$500)
per day per violation.

D. An exemption
status shall in no way constitute state
authorization. Therefore, references
to the department shall not be used
in any advertisements, brochures,
etc. without written consent of the

department.

E. Non-accredited
private post-secondary educational
institutions that offer a degree
program shall not be granted
exemption.
[5.100.5.6 NMAC - N, 12/26/2017]

5.100.5.7 DEFINITIONS:
A. "Accreditation"
means a verified accreditation status
with an accrediting agency recognized
by the United States department of
education that accredits institutions,
as a means of assuring quality
instruction.

**B. "Avocation or
recreation"** means an activity taken
up in addition to one's regular work
or profession, usually for enjoyment;
a hobby.

C. "Career school"
means a private post-secondary
educational institution offering a
formal educational curriculum in
New Mexico for a fee to members
of the general public beyond
compulsory school age, terminating
in a certificate, diploma, associate
degree, or comparable confirmation of
completion of the curriculum.

D. "Charter" means
a formal document by which a
sovereign authority or a government
grants rights, powers, and privileges
to a person, business, or the people.

**E. "College" or
"University"** means a private post-
secondary educational institution
offering a formal educational
curriculum in New Mexico for
a fee to members of the general
public beyond compulsory school
age, terminating in a baccalaureate
degree, master's degree, or doctoral
degree or comparable confirmation of
completion of the curriculum.

**F. "Continuing
education"** means only brief courses
of instruction designed to teach
specific skills that may be applicable
in a work setting but are not sufficient
in themselves to be considered a
program of training for employment.
Typically, a student only enrolls for
one course rather than a sequence of
courses. The continuing education
units must meet the criteria set out

by the professional organization or authority requiring the continuing education.

G. “Department”
means the New Mexico higher education department or its designated employee.

H. “Degree”
means any title, designation, mark, abbreviation, appellation, or series of letters or words, including “associate”, “bachelor’s”, “master’s”, “doctor’s” and their equivalents, which are generally taken to signify satisfactory completion of the requirements of a program of study designed to be comparable to those provided by institutions accredited by agencies recognized by the United States department of education.

I. “Degree-granting”
means a post-secondary educational institution that offers instruction resulting in a credential as defined by “degree.”

J. “Exemption”
means a written acknowledgment by the department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the department to provide educational services in New Mexico, and is not subject to the post-secondary educational institution act.

K. “Instruction provided by employer” means only a brief course of instruction designed to teach specific skills that may be applicable in a work setting or as professional development but are not sufficient in themselves to result in a credential.

L. “License”, “Licensed” or “Licensure” means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department for offering a formal educational curriculum within New Mexico;

M. “Physical presence” means the ongoing occupation of a physical location in the state for, or the ongoing maintenance of an administrative office to support, the provision of higher education instruction.

N. “Post-secondary educational institution” means an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education.

O. “Registration”
or “Registered” means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate a private post-secondary educational institution.

P. “State Authorization” means a post-secondary educational institution has been deemed by the department to meet satisfactory criteria, as determined by the department, for registration or licensure under the post-secondary educational institution act. All degree-granting institutions seeking state authorization shall be accredited or be seeking appropriate external accreditation. State authorization is not an endorsement of the institution by the department.
[5.100.5.7 NMAC - N, 12/26/2017]

5.100.5.8 GENERAL STANDARD FOR OBTAINING EXEMPTION STATUS BY THE DEPARTMENT:

A. The department shall provide an application form and assess an administrative fee to provide a formal exemption status. The department has the sole discretion to determine whether an institution meets the criteria for exemption status. If the department determines that an institution does not meet the criteria for exemption, the department may require the institution to apply for state authorization.

B. The exemption status will be valid for a term of five years from the date that the department makes the final determination.

C. As a condition of exemption, all post-secondary educational institutions shall agree to

comply with Section 21-23-15 NMSA 1978 in the event of institutional closure.

D. An exempt institution shall provide the department with immediate written notification of any changes or events that may trigger the whole or part of the claim for exemption application to be untrue. In no case shall a change be made without an acknowledgement from the department. An institution shall provide the department with notification in no less than 90 days prior to the proposed changes going in effect.

[5.100.5.8 NMAC - N, 12/26/2017]

5.100.5.9 PENALTY: A post-secondary institution that does not have state authorization or has not been granted express exemption by the department, and meets the definition of physical presence in New Mexico, shall be notified by certified mail that it shall cease immediately to operate until it obtains state authorization or exemption from the department; the department shall initiate appropriate legal action if an institution fails to comply; whoever violates any provision of Sections 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.
[5.100.5.9 NMAC - N, 12/26/2017]

History of 5.100.5 NMAC - [RESERVED]

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION PART 6 REGISTRATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT

5.100.6.1 ISSUING AGENCY: New Mexico Higher

Education Department.

[5.100.6.1 NMAC - N, 12/26/2017]

5.100.6.2 SCOPE:

Provisions of 5.100.6 NMAC apply to all private post-secondary institutions that meet the standards set by the department to obtain state authorization under the registration status of the post-secondary educational institution act within the state of New Mexico.

[5.100.6.2 NMAC - N, 12/26/2017]

5.100.6.3 STATUTORY

AUTHORITY: The Post-Secondary Educational Institution Act, Sections 21-23-1 et seq. NMSA 1978 authorizes the New Mexico higher education department ("department") to establish standards and oversight for registered private post-secondary institutions under the act while operating in New Mexico.

[5.100.6.3 NMAC - N, 12/26/2017]

5.100.6.4 DURATION:

Permanent

[5.100.6.4 NMAC - N, 12/26/2017]

5.100.6.5 EFFECTIVE

DATE: December 26, 2017 unless a later date is cited at the end of a section.

[5.100.6.5 NMAC - N, 12/26/2017]

5.100.6.6 OBJECTIVES AND GENERAL PRINCIPLES:

A. Each private post-secondary institution operating with a physical presence in New Mexico shall be subject to provisions of the Post-Secondary Educational Institution Act ("the act") unless expressly exempt by the department.

B. Every college or university operating in New Mexico that is regionally accredited or seeking regional accreditation by an accrediting agency shall register with the department.

C. A college or university that is regionally accredited or seeking regional accreditation deemed by the department to meet satisfactory criteria, as determined by the department, will be registered with the state. A college or university

that has successfully registered with the state shall be considered to hold state authorization.

D. An institution shall provide the department with immediate written notification of any changes or events that may trigger the whole or part of the application or the certifications to be untrue.

In no case shall a change be made without an acknowledgement from the department. An institution shall provide the department with notification in no less than 90 days prior to the proposed changes going in effect.

E. The department is statutorily charged with evaluating each individual institution in order to determine the institution's compliance with the standards outlined in this regulation. This evaluation may take the form of a physical visit to the institution or administrative office or may be a desk audit if a physical visit is not feasible. It is the responsibility of the institution to maintain full compliance with the Post-Secondary Educational Institution Act, Sections 21-23-1 through 21-23-15 NMSA 1978 and all applicable rules at all times. The following three types of site visits may be conducted by the department as means to determine the institution's compliance with the standards outlined in the regulation:

(1) Regular site visit: The department shall determine an appropriate schedule on which to re-evaluate each individual registered institution and the specific programs offered by that institution in order to determine continued compliance with this rule. Department staff will give prior notification of at least two weeks of the date and time of the visit. A short exit interview will be held at the conclusion of the visit. This exit interview may include a discussion of findings and a final written site visit report will be sent to the institution for review and comment. The outcome of the regular site visit may be continued registration.

(2) Required special site visit: The department may request a required special site visit as

a requirement for initial registration, or for registration renewal. At the conclusion of a required special site visit, the exit interview may include a discussion of any findings.

(3) Triggered site visit: any occurrence listed below trigger a site visit to the institution in order to evaluate compliance with standard within this regulation. The exit interview may include a discussion of any findings. The outcome of a triggered site visit may include a recommendation for a penalty, as outlined in 5.100.6.21 NMAC:

(a) an institution involuntarily loses its accreditation status;

(b) the department is notified of an institution's non-compliance with federal financial aid program regulations or the outcome of an audit from another state agency;

(c) the institution fails to renew its surety bond, or appropriate alternative in a timely manner;

(d) an institution is experiencing financial difficulties sufficient to threaten program quality;

(e) an institution has significant staff turnover;

(f) an institution fails to immediately notify the department of a change in ownership/management; or

(g) the department becomes aware of any other factor that could alter basis for registration.

F. Post-secondary educational institutions that do not have state authorization or have not been granted express exemption by the department, and meet the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to offer instruction until they obtain state authorization or exemption from the department; the department shall initiate appropriate legal action if post-secondary educational institutions fail to comply; whoever

violates any provision of Sections 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

G. As a condition of registration, all private post-secondary institutions shall agree to comply with Section 21-23-15 NMSA 1978 and 5.100.8 NMAC in the event of institutional closure.
[5.100.6.6 NMAC - N, 12/26/2017]

5.100.6.7 DEFINITIONS:

A. "Accreditation" means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions, as a means of assuring quality instruction.

B. "College" or "university" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral degree or comparable confirmation of completion of the curriculum.

C. "Department" means the New Mexico higher education department or its designated employee.

D. "Exception", "Exemption", or "Exempt" means a written acknowledgment by the department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the department to provide educational services in New Mexico, and is not subject to the post-secondary educational institution act.

E. "License", "Licensed", or "Licensure" means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department for offering a formal educational curriculum within New Mexico.

F. "Manager"

or **"Managers"** means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of a New Mexico post-secondary educational institution.

G. "Management plan of action" means a plan that has been developed, reviewed and implemented by managers of the institution which details specific steps the institution will commit to taking in order to remediate an identified weakness, shortcoming or insufficiency.

H. "Physical presence" means the ongoing occupation of a physical location in the state for, or the ongoing maintenance of an administrative office to support, the provision of higher education instruction.

I. "Post-secondary educational institution" includes an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education.

J. "Regional accreditation" means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions operating in a designated geographic region.

K. "Registration" or "Registered" means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate a private post-secondary educational institution.

L. "State Authorization" means a post-secondary educational institution that has been deemed by the department to meet satisfactory criteria, as determined by the department, for registration or licensure under the post-secondary educational

institution act. All degree-granting institutions seeking state authorization through application for registration or licensure shall be accredited or be seeking appropriate external accreditation. State authorization is not an endorsement of the institution by the department.
[5.100.6.7 NMAC - N, 12/26/2017]

5.100.6.8 GENERAL STANDARDS FOR REGISTRATION:

A. A regionally accredited college or university seeking state authorization through registration must submit a complete application and all supporting documentation, as requested by the department.

B. A branch campus that operates under the regional accreditation of a primary New Mexico campus is not considered a separate institution for purposes of state authorization. To be considered a branch campus the institution shall meet the following criteria:

- (1) it has the same ownership, financial management or control as that of the primary New Mexico campus;
- (2) it operates under the regional accreditation of the primary New Mexico campus;
- (3) it is not considered a separate institution for the purpose of accreditation;
- (4) the primary New Mexico campus has previously operated as a state authorized and accredited institution in New Mexico; and
- (5) it is a secondary physical presence by the same institution in New Mexico.

C. A regionally accredited college or university that has been granted state authorization through registration must submit an annual report, as requested by the department. The department shall promulgate a standard reporting form for registration to include: curriculum and enrolment information, financial information, and all publication material requested by the department.

D. A regionally

accredited college or university registering with the department shall adopt the student complaint procedure, as defined by the department, for the resolution of student complaints. State authorization through registration granted by the department is valid for the same period as its grant of regional accreditation from its accrediting agency, not to exceed 10 years.

[5.100.6.8 NMAC - N, 12/26/2017]

5.100.6.9 APPLICATION FOR REGISTRATION:

A. The department shall create an application form for registration.

B. The application criteria, all of which are defined in Sections 10 through 17 of 5.100.6 NMAC, shall include the following:

- (1) curriculum requirements;
- (2) enrollment agreement;
- (3) proof of financial stability;
- (4) materials and information;
- (5) student complaint procedure;
- (6) cooperation;
- (7) records maintenance and retention policy;
- (8) surety bond.

[5.100.6.9 NMAC - N, 12/26/2017]

5.100.6.10 CURRICULUM REQUIREMENTS: Regionally accredited institutions shall be governed by their accrediting agencies in establishing curriculum standards. Accredited institution shall submit formal documentation from the accreditor listing all approved campuses, credentials and programs; and written notification of any changes related to accreditation.

A. The institution shall submit a complete catalog that includes all programs of study, course descriptions, methods of delivery for each course, and number of credit hours for each course. When

applicable, the institution shall identify specialized programmatic accreditation in the catalog.

B. The institution shall submit the organizational profile from the regional accreditor that lists all programs offered by the institution.

C. Institutions proposing to change or add programs must formally notify the department. If the change or addition of the program requires the accreditor's approval, the institution must provide written proof of the approval. If the change or addition does not require approval by the accreditor, the institution shall provide proof that the accreditor was notified of the change or addition. Upon receipt of the approval or proof of notification to the accreditor, the department will provide a formal acknowledgment of the change or added program. The institution may begin to advertise the program based on the department's letter of acknowledgement.

D. Accreditation for new degree-granting institutions: New degree-granting institutions who have applied for regional accreditation must submit a written accreditation plan. If the institution fails to comply with the plan as provided to the department, the department may require the institution to seek state authorization under licensure as a non-accredited institution. The written accreditation plan shall include at minimum:

- (1) a complete catalog that includes all programs of study, course descriptions, methods of delivery for each course, and number of credit hours for each course. When applicable, the institution shall identify specialized programmatic accreditation in the catalog;
- (2) the name and contact information of the U.S. department of education recognized accrediting agency;
- (3) the planned timeline for application with and approval by the U.S. department of education recognized accrediting agency;
- (4) any contracts already made with the U.S.

department of education recognized accrediting agency, including supporting documents;

(5)

certification that the institution will complete the accreditation process within the planned timeline provided to the department. Any modification to the timeline must be approved by the accreditor and communicated to the department; and

(6) any

additional information which the department may request.

[5.100.6.10 NMAC - N, 12/26/2017]

5.100.6.11 ENROLLMENT AGREEMENT:

Before a student begins coursework at an institution, the institution shall execute an enrollment agreement with the student. An enrollment agreement will be binding only when it has been fully completed, signed, and dated by the student and authorized institution representative prior to the beginning of instruction. The institution shall retain the original enrollment agreement and a copy shall be delivered to the student at the time of execution or by mail when the enrollment is solicited by mail. A copy of the blank agreement or contract shall be submitted to the department. Each enrollment contract or agreement shall include at least the following:

A. information that will clearly and completely define the terms of the agreement between the student and the school;

B. names and addresses of the school and the student;

C. the program or course title in which the student is enrolling and the applicable catalog date or version reference;

D. program start date and estimated end date;

E. the number of hours or units of instruction;

F. the school's cancellation and refund policies;

G. an itemization of all charges, fees and required purchases being incurred by the student or their sponsor in order to complete the

training, e.g., tuition, books, supplies and all other items of expense required by the school;

H. the method of payment and payment schedule being established; and

I. when applicable, a statement detailing the institution's academic placement policy.
[5.100.6.11 NMAC - N, 12/26/2017]

5.100.6.12 PROOF OF FINANCIAL STABILITY:

Standards for reviewing and analyzing financial stability are a critical component of the institution's overall assessment. The institution's financial stability will be reviewed by the department to assess the institution's ability to meet financial obligations including, but not limited to, obligations to enrolled students. In determining financial stability of the institution the department shall review the following requirements:

A. Insurance:

Institutions registered by the department shall maintain valid standard, commercial liability insurance, worker's compensation insurance, and property insurance sufficient to protect students, employees, and other citizens from hazards in the institution's facilities. Where applicable institutions shall have liability insurance covering students involved in internships at sites and locations other than the institution.

B. Financial statement analysis: The department shall consider an institution's financial history when reviewing an application for registration. In the case where an institution submits an audit report and management letter provided by a certified public accountant, the department shall normally accept the report as accurate and rely on the auditor's professional responsibility to evaluate and to make known their professional opinion.

C. New institutions not previously operating in any capacity in any state or jurisdiction shall demonstrate liquid assets sufficient to operate the institution for a period of one year exclusive of

anticipated revenue from tuition and fees. These assets shall be sufficient to pay all projected salary and benefits of employees and the rent, utilities, insurance and other costs of operating the institution's facilities for a period of one year. If an institution has audited financials available for the year prior to that of the application, such audited financials shall be submitted for review. Any new institution shall submit the following:

(1) bank statements, investor agreements, any other financial donations or gifts used to develop the institution;

(2) the institution's projected income statement certified as accurate by the institution. The income statement must include details of projected salaries and benefits of employees, rent, utilities, insurance, any financial obligations made by the institution, and any other operating costs; and

(3) any additional information which the department may request.

D. Existing Institutions: If an institution has previously operated in any capacity in any jurisdiction, it must submit documents based on the following thresholds:

(1) An institution with seven hundred fifty thousand dollars (\$750,000) or more in gross annual tuition revenue and all federal Title IV financial aid institutions shall submit, on a schedule set by the department, an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Sections 61-28B-1 et seq. NMSA 1978. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The

composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(2) An institution with gross annual tuition revenue of two hundred fifty thousand dollars (\$250,000) or more but less than seven hundred forty nine thousand nine hundred ninety-nine dollars (\$749,999) shall submit, on a schedule set by the department, either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Sections 61-28B-1 et seq. NMSA 1978 or a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(3) An institution with gross annual tuition revenue of less than two hundred forty nine thousand nine hundred ninety-nine dollars (\$249,999) shall submit on a schedule set by the department either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Sections 61-28B-1 et seq. NMSA 1978, a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, or an income statement and balance sheet certified as accurate

by the institution. In addition to the audit report and management letter, the review of financial statements, or the income statement and balance sheet as described in this paragraph, the institution shall submit copies of business tax returns and bank statements for the most current year. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

E. Failure to satisfactorily meet financial requirements: If considerable concern is established as to the institution's ability to maintain its operation, department staff may contact the school to request additional information that may influence the institution's financial picture. If concerns are not addressed through the additional information provided to the department, a department financial analyst may conduct a second financial review. If after the second review, substantial doubt remains about the institution's ability to continue, the department may contract for further independent review of the records. All costs associated with contracting a third party independent reviewer will be charged to the institution. Following review and based on the determination of the department:

(1) the institution may be authorized for operation; or

(2) the institution may be placed on probationary status and required to submit a management plan of action; and

(3) the

department may report the failure to satisfactorily meet financial requirements to the U.S. department of education and the institution's accreditor. If the issue is not resolved, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny registration.
[5.100.6.12 NMAC - N, 12/26/2017]

5.100.6.13 MATERIALS

AND INFORMATION: The department shall regulate the use of deceptive and misleading materials and information. An institution shall not disseminate material or information that is deceptive, misleading or untrue. The institution shall certify compliance with all laws and regulations related to materials and information. The department may request copies of publications, advertisements, agreements, marketing collateral, or contracts in order to regulate the use of deceptive and misleading information. All materials and information shall comply with the following requirements:

A. Representation of accreditation and state authorization status:

(1) Institution may not make claims to or advertise an accreditation status if the accrediting agency is not recognized by the U.S. department of education.

(2) Institution not accredited by a U.S. department of education recognized accreditor shall clearly state that the institution is not accredited.

(3) An institution registered by the department may not use terms such as "accredited," "endorsed," or "recommended" in reference to its approval by the department.

B. Enrollment agreement: Before a student begins coursework at an institution, the institution shall execute an enrollment agreement with the student. An enrollment agreement will be binding only when it has been fully completed, signed, and dated by the

student and authorized institution representative prior to the beginning of instruction. The institution shall retain the original enrollment agreement and a copy shall be delivered to the student at the time of execution or by mail when the enrollment is solicited by mail. Each enrollment contract or agreement shall include at least the following:

(1) information that will clearly and completely define the terms of the agreement between the student and the school;

(2) names and addresses of the school and the student;

(3) the program or course title in which the student enrolling and the applicable catalog date or version reference;

(4) program start date and estimated end date;

(5) the number of hours or units of instruction;

(6) the school's cancellation and refund policies;

(7) an itemization of all charges, fees and required purchases being incurred by the student or their sponsor in order to complete the training, e.g., tuition, books, supplies and all other items of expense required by the school;

(8) the method of payment and payment schedule being established; and

(9) when applicable, a statement detailing the institution's academic placement policy.

C. Advertising, marketing, promotional materials and recruitment: All advertisements and promotional literature must be truthful regarding the content of an institution's educational program(s), the duration of the program(s), student attributes and skills needed for successful completion of the program(s), and costs of the program(s). An institution shall use no advertisements or promotional materials that are false, deceptive, inaccurate, or misleading. Materials must comply with all of the following

regulations:

(1)

Advertisements and promotional literature shall not contain promises of job placement or employment, either explicitly or implicitly, but may refer to an institution's services to assist students in obtaining employment.

(2)

Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training and may not either explicitly or implicitly suggest that the institution is offering employment.

(3) An

institution advertising salary ranges or averages for its graduates must have on file and available to inspection by students, the department, or their representatives current and accurate data that includes New Mexico employers and that validates such claims.

(4) An

institution shall not advertise the transferability of its courses or programs to another institution unless it has signed transfer or articulation agreements with that institution.

(5) An

institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve predominantly as sites of instruction or related activities provided by the institution, either in New Mexico or in other states. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.

(6) No person

shall for a fee solicit enrollment at an institution who is not employed by and under supervision of the institution. The institution shall be responsible for the representations of its employees.

(7) Prospective

students shall not be solicited by any representative of an institution on the sites of any government agency such as motor vehicle registration offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be

made available at such sites.

(8)

Prospective students shall not be solicited by any representative of an institution on the site of any public school, except at the invitation of school personnel. No institution shall offer or provide financial inducement to any public school in return for permission to solicit students.

(9) No

institution shall solicit the enrollment of any student who is currently attending another institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.

(10) On all

materials, an institution shall use the full name in which it is registered and list any other names in which the institution holds other government registrations. Permutations of its name, e.g., initials, or shortened name or nicknames, cannot be employed without prior written permission of the department.

(11) On all

materials, the name of an institution shall not be misleading.
[5.100.6.13 NMAC - N, 12/26/2017]

5.100.6.14 STUDENT COMPLAINT PROCEDURE:

An institution shall provide proof of an adopted complaint procedure that complies with the minimum requirements set by the department. The institution shall have and make available to all students, the adopted complaint procedure that describes, in detail, how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

A requirement

that students or other parties with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;

B. a time frame within

which the institution will investigate the complaint and respond to the complainant;

C. assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;

D. assurance that no adverse action will be taken against the complainant for registering the complaint; and

E. identification of the higher education department as the agency to be contacted in cases where a complaint cannot be resolved.

[5.100.6.14 NMAC - N, 12/26/2017]

5.100.6.15 COOPERATION:

The institution shall provide copies of valid certificates from other federal, state and municipal agencies, and any other higher education authorities as proof of compliance with applicable bodies. At minimum the application submission must include:

A. a copy of the notification of good standing and ability to do business in New Mexico issued by the New Mexico secretary of state's office;

B. a copy of the New Mexico taxation and revenue department registration;

C. as applicable, a copy of the national council of state authorization reciprocity agreements (NC-SARA) welcome letter;

D. as applicable, a list and copy of authorizations granted by other jurisdictions; and

E. as applicable, a list and copy of authorizations granted by other New Mexico boards, commission or agencies.

[5.100.6.15 NMAC - N, 12/26/2017]

5.100.6.16 RECORD MAINTENANCE AND RETENTION POLICY:

A. Each regionally accredited college or university registered by the department shall provide a records maintenance and retention plan. The plan shall consist of a records maintenance and disposal schedule that follows the minimum retention schedule set out and published by the department. The plan must include a description of how records will be maintained in

the event of closure, which includes, but is not limited to, designation of a custodian of records, digitization, and a process for obtaining transcripts from the custodian of record.

B. Each institution must submit a certification of compliance with all applicable laws, rules and regulations that govern records management for closed institution.

[5.100.6.16 NMAC - N, 12/26/2017]

5.100.6.17 SURETY BOND:

A. Each institution registered by the department shall maintain in force a surety bond or alternative surety accepted by the department, in an amount set by the department, and payable to the department. The institution must have and adhere to the following requirements:

(1) the amount of the bond or alternative surety shall be sufficient to indemnify any student damaged as a result of fraud or misrepresentation by a registered institution or as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted. If a registered institution closes, the department may draw upon the bond to pay costs associated with preservation of student records;

(2) the bond required for each institution shall be twenty percent of the institution's projected or actual gross annual tuition and fees revenue in New Mexico, which takes into consideration the size, number of students and total income and assets of an institution. In no case shall the bond be less than \$5,000;

(3) bonds provided by institutions must be accompanied by the name, office address and phone number of the issuing company representative; and

(4) if an institution seeks to cancel a surety bond, written notice must be delivered to the department. The institution may not cancel the surety bond until provided with written release by the department. The institution shall

provide the department with a like surety or acceptable alternative in order to maintain registration status.

B. Alternative forms of surety. An institution may request a waiver from the bond requirement and provide to the department an explanation of the alternative form for which they are seeking approval. The department has the authority to accept or reject any request. Such alternative may be a cash deposit escrow account, irrevocable letter or credit, or similar alternative payable to the department in the amount equal to the bond requirement.

[5.100.6.17 NMAC - N, 12/26/2017]

5.100.6.18 COMPLAINT TO THE DEPARTMENT:

A. A student or other party not satisfied with an institution's resolution of a complaint may submit a complaint to the department in writing on a form provided by the department. A student must file a complaint with the department within three years of their last date of enrollment.

B. Upon receipt of a written complaint, the department or its authorized representative shall verify that the complaint involves one or more standards for registration of the institution and is therefore a legitimate subject of complaint to the department. If the complaint is determined to be legitimate, the department or its authorized representative shall forward the complaint to the institution for a written response and shall facilitate possible resolution of the complaint between the student and the institution. The institution shall have 10 days to forward its response to the department. A copy of the institution's response will be forwarded to the student with a request that the student indicate satisfaction or dissatisfaction with the response.

C. In attempting to resolve a complaint, the department or its authorized representative may, but is not obliged to, convene a hearing or meetings and shall give written notice to the institution and to all persons

involved, regarding the time, date, and place of the hearing or meeting. Such hearings or meetings, if held, shall be informal and for the purpose of determining the facts surrounding the claim and if the parties can come to a resolution or compromise.

D. In the event that the institution refuses to respond or refuse to attend a hearing or meeting:

(1) The department shall make three attempts to contact the institution including at least one attempt through certified mail, to notify the institution of the complaint, request, action, hearing or meeting; and

(2) If the institution does not respond or fails to attend the hearing or meeting after three attempts to contact the institution by the department have been made, the department may invoke its powers to take such action as shall be necessary for the indemnification of the claimant.

[5.100.6.18 NMAC - N, 12/26/2017]

5.100.6.19 APPLICABLE FEES:

A. The department shall assess application and administrative fees for registration, pursuant to Section 21-23-6.3 NMSA 1978, and publish a fee schedule.

B. The department shall assess an administrative fee for providing the services associated with application review and determination of eligibility for registration.

C. The department shall assess an application fee upon determination that the institution has met all satisfactory conditions for registration.

D. The department shall assess an administrative fee for annual reporting.

[5.100.6.19 NMAC - N, 12/26/2017]

5.100.6.20 REPORTING REQUIREMENTS:

A. Registered colleges or universities shall annually submit a standard reporting form.

B. The department shall promulgate a standard form for annual reporting to include: curriculum

and enrolment information, financial information, all publication material requested by the department, and certification of compliance with current New Mexico Administrative Code or Statutes applicable to post-secondary educational institutions. [5.100.6.20 NMAC - N, 12/26/2017]

5.100.6.21 PENALTY:

A. A post-secondary institution that does not have state authorization or have not been granted express exemption by the department, and meets the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to offer such until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of Sections 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

B. A post-secondary institution that does not submit an application for renewal within deadlines set by the department and has a lapse in state authorization for one or more years will be required to complete a provisional period of two years.

C. The department shall provide notification for public viewing on the department's website if a registered private post-secondary institution has been sanctioned or penalized by their accreditor or the U.S. department of education.

D. The department may report any failures to comply with provisions of 5.100.6 NMAC to the U.S. department of education and the institution's accreditor. If the institution does not comply, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny registration. [5.100.6.21 NMAC - N, 12/26/2017]

5.100.6.22 REVOCATION

OF REGISTRATION:

A. The department may revoke an institution's registration to operate or approval to offer a specific degree program(s) at any time, upon finding that

(1) any statement made in the institution's application for registration is untrue;

(2) the institution has failed to maintain the faculty, facilities, equipment, or other necessary support for its program(s) of study on the basis of which the registration or approval was granted; and

(3) the institution has failed to advise the department about significant factors which serve as a basis for registration, such as:

(a) financial difficulties sufficient to threaten program quality;

(b) significant staff changes in a short period of time;

(c) change of ownership and management;

(d) outcomes of audits by other state agencies;

(e) loss or lowering of accreditation status;

(f) any other factor that could alter basis for registration;

(g) the institution has failed to renew registration in a timely manner; or

(h) the institution has failed to comply with one or more standards of registration established by the department or with applicable law.

B. Prior to revoking registration, the department, or its designee, shall give the institution notice of ten work days and shall provide an opportunity for the institution to demonstrate why the registration should not be revoked.

C. At its discretion, the department, or its designee, may institute a probationary period of continued registration for the

institution during which time the institution must demonstrate resolution of deficiencies to the satisfaction of the department. Under no circumstance shall this probationary period exceed one year.

D. If the institution fails to sufficiently demonstrate that registration should not be revoked, as provided by Subsection B of 5.100.6.22 NMAC, the department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978. [5.100.6.22 NMAC - N, 12/26/2017]

5.100.6.23 DENIAL OF REGISTRATION:

An applicant that fails to satisfactorily meet the requirements in Sections 10 through 17 of 5.100.6 NMAC or fails to adequately address the specific criteria set forth in Sections 10 through 17 of 5.100.6 NMAC shall be subject to denial of registration. If the department contemplates denial of registration to any applicant, the department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978. [5.100.6.23 NMAC - N, 12/26/2017]

History of 5.100.6 NMAC - [RESERVED]

HIGHER EDUCATION DEPARTMENT

**TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION
PART 7 LICENSURE UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT**

5.100.7.1 ISSUING AGENCY: New Mexico Higher Education Department. [5.100.7.1 NMAC - N, 12/26/2017]

5.100.7.2 SCOPE:

Provisions of 5.100.7 NMAC apply to all private post-secondary institutions that meet the standards set by the department to obtain state authorization under the licensure status of the post-secondary educational institution act within the state of New Mexico.
[5.100.7.2 NMAC - N, 12/26/2017]

5.100.7.3 STATUTORY AUTHORITY: The Post-Secondary Educational Institution Act, Sections 21-23-1 et seq. NMSA 1978 authorizes the New Mexico higher education department (“Department”) to establish standards and oversight for licensed private post-secondary institutions under the act while operating in New Mexico.
[5.100.7.3 NMAC - N, 12/26/2017]

5.100.7.4 DURATION:
Permanent
[5.100.7.4 NMAC - N, 12/26/2017]

5.100.7.5 EFFECTIVE DATE: December 26, 2017 unless a later date is cited at the end of a section.
[5.100.7.5 NMAC - N, 12/26/2017]

5.100.7.6 OBJECTIVES AND GENERAL PRINCIPLES:

A. Each private post-secondary institution operating with a physical presence in New Mexico shall be subject to provisions of the Post-Secondary Educational Institution Act (“the act”) unless expressly exempted by the department.

B. Every career school or nonregionally accredited college or university operating in New Mexico shall annually license with the department.

C. A career school or nonregionally accredited college or university deemed by the department to meet satisfactory criteria, as determined by the department, will be licensed with the state. A career school or nonregionally accredited college or university that has successfully licensed with the state shall be considered to hold state authorization.

D. An institution shall provide the department with immediate written notification of any changes or events that may trigger the whole or part of the application or the certifications to be untrue. In no case shall a change be made without an acknowledgement from the department. An institution shall provide the department with notification in no less than 90 days prior to the proposed changes going in effect.

E. The department is statutorily charged with evaluating each individual institution in order to determine the institution’s compliance with the standards outlined in this regulation. This evaluation may take the form of a physical visit to the institution or administrative office or may be a desk audit if a physical visit is not feasible. It is the responsibility of the institution to maintain full compliance with the Post-Secondary Educational Institution Act, Sections 21-23-1 through 21-23-15 NMSA 1978 and all applicable rules at all times. The following four types of site visits may be conducted by the department as means to determine the institution’s compliance with the standards outlined in the regulation:

(1) Initial
site visit: In making a determination regarding issuance of a new license, a site review may be conducted during the initial start-up phase to determine the adequacy of items included on the application for licensure. This visit is for information gathering purposes only.

(2) Regular
site visit: The department shall determine an appropriate schedule (typically on a bi-annual basis) on which to re-evaluate each individual licensed institution and the specific programs offered by that institution in order to determine continued compliance with this rule. Department staff will give prior notification of at least two weeks of the date and time of the visit. A short exit interview will be held at the conclusion of the visit. This exit interview may include a discussion of findings and a final written site visit

report will be sent to the school for review and comment. The outcome of the regular site visit may be continued licensure.

(3) Required
special site visit: The department may request a required special site visit as a requirement for initial licensure, probation, or for licensure renewal. At the conclusion of a required special site visit, the exit interview may include a discussion of any findings.

(4) Triggered
site visit: any occurrence listed below trigger a site visit to the institution in order to evaluate compliance with standard within this regulation. The exit interview may include a discussion of any findings. The outcome of a triggered site visit may be a recommendation for a provisional license or revocation of a license:

(a)
an institution involuntarily loses its accreditation status;

(b)
the department is notified of an institution’s non-compliance with federal financial aid program regulations or the outcome of an audit from another state agency;

(c)
the institution fails to renew its surety bond, or appropriate alternative in a timely manner;

(d)
an institution is experiencing financial difficulties sufficient to threaten program quality;

(e)
an institution has significant staff turnover;

(f)
an institution fails to immediately notify the department of a change in ownership/management; or

(g)
the department becomes aware of any other factor that could alter basis for licensure.

F. A career school or nonregionally accredited college or university that does not have state authorization or has not been granted express exemption by the department, and meets the definition

of physical presence in New Mexico, shall be notified by certified mail that it shall cease immediately offering instruction or enrolling new students until it obtains state authorization or exemption from the department; the department shall initiate appropriate legal action if an institution fails to comply; whoever violates any provision of Section 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

G. No person other than an employee of an institution licensed pursuant to this rule shall, for a salary or fee, solicit attendance at that institution.
[5.100.7.6 NMAC - N, 12/26/2017]

5.100.7.7 DEFINITIONS:

A. "Accreditation" means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits institutions, as a means of assuring quality instruction.

B. "Career school" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree, or comparable confirmation of completion of the curriculum.

C. "College" or "university" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral degree or comparable confirmation of completion of the curriculum.

D. "Continuing education" means only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be considered a program of training for employment.

Typically, a student only enrolls for one course rather than a sequence of courses. The continuing education units must meet the criteria set out by the professional organization or authority requiring the continuing education.

E. "Cooling off period" means at least three work days from the date of agreement or payment or from the date that the student first visits the institution, whichever is later.

F. "Credit hour" means an institution's count of the amount of work represented in the intended learning outcomes and verified by evidence of student achievement, proof of commonly-accepted industry practices or consistent with the federal definition of the credit hour.

G. "Degree" means any title, designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents, which are generally taken to signify satisfactory completion of the requirements of a program of study designed to be comparable to those provided by institutions accredited by agencies recognized by the United States department of education.

H. "Department" means the New Mexico higher education department or its designated employee.

I. "Enrollment Agreement" means any agreement, instrument or note executed before a student begins course work which creates a binding obligation between the student and the institution.

J. "Exception", "Exemption", or "Exempt" means a written acknowledgment by the department that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the department to provide educational services in New Mexico, and is not subject to the post-secondary educational institution act.

K. "Institution" means a career school or

nonregionally accredited college or university.

L. "License", "Licensed", or "Licensure" means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department for offering a formal educational curriculum within New Mexico.

M. "Manager" or "Managers" means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of a New Mexico post-secondary educational institution.

N. "Management plan of action" means a plan that has been developed, reviewed and implemented by managers of the institution which details specific steps the institution will commit to taking in order to remediate an identified weakness, shortcoming or insufficiency.

O. "Owner" or "Ownership" means all individuals or entities that have any ownership interest in the institution.

P. "Physical presence" means the ongoing occupation of a physical location in the state for, or the ongoing maintenance of an administrative office to support, the provision of higher education instruction.

Q. "Post-secondary educational institution" means an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education.

R. "Regional accreditation" means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions operating in a designated geographic region.

S. "Registration" or "Registered" means a written

acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate a private post-secondary educational institution.

T. "Review Committee" means a committee established by the department pursuant to 5.100.7.11 NMAC.

U. "State Authorization" means a post-secondary educational institution has been deemed by the department to meet satisfactory criteria, as determined by the department, for registration or licensure under the post-secondary educational institution act. All degree-granting institutions seeking state authorization shall be accredited or be seeking appropriate external accreditation. State authorization is not an endorsement of the institution by the department.

V. "Work day" means a week day, Monday through Friday that is not recognized as a federal holiday.
[5.100.7.7 NMAC - N, 12/26/2017]

5.100.7.8 GENERAL STANDARDS FOR LICENSURE:

A. An institution seeking state authorization through licensure must submit a complete application and all supporting documentation as described in 5.100.7.10 NMAC. The department shall create application forms for institutions to apply for licensure.

B. A branch campus that operates under the accreditation of a primary New Mexico campus is not considered a separate institution for purposes of state authorization. To be considered a branch campus the institution shall meet the following criteria:

- (1) it has the same ownership, financial management or control as that of the primary New Mexico campus;
- (2) it operates under the accreditation of the primary New Mexico campus;
- (3) it is not

considered a separate institution for the purpose of accreditation;

(4) the primary New Mexico campus has previously operated as a state authorized and accredited institution in New Mexico; and

(5) it is a secondary physical presence by the same institution in New Mexico.

C. An institution licensed by the department shall adopt the student complaint procedure, as defined in Subsection Q of 5.100.7.10 NMAC, for the resolution of student complaints.

D. As a condition of licensure, all institutions shall agree to comply with surety bond requirements as defined in Subsection O of 5.100.7.10 NMAC.

E. As a condition of licensure, all institutions shall agree to comply with Section 21-23-15 NMSA 1978 and 5.100.8 NMAC and applicable rules and regulations in the event of institutional closure.

F. An institution that has been granted state authorization through licensure must submit an annual report, as requested by the department. The department shall promulgate a standard reporting form for licensure to include: enrollment, program completion by students, and employment and other educational placements of students.
[5.100.7.8 NMAC - N, 12/26/2017]

5.100.7.9 TYPES OF LICENSURE:

The department will determine the type of license an institution is eligible to receive based on standards set by the department. An institution holding a provisional license or license holds state authorization to operate in New Mexico:

A. Provisional License: An institution that has never applied for licensure is required to submit an annual application for a provisional license to the department. An institution must reapply for a provisional license for a minimum of two consecutive years. The department will review the annual application to ensure the institution

satisfactorily meets the application requirements in 5.100.7.10 NMAC. An institution may be required to hold a provisional license status for a period beyond two consecutive years if the institution fails to meet the requirements for full licensure. Provisional license does not imply automatic eligibility for licensure.

B. License: After successful completion of the provisional license period, an institution is required to submit an application for a license to the department. The department will review the application to ensure the institution satisfactorily meets the application requirements in 5.100.7.10 NMAC. A renewal application must be submitted annually to the department on forms created by the department within deadlines set by the department.
[5.100.7.9 NMAC - N, 12/26/2017]

5.100.7.10 APPLICATION REQUIREMENTS: The institution must provide complete and accurate information to the department. The department may request additional supporting documentation. Upon request of the department, the applicant must supply any missing or requested information to the department. An applicant must respond to the department within deadlines set by the department. The department application will require institutions to supply information described in Subsections A through W of 5.100.7.10 NMAC:

A. Evaluation plan: The plan shall include measures of institutional success. The institution shall provide a plan for evaluation of the following:

(1) the satisfaction of its graduates and shall make available to the department all reports of these satisfaction assessments prepared during the past five years;

(2) a written plan for keeping courses current;

(3) a written plan for faculty improvement in terms of content knowledge and relevant instructional techniques and the use

of new and applicable technologies to support instruction; and

(4) if the institution is subject to the Student-Right-to-Know Act, it shall provide the department with copies of all reports submitted to the federal agency.

B. Tuition policy: Tuition and fee charges shall be the same for all students admitted to a given program for a given term of instruction. An institution may not discount its tuition and fees charged to individual students as an incentive for quick enrollment or early payment. An institution may negotiate special rates with business, industrial, governmental, or similar groups for group training programs and may establish special rates for students who transfer between programs. An institution may charge a reasonable carrying fee associated with deferred payments or payment plans. All tuition and fees must be comprehensively listed in the institution's catalog as required in Subsection G of 5.100.7.10 NMAC.

C. Tuition refund policy: An institution licensed by the department shall adhere to the following tuition refund policy:

(1) An institution accredited by agencies recognized by the United States department of education shall adhere to the tuition refund schedule established by the institution's accrediting body or the United States department of education. If an institution is required to adopt such refund schedule, it is required to provide proof of adoption and a copy of the refund schedule policy from either the accreditor or the United States department of education.

(2) If an institution is not required to adopt a refund schedule policy by an accreditor or the United States department of education, the following refund schedule policy set out by the department shall be adopted:

**Continued On the Following
Page**

Date of student withdrawal as a % of the enrollment period for which the student was obligated	Portion of tuition and fees obligated and paid that are eligible to be retained by the institution
On 1st class day	0%
After 1st day; within 10%	10%
After 10%; within 25%	50%
After 25%; within 50%	75%
50% or thereafter	100%

(3) Any student signing an enrollment agreement or making an initial deposit or payment toward tuition and fees of the institution shall be entitled to a cooling off period as defined in 5.100.7.7 NMAC. During the cooling off period the agreement can be withdrawn and all payments shall be refunded. Evidence of personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means shall be deemed as meeting the terms of the cooling off period.

(4) Following the cooling off period, but prior to the beginning of instruction, a student may withdraw from enrollment, effective upon personal appearance at the institution or deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or five percent in tuition or fees, whichever is less, as the institution's registration charges.

(5) In the case of students enrolling for non-traditional instruction, a student may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$100 or five percent in tuition or fees, whichever is less, as the institution's registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(6) Upon request by a student or by the department, the institution shall provide an accounting for such amounts retained under this standard within five work days.

D. Record maintenance and retention policy: Each private career school or non-regionally accredited college or university licensed by the department shall provide a records maintenance and retention plan. The plan shall consist of a records maintenance and disposal schedule that follows the minimum retention schedule set out and published by the department. The plan must include a description of how records will be maintained in the event of closure, which includes, but is not limited to, designation of a custodian of records, digitization, and a process for obtaining transcripts from the custodian of record.

E. Materials and information: The department shall regulate the use of deceptive and misleading materials and information. An institution shall not disseminate material or information that is deceptive, misleading or untrue. The institution shall certify compliance with all laws and regulations related to materials and information. The department may request copies of publications, advertisements, agreements, marketing collateral, or contracts in order to regulate the use of deceptive and misleading information. All materials and information shall comply with the following requirements:

(1) Representation of accreditation and state authorization status:

(a) An institution may not make claims to or advertise an accreditation status if the accrediting agency is not recognized by the United States department of education.

(b) An institution not accredited by a United States department of education recognized accreditor shall clearly state that the institution is not accredited.

(c) An institution licensed by the department may not use terms such as "accredited," "endorsed," or "recommended" in reference to its approval by the department.

(2) Enrollment agreement: Before a student begins coursework at an institution, the institution shall execute an enrollment agreement with the student. An enrollment agreement will be binding only when it has been fully completed, signed, and dated by the student and authorized institution representative prior to the beginning of instruction. The institution shall retain the original enrollment agreement and a copy shall be delivered to the student at the time of execution or by mail when the enrollment is solicited by mail. A copy of the blank agreement or contract shall be submitted to the department. Each enrollment contract or agreement shall include at least the following:

(a) information that will clearly and completely define the terms of the agreement between the student and the school;

(b) names and addresses of the school and the student;

(c) the program or course title in which the student is enrolling and the applicable catalog date or version reference;

(d) the program start date and estimated end date;

(e)
the number of hours or units of instruction;

(f)
the school's cancellation and refund policies;

(g)
an itemization of all charges, fees and required purchases being incurred by the student or their sponsor in order to complete the training, e.g., tuition, books, supplies and all other items of expense required by the school;

(h)
the method of payment and payment schedule being established; and

(i)
when applicable, a statement detailing the institution's academic placement policy.

(3)
Advertising, marketing, promotional materials and recruitment: All advertisements and promotional literature must be truthful regarding the content of an institution's educational program(s), the duration of the program(s), student attributes and skills needed for successful completion of the program(s), and costs of the program(s). An institution shall use no advertisements or promotional materials that are false, deceptive, inaccurate, or misleading. Materials must comply with all of the following requirements:

(a)
Advertisements and promotional literature shall not contain promises of job placement or employment, either explicitly or implicitly, but may refer to an institution's services to assist students in obtaining employment.

(b)
Advertisements shall clearly indicate by their content and location in media that the institution is offering education or training and may not either explicitly or implicitly suggest that the institution is offering employment.

(c)
An institution advertising salary ranges or averages for its graduates must have on file and available to inspection by students, the department, or their representatives

current and accurate data that includes New Mexico employers and that validates such claims.

(d)
An institution shall not advertise the transferability of its courses or programs to another institution unless it has signed transfer or articulation agreements with that institution.

(e)
An institution shall not include in its advertising or promotional materials any photograph or other illustration of facilities unless those facilities serve predominantly as sites of instruction or related activities provided by the institution, either in New Mexico or in other states. Photographs or other illustrations must accurately depict the size and condition of any facilities or equipment illustrated.

(f)
No person shall for a fee solicit enrollment at an institution who is not employed by and under supervision of the institution. The institution shall be responsible for the representations of its employees.

(g)
Prospective students shall not be solicited by any representative of an institution on the sites of any government agency such as motor vehicle division offices, unemployment offices, or public assistance offices. However, leaflets or other promotional material may be made available at such sites.

(h)
Prospective students shall not be solicited by any representative of an institution on the site of any public school, except at the invitation of school personnel. No institution shall offer or provide financial inducement to any public school in return for permission to solicit students.

(i)
No institution shall solicit the enrollment of any student who is currently attending another institution in New Mexico by using any inducement of greater financial assistance in meeting the costs of education.

(j)
On all materials, an institution shall use the full name in which it is

licensed and list any other names in which the institution holds other government approvals. Permutations of its name, e.g., initials, or shortened name or nicknames, cannot be employed without prior written permission of the department.

(k)
On all materials, the name of an institution shall not be misleading.

F. Name of the institution: The department reserves the right to deny licensure to an institution proposing to operate under a name that the department determines to be misleading or so similar to that of another institution operating within the state that it may result in substantial confusion. Institution names must comply with each of the following regulations:

(1) institutions including the term "college" in their name must offer at least an associate degree and enroll a substantial portion of their students in such degree programs; and

(2) institutions including the term "university" in their name must offer graduate degree programs and must enroll a preponderance of their students in baccalaureate and graduate degree programs.

G. Information provided to students: Information shall be provided to students prior to their signing an enrollment agreement and the institution shall make reasonable effort to assure and verify that each student understands their academic and financial obligations prior to enrolling in the institution. An institution shall publish and make available to all students a catalog or other materials that clearly describe:

(1) accurate representation of accreditation and state authorization status as described in Paragraph 1 of Subsection E of 5.100.7.10 NMAC;

(2) admission policies and procedures that provide criteria and methods used to assess and admit or deny admission;

(3) admission methods and criteria used to assess student ability to complete program

requirement;

(4) programs offered, the program completion requirements of each program offered, and descriptions of all courses offered;

(5) requirements for those occupations that require professional or trade licensure and for which the institution is offering preparation;

(6) tuition and fees and refund policies, consistent with the requirements in 5.100.7 NMAC;

(7) types of financial aid available to students and the procedure for applying for such aid;

(8) the institution's policy regarding program or course cancellations;

(9) rules and regulations pertaining to academic progress;

(10) rules and regulations pertaining to student conduct;

(11) the procedure to be followed in the instance that a student decides to withdraw from the institution prior to completing a program;

(12) the institution's policy regarding student complaints and the resources available to students for resolving differences with the institution. The institution must adopt the student complaint process established by the department and published by the department; and

(13) the institution's policy regarding release of transcripts.

H. Financial aid:
Prior to a student signing a financial aid agreement, each student must be informed in writing regarding his or her obligations associated with receipt of financial aid and the institution must take reasonable steps to assure that the student understands that obligation. The institution shall provide financial aid resources to students.

I. Proof of teach-out agreement: Each institution shall submit a teach-out plan or agreement.

(1) An institution must submit proof of a teach-out agreement with at least one other private or public institution operating in the state or provide a teach-out plan that allows students to complete their program of study at the institution within a timeframe accepted by the department. Proof of such teach-out agreement(s) with another institution must be submitted to the department. The teach-out plan or agreement must address the ability of students to complete programs within a reasonable proximity to the physical location of the institution and shall be arranged at no additional cost to the students beyond that originally agreed to by the students.

(2) The department may determine that a teach-out plan or agreement is not feasible after consideration of evidence submitted to the department. The department may find that teach-out arrangements are not feasible for students in one or more programs offered by the institution, in which case the institution shall plan to refund all tuition and fees paid by the students in question for the current period of enrollment and shall plan to provide appropriate transcripts and evaluations to assist students in transferring their work to another institution.

(3) A teach-out plan or agreement shall be evaluated and updated by the institution annually upon submitting a license renewal application. If an institution closes or has a substantial change in location, the institution is subject to 5.100.8 NMAC. If the teach-out plan or agreement presented to the department during application for licensure becomes impossible or is no longer feasible due to institutional changes, the plan must be updated and submitted to the department within 90 days of the change.

J. Adoption of degree standards: Institutions accredited by a recognized United States department of education accreditor shall adopt degree standards governed by their accrediting body. Any non-accredited

degree granting institution shall adopt the following degree standards for each credential as listed below:

(1) Associate degree program:

(a) associate degree programs must include both technical or vocational and general education instruction. Associate degree programs shall consist of 60 credit hours of study or the equivalent;

(b) associate of applied science degrees, associate of occupational studies degrees or comparable appellations must be based upon the institution's certification that the recipient is prepared for immediate employment in a specified career field and must be comprised primarily of technical or vocational study; and

(c) associate of arts or associate of science degrees must be based upon the institution's certification that the recipient is prepared both for immediate employment in a specified career field and transfer to another institution for more advanced study; associate of arts and associate of science degree programs will normally consist of approximately equal numbers of technical or vocational and general education courses.

(2) Baccalaureate degree programs:

(a) baccalaureate degree programs must be comparable in quality to those offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs; award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited; and

(b) at a minimum, issuance of a baccalaureate degree shall require 120 credit hour or the equivalent; the degree program must include 30

credit hours of general education core requirements.

(3) Master's degree programs:

(a) master's degree programs must be comparable in quality to those offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs; award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited; and

(b) at a minimum, issuance of a master's degree shall require 30 credit hours of academic credit or the equivalent beyond a baccalaureate degree.

(4) Doctoral degree programs:

(a) at a minimum, issuance of a doctoral degree shall require 90 credit hours of academic credit or the equivalent beyond a baccalaureate degree or 60 credit hours or the equivalent beyond the master's degree and shall require successful completion and defense of a major independent project, involving original research or application of knowledge. The research component shall provide no more than 30 percent of the degree credit requirement;

(b) research or project committees composed of no fewer than three qualified readers shall review the project at various stages of development; documentation shall be provided to support this requirement. The final version of the research or project shall be accompanied by the original signature of each committee member; and

(c) the institution shall maintain a copy of the final report of the research or project and make it available upon request.

(5) Honorary degree or certificate: Licensed, private

degree-granting institutions may issue honorary degrees or certificates. An honorary degree or certificate shall identify in its title or name that it is an honorary degree or certificate and shall bear such on its face.

(6) Credit for life experience: If an institution offers academic credit for life experience or employment related experience, the institution must have and adhere to the following requirements:

(a) applicable life experience shall be limited to work experience, military experience or a combination of the two;

(b) no more than 30 percent of the credit in a student's degree program may be awarded for life or work experience;

(c) the institution shall utilize the methodologies outlined by the council for adult and experimental learning (CAEL) for evaluating life experience or shall have in place a comparable plan which describes procedures and requirements for the assessment of experiential learning;

(d) the institution shall maintain documentation for at least three years of all materials used to assess and award credit for experiential learning;

(e) the institution shall clearly indicate on the student degree plan the course(s) for which the experiential learning is being substituted;

(f) the institution shall evaluate extra-institutional learning only in subject areas in which it has or can arrange for faculty expertise or where it can rely on nationally validated examinations or other procedures for establishing credit equivalencies; and

(g) no life experience credit shall be awarded toward the doctorate degree beyond master's level study.

K. Accreditation:

(1) Accredited institutions shall be governed by their accrediting agencies in establishing degree and program standards. Accredited institutions shall submit:

(a) formal documentation from the accreditor listing all approved campuses, degrees and programs; and
(b) written notification of any changes related to accreditation.

(2) Institutions proposing to change or add programs must formally notify the department. If the change or addition of the program requires the accreditor's approval, the institution must provide written proof of the approval. If the change or addition does not require approval by the accreditor, the institution shall provide proof that the accreditor was notified of the change or addition. The department shall review proposed changes. The department may review proposed changes on a set schedule defined by the department and charge an administrative fee for the processing of such requests. Upon final review, the department will provide a formal acknowledgment of the approved new degrees and programs. The institution may begin to advertise the program based on the department's letter of acknowledgement. The complete list of programs offered by an institution will be listed on the license issued to the institution.

L. Accreditation for new degree-granting institutions or degree-granting institution seeking accreditation: New degree-granting institutions making application with the department will be required to obtain accreditation with an accrediting agency recognized by the United States department of education within two years of submitting the initial application. Non-accredited degree-granting institutions must submit a written accreditation plan, which shall include:

(1) the United States department of education recognized accrediting agency with which the applicant intends to apply for institutional accreditation;

(2) the planned timeline for application with and approval by the United States department of education recognized accrediting agency;

(3) any contracts already made with the United States department of education recognized accrediting agency, including supporting documents;

(4) certification that the institution will complete the accreditation process within the planned timeline provided to the department;

(5) submit all documents as required for non-accredited non-degree granting institutions; and

(6) any additional information which the department may request.

M. Non-accredited non-degree granting institutions: Applications for non-accredited non-degree granting institutions shall be evaluated by a department review committee described in 5.100.7.11 NMAC. A new non-accredited non-degree granting institution applying for licensure will be approved to offer no more than six degree programs during the first two years of operation. Non-accredited non-degree granting institutions shall submit the following for review:

(1) Institution curriculum requirements: For each program and course of instruction offered by an institution, the institution shall submit:

(a) program outline, syllabus and curriculum materials that accurately describe the objectives, content, and methods of the program or course;

(b) objectives, content, and methods of each program and course of instruction which demonstrate curriculum quality;

(c) details of equipment and facilities utilized by a program which shall be sufficient for the number of students using them, and shall be applicable to the objectives set for the program; and

(d) a report that demonstrates that each program is designed to provide training for an occupation that is recognized in New Mexico and that the training provided is sufficient in

length and quality to prepare students for immediate employment in the occupation(s) or prepare students to complete licensing assessments.

(2) Faculty qualifications: The institution must demonstrate the following:

(a) each member of the teaching faculty has an educational background, including licensure or occupational or credential, and experience applicable to teaching assignments;

(b) faculty degrees, licensure, certification, and credentials are in the applicable field of instruction unless the institution demonstrates to the satisfaction of the department and review committee, on an individual basis, that alternative qualifications are sufficient;

(c) for degree-granting institutions faculty must hold degrees in the field of instruction from an accredited institution at a minimum of one degree level higher than the level of instruction, and in no case less than a baccalaureate unless the institution demonstrates to the satisfaction of the department that alternative qualifications are sufficient;

(d) for degree-granting institutions no more than twenty percent of the faculty of an institution may be employed under alternative qualifications;

(e) for each proposed credential offering, the institution employs at least one faculty member with the applicable training who shall have the responsibility for providing oversight of the instructional program; and

(f) faculty are sufficient in number to provide instruction and attention to the work of students of the institution.

(3) Student outcomes: New institutions submitting first time application shall provide a plan for tracking program completion rates, withdrawal rates and satisfaction of students, and employers. Institutions renewing application with the department

must submit required reporting for program completion rates, withdrawal rates, and satisfaction of students and employers.

(4) Non-accredited non-degree institutions proposing to change existing programs or add new degree programs to their curriculum shall submit application on a form acceptable to the department, for review committee approval prior to marketing the program and enrolling students in the proposed program.

N. Maintenance of records certification: Each institution must submit a certification of compliance with all applicable laws, rules and regulations that govern records management for closed institution.

O. Surety bond: Each institution licensed by the department shall maintain in force a surety bond or alternative surety accepted by the department, in an amount set by the department, and payable to the department. The institution must have and adhere to the following requirements:

(1) the amount of the bond or alternative surety shall be sufficient to indemnify any student damaged as a result of fraud or misrepresentation by a licensed institution or as a result of the institution ceasing operation prior to its students having completed the programs for which they have contracted. If a licensed institution closes, the department may draw upon the bond to pay costs associated with preservation of student records. The bond must also meet the following criteria:

(a) the bond required for each institution shall be twenty percent of the institution's projected or actual gross annual tuition and fee revenue in New Mexico, which takes into consideration the size, number of students and total income and assets of an institution. In no case shall the bond be less than \$5,000; and

(b) bonds provided by institutions must be accompanied by the name, office

address and phone number of the issuing company representative;

(2) If an institution seeks to cancel a surety bond, written notice must be delivered to the department. The institution may not cancel the surety bond until provided with written release by the department. The institution shall provide the department with a like surety or acceptable alternative in order to maintain licensure.

(3) Alternative forms of surety: An institution may request a waiver from the bond requirement and provide to the department an explanation of the alternative form for which they are seeking approval. The department has the authority to accept or reject any request. Such alternative may be a cash deposit escrow account, irrevocable letter of credit, or similar alternative payable to the department in the amount equal to the bond requirement.

P. Proof of financial stability: Standards for reviewing and analyzing financial stability are a critical component of the institution's overall assessment. The institution's financial stability will be reviewed by the department to assess the institution's ability to meet financial obligations including, but not limited to, obligations to enrolled students. In determining financial stability of the institution the department shall review the following requirements:

(1) Insurance: Institutions licensed by the department shall maintain valid standard, commercial liability insurance, worker's compensation insurance, and property insurance sufficient to protect students, employees, and other citizens from hazards in the institution's facilities. Where applicable, institutions shall have liability insurance covering students involved in internships at sites and locations other than the institution.

(2) Financial statement analysis: The department shall consider an institution's financial history when reviewing an application for licensure. In the case where an

institution submits an audit report and management letter provided by a certified public accountant, the department shall normally accept the report as accurate and rely on the auditor's professional responsibility to evaluate and to make known their professional opinion.

(3) New institutions not previously operating in any capacity in any state or jurisdiction shall demonstrate liquid assets sufficient to operate the institution for a period of one year exclusive of anticipated revenue from tuition and fees. These assets shall be sufficient to pay all projected salary and benefits of employees and the rent, utilities, insurance and other costs of operating the institution's facilities for a period of one year. If an institution has audited financials available for the year prior to that of the application, such audited financials shall be submitted for review. Any new institution shall submit the following:

(a) bank statements, investor agreements, any other financial donations or gifts used to develop the institution;

(b) the institution's projected income statement certified as accurate by the institution. The income statement must include details of projected salaries and benefits of employees, rent, utilities, insurance, any financial obligations made by the institution, and any other operating costs; and

(c) any additional information which the department may request.

(4) Existing institutions: If an institution has previously operated in any capacity in any jurisdiction, it must submit documents based on the following thresholds:

(a) An institution with seven hundred fifty thousand dollars (\$750,000) or more in gross annual tuition revenue and all federal Title IV financial aid institutions shall submit, on a schedule set by the department, an audit report and management letter prepared by a certified public

accountant in accordance with the New Mexico Public Accountancy Act, Section 61-28B-1 et seq. NMSA 1978 as amended. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(b) An institution with gross annual tuition revenue of two hundred fifty thousand dollars (\$250,000) or more but less than seven hundred forty nine thousand nine hundred ninety-nine dollars (\$749,999) shall submit, on a schedule set by the department, either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, Section 61-28B-1 et seq. NMSA 1978 as amended or a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(c) An institution with gross annual

tuition revenue of less than two hundred forty nine thousand nine hundred ninety-nine dollars (\$249,999) shall submit on a schedule set by the department either an audit report and management letter prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, 61-28B-1 et seq. NMSA 1978 as amended, a review of financial statements prepared by a certified public accountant in accordance with the New Mexico Public Accountancy Act, or an income statement and balance sheet certified as accurate by the institution. In addition to the audit report and management letter, the review of financial statements, or the income statement and balance sheet as described in this paragraph, the institution shall submit copies of business tax returns and bank statements for the most current year. If the institution has been required to obtain a financial responsibility composite score as computed using the latest version of the United States department of education index score formula it shall provide the score to the department. The financial responsibility composite score must be 1.5 or above as computed using the latest version of the United States department of education index score formula. The composite score must be calculated by the United States department of education, a recognized accreditor, or a certified public accountant contracted at the expense of the institution.

(5) Failure to satisfactorily meet financial requirements: If considerable concern is established as to the institution's ability to maintain its operation, department staff may contact the school to request additional information regarding the institution's financial picture. If concerns are not addressed through the additional information provided to the department, a department financial analyst may conduct a second financial review. If after the second review, substantial doubt remains about the institution's ability to continue, the department may contract

for further independent review of the records. All costs associated with contracting a third party independent reviewer will be charged to the institution. Following review and based on the determination of the department

(a) the institution may be authorized for operation; or

(b) the institution may be placed on probationary status and required to submit a management plan of action; and

(c) the department may report the failure to satisfactorily meet financial requirements to the United States department of education and the institution's accreditor. If the issue is not resolved, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny licensure.

Q. Procedure for resolution of student complaints: An institution shall provide proof of an adopted complaint procedure that complies with the minimum requirements set by the department. The institution shall have and make available to all students, the adopted complaint procedure that describes, in detail, how students or other parties may register a complaint or grievance, how the institution will investigate the complaint, and how the institution will attempt to resolve the complaint. Such policies shall at a minimum include the following components:

(1) requirement that students or other parties with complaints or grievances against an institution first seek to resolve their complaint or grievance directly with the institution;

(2) a time frame within which the institution will investigate the complaint and respond to the complainant;

(3) assurance of the involvement of a person who will serve as an impartial representative of the institution but not be directly involved in the area of the complaint;

(4) assurance that no adverse action will be taken against the complainant for registering the complaint; and

(5) identification of the higher education department as the agency to be contacted in cases where a complaint cannot be resolved.

R. Student Services: The institution shall certify that it will provide the following:

(1) Financial aid counseling: Institutions offering financial aid to students shall provide adequate personnel qualified to administer the financial aid programs according to the regulations of all applicable agencies;

(2) Academic counseling and progress: Institutions shall provide adequate counseling for students regarding their academic progress. An institution shall have a clear policy and procedure for assessing the progress of students toward their program objectives and to inform student of progress. Students shall receive warning when their academic status is at risk and shall be given clear information about their academic status and whatever actions are needed to maintain satisfactory progress. The institution shall have a policy for terminating enrollment in manner that minimizes the financial cost to the student, when the student fails to meet the standards for academic progress. Records of the institution, including individual student records, shall reflect consistent application of such policy and procedure. The institution's catalog and other publications shall clearly inform students about the institution's standards for academic progress and any academic counseling and support services available to students.

(3) Employment counseling and placement: Institutions shall provide services that assist students in locating and qualifying for employment opportunities. Employment counseling and placement services must be provided at no additional charge to students. No institution

shall be expected to provide employment counseling and placement services beyond providing academic and financial aid transcripts for more than one year following a student's receipt of a diploma, certificate, or degree, except by such policy of the institution. An institution offering placement services for its students and graduates shall maintain records listing, for each student who has been assisted, each placement conference held with the student and each placement contact made in behalf of the student.

S. Records standards and access:

(1) Transcript standards: An institution shall prepare for students a transcript of record. A sample transcript shall be submitted and include at minimum the following:

(a) designation of the program(s) of study for which the student has been enrolled;

(b) each course completed by the student and the grade or other indication of performance assigned; and

(c) a dated statement of completion of the program and award of any certificate, diploma, or degree earned by the student.

(2) The method by which students and graduates may obtain transcripts and financial aid documents and applicable fees shall be described clearly in the institution's catalog or in other documents provided to students. All documents with reference to the method for obtaining transcripts and financial aid documents and fees must be submitted to the department for review.

(3) The institution shall certify that an official student file will be kept for each student and include at a minimum the following:

(a) admission application and enrollment agreement;

(b) official transcripts indicating

qualification for admission;

(c) when applicable actual test and scores from an ability-to-benefit assessment;

(d) grades received (up-dated transcript);

(e) all obligations incurred and all funds paid by the student to the institution;

(f) student attendance information;

(g) academic counseling and employment counseling records; and

(h) financial aid records.

T. Academic support resources: The institution shall provide or otherwise assist students in gaining access to learning resources needed for completion of their programs, including library materials, laboratories, facilities, equipment and materials, and relevant experiences needed to meet program requirements. No institution shall absolve itself from this requirement solely by referring students to the resources of other private or public institutions or facilities, except by written agreement with such institutions or facilities. The institution will certify that:

(1) students have access to learning resources;

(2) that resources are adequate to support the programs;

(3) students are adequately informed about learning resources available to them and how to access such resources and services;

(4) training is made available for accessing learning resources;

(5) resources are delivered within a reasonable period of time;

(6) the facilities have satisfactorily met all applicable health and fire inspections; and

(7) compliance with regulations pursuant to the American with Disabilities Act (ADA).

U. Admission policy: Each institution shall adopt an

admission policy that includes the following standards:

(1) No student shall begin a certificate or diploma program who has not received a high school diploma or the equivalent or who has not demonstrated ability to benefit from the program through a process of assessment that meets standards of the United States department of education or the department or who is participating in a concurrent enrollment program with a secondary school.

(2) Institutions enrolling students who are of compulsory school age or who are concurrently attending an elementary or secondary school shall have in their possession a signature or other written acknowledgement by elementary or secondary officials and by the student's parent or guardian.

(3) Institutions using an ability-to-benefit admission option shall provide the department with a clear and detailed statement describing their ability-to-benefit assessment programs (including cut off scores and validity data for any test used) and shall be able to demonstrate that ability-to-benefit assessment is performed in a consistent and valid manner.

(4) No student shall be admitted to an associate degree or baccalaureate degree program who has not received a high school diploma or the equivalent.

(5) No student shall be admitted to a graduate degree program who has not received a baccalaureate degree from an institution accredited by an agency recognized by the United States department of education, or received a baccalaureate degree from a non-accredited institution licensed by the department or by the cognizant state agency in another state, or qualified in an alternative manner approved by the department.

V. Cooperation: The institution shall provide copies of valid certificates from other federal, state and municipal agencies, and any other higher education authorities as proof of compliance with applicable

bodies. At minimum the application submission must include:

- (1) a copy of the notification of good standing and ability to do business in New Mexico issued by the New Mexico secretary of state's office;
- (2) a copy of the New Mexico taxation and revenue department registration;
- (3) as applicable, a copy of the national council of state authorization reciprocity agreements (NC-SARA) welcome letter;
- (4) as applicable, a list and copy of authorizations granted by other jurisdictions;
- (5) as applicable, a list and copy of authorizations granted by other New Mexico boards, commission or agencies.

W. Ownership and administration: The institution shall provide the department with information about ownership, owners, and managers. An institution shall notify the department in writing within 10 working days whenever the institution changes ownership, whenever there is a change in control of the institution, or whenever changes are made to managers. No institution will be licensed in the state of New Mexico without completion certifications required by the department. Any changes or events that may trigger any certification to be untrue, must be immediately reported to the department, and shall be reported in no less than 10 working days.

(1) The institution shall provide a list of principal owners and provide a list of managers.

(2) The institution shall certify that no owner of the institution has:

- (a) been convicted of or has pled no contest or guilty to a crime involving abuse of public funds;
- (b) been convicted of or has pled no contest or guilty to a crime of

dishonesty or felony within the last five years;

(c) controlled or managed an institution that has ceased operation during the past five years without providing for the completion of programs by its students; and

(d) filed bankruptcy associated with the operation of an educational institution during the past five years.

(3) The institution shall certify that no manager of the institution has:

(a) been convicted of or has pled no contest or guilty to a crime involving abuse of public funds;

(b) been convicted of or has pled no contest or guilty to a crime of dishonesty or felony within the last five years;

(c) controlled or managed an institution that has ceased operation during the past five years without providing for the completion of programs by its students; and

(d) filed bankruptcy associated with the operation of an educational institution during the past five years.

(4) The institution shall certify it:

- (a) has not filed bankruptcy during the past five years;
- (b) is not under the ownership of any person who has filed bankruptcy associated with the operation of an educational institution during the past five years;
- (c) is not managed by any person who has filed bankruptcy associated with the operation of an educational institution during the past five years;
- (d) has not been found to be operating illegally in another state for a least five years.

[5.100.7.10 NMAC - N, 12/26/2017]

5.100.7.11 REVIEW COMMITTEE:

A. The purpose of

the review committee is to assist the department in assuring that non-accredited institutions maintain high quality programs and operations. The committee will review applications of licensure for non-accredited institutions seeking state authorization. The committee shall also conduct programmatic review and approval for non-accredited institutions. The committee will make a final recommendation to the department for state authorization or program approval. The review committee will evaluate the following criteria:

- (1) adequacy of the administration of the institution;
- (2) adequacy of the curriculum and program requirements of the institution and of its programs;
- (3) adequacy of qualifications and performance of the teaching faculty of the institution; and
- (4) the institution's effectiveness as reflected in student outcomes such as program completion rates, withdrawal rates, and satisfaction of students and employers.

B. The review committee membership shall:

- (1) be composed of an odd number of members appointed by the department and serving at the pleasure of the department;
- (2) be representatives of education providers and consumers, including owners and operators of career schools and nonregionally accredited colleges and universities. Private post-secondary institutions shall be consulted in selection of their representatives; however, appointment and service shall be at the discretion of the department;
- (3) have no less than two members representing the public interest. The public interest representatives shall be representative of the general public with particular interest in post-secondary education. Appointment and service shall be at

the discretion of the department;

(4) have committee members who serve two year staggered terms or until their successors are appointed. A member may be reappointed for successive terms;

(5) not have more than one representative from any one institution among the members of the committee; and

(6) not allow a representative of an institution that is designated in another state as an institution offering fraudulent or substandard education.

C. Operation and work of the review committee shall be coordinated by staff of the department. The review committee:

(1) shall organize itself as it deems appropriate, at a minimum designating a chairperson to collaborate with department staff in arranging meetings, other operations, and reports of the committee;

(2) shall assist in reviewing applications, upon the request of the department. When assisting staff of the department in reviewing private post-secondary institutions, members of the committee must recuse themselves in actions in which they have a conflict of interest with their own institution or a direct competitor or that would otherwise have the appearance of impropriety. For example, a member representing a private post-secondary institution shall avoid participation in a review of or visit to an institution that is a direct competitor for students, defined as an institution offering a similar program of instruction within the same community;

(3) shall convene at minimum twice a year to conduct review;

(4) shall report to the department at least once each year regarding the status of private post-secondary education in the state of New Mexico and any recommendations for improving the quality and operation of private post-secondary institutions;

(5) shall be reimbursed for travel expenses associated with convening and conducting review; and

(6) may form ad hoc work groups composed of any persons it deems appropriate, to help fulfill its responsibilities.
[5.100.7.11 NMAC - N, 12/26/2017]

5.100.7.12 COMPLAINT TO THE DEPARTMENT:

A. A student not satisfied with an institution's resolution of a complaint may submit a complaint to the department in writing on a form provided by the department. A student must file a complaint with the department within three years of their last date of enrollment.

B. Upon receipt of a written complaint, the department or its authorized representative shall verify that the complaint involves one or more standards for licensure of the institution and is therefore a legitimate subject of complaint to the department. If the complaint is determined to be legitimate, the department or its authorized representative shall forward the complaint to the institution for a written response and shall facilitate possible resolution of the complaint between the student and the institution. The institution shall have 10 days to forward its response to the department. A copy of the institution's response will be forwarded to the student with a request that the student indicate satisfaction or dissatisfaction with the response.

C. In attempting to resolve a complaint, the department or its authorized representative may, but is not obliged to, convene a hearing or meetings and shall give written notice to the institution and to all persons involved, regarding the time, date, and place of the hearing or meeting. Such hearings or meetings, if held, shall be informal and for the purpose of determining the facts surrounding the claim and whether the parties can come to a resolution or compromise.

D. In the event that

the institution refuses to respond or refuses to attend a hearing or meeting:

(1) the department shall make three attempts to contact the institution including at least one attempt through certified mail, to notify the institution of the complaint, request, action, hearing or meeting;

(2) if the institution does not respond or fails to attend the hearing or meeting after three attempts to contact the institution by the department have been made, the department may invoke its powers to take such action as shall be necessary for the indemnification of the claimant.
[5.100.7.12 NMAC - N, 12/26/2017]

5.100.7.13 APPLICABLE FEES:

A. The department shall assess application, administrative, and licensing fees, pursuant to Section 21-23-6.3 NMSA 1978, and publish a fee schedule.

B. The department shall assess an administrative fee for providing the services associated with application review and determination of eligibility for licensure.

C. The department shall assess a licensing fee upon determination that the institution has met all satisfactory conditions for licensure.

D. The department shall assess an administrative fee for filing annual reporting; any costs associated with review committee evaluation and determination; any costs associated with specialized review, program changes, and institution or administrative changes.
[5.100.7.13 NMAC - N, 12/26/2017]

5.100.7.14 REPORTING:

A. Licensed institutions shall annually submit a standard reporting form on a deadline set by the department.

B. The department shall promulgate a standard form for annual reporting to include: curriculum and enrollment information, financial information, all publication material requested by the department, and

certification of compliance with current New Mexico administrative code or statutes applicable to post-secondary educational institutions.

C. An institution must comply with reporting requirements in order to be eligible for annual license renewal.

D. An institution renewing application with the department must submit required reporting for program completion rates, withdrawal rates, and satisfaction of students and employers.

[5.100.7.14 NMAC - N, 12/26/2017]

5.100.7.15 SITE VISITS AND RECORDS INSPECTION:

The department may conduct a site visit at any time to evaluate institutional compliance with all applicable laws and regulations. The department may request documents or access to files to evaluate compliance. The department may request inspection of the institution's records, which must follow the records management plan set out by the institution as required in Subsection D of 5.100.7.10 NMAC and comply with the retention schedule set by the department. Records that must be maintained and available for inspection are as follows:

A. official student transcripts;

B. records related to development of courses including, but not limited to, outlines and syllabi; and

C. records related to student enrollment, original version of enrollment agreements, student class registration and withdrawals,

D. list of current students;

E. list of dropped or withdrawn students;

F. list of students that have graduated;

G. catalogs of the institution plus any additional documentation that defines student policies. The institution shall maintain an archive of catalog versions for the period of time applicable to enrollment agreements

for current students;

H. records related to marketing and recruitment, including but not limited to, samples of advertising including online pages;

I. records related to examination and testing including, but not limited to, grade results;

J. records related to academic programs, including, but not limited to, analyses of academic program completion rates, student transfer rates, or employment rates for graduates of the institution and membership and minutes for academic committees;

K. records related to higher education programs;

L. documentation of accrediting reports and self-study reports submitted to accrediting bodies for institutions accredited or seeking accreditation;

M. records related to faculty and staff qualifications, including, but not limited to, the results of periodic student and peer or supervisor assessment of teaching, original official transcripts of record sent directly to the hiring institution from institutions issuing the faculty member a degree and applicable license or certification demonstrating the educational qualifications of the faculty member, documentation of applicable experience for faculty members with alternative qualifications, and a separate file available for review containing documentation regarding all complaints lodged against the faculty member;

N. records related to student evaluations, discipline, assessments and attendance;

O. student complaint files;

P. evidence of the institution's valid insurance policies and surety bond or alternative surety;

Q. records related to scholarships, loans, grants and other financial aid; and

R. records related to financial stability.

[5.100.7.15 NMAC - N, 12/26/2017]

5.100.7.16 PENALTY:

A. Institutions that do not have state authorization or have not been granted express exemption by the department, and meet the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately offering instruction or enrolling new students until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if institutions fail to comply; whoever violates any provision of Section 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

B. A private post-secondary institution that does not submit an application for renewal within deadlines set by the department and has a lapse in state authorization for one or more years will be required to complete a provisional period of two years.

C. The department shall provide notification for public viewing on the department's website if a licensed private post-secondary institution has been sanctioned or penalized by their accreditor or the United States department of education.

D. The department may report any failures to comply with provisions of 5.100.7 NMAC to the United States department of education and the institution's accreditor. If the institution does not comply, the department may take action to forward the file to the attorney general's office for issuance of a notice of contemplated action to deny licensure.

[5.100.7.16 NMAC - N, 12/26/2017]

5.100.7.17 REVOCATION OF A LICENSE:

A. The department may revoke an institution's license to operate or approval to offer a specific degree program(s) at any time, upon finding that

(1) any statement made in the institution's application for licensure is untrue;

(2) the institution has failed to maintain the faculty, facilities, equipment, or other necessary support for its program(s) of study on the basis of which the license or approval was granted; and

(3) the institution has failed to advise the department about significant factors which serve as a basis for licensure, such as:

(a) financial difficulties sufficient to threaten program quality;

(b) significant staff changes in a short period of time;

(c) change of ownership and management;

(d) outcomes of audits by other state agencies;

(e) loss or lowering of accreditation status;

(f) any other factor that could alter basis for licensure;

(g) the institution has failed to renew annual license in a timely manner; or

(h) the institution has failed to comply with one or more standards of licensure established by the department or with applicable law.

B. Prior to revoking a license, the department, or its designee, shall give the institution notice of ten work days and shall provide an opportunity for the institution to demonstrate why the license should not be revoked.

C. At its discretion, the department, or its designee, may institute a probationary period of continued licensure for the institution during which time the institution must demonstrate resolution of deficiencies to the satisfaction of the department. Under no circumstance shall this probationary period exceed one year.

D. If the institution fails to sufficiently demonstrate that licensure should not be revoked, as provided by Subsection B of 5.100.7.17 NMAC, the department

shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978. [5.100.7.17 NMAC - N, 12/26/2017]

5.100.7.18 DENIAL OF A LICENSE: An applicant that fails to satisfactorily meet the requirements of Section 5.100.7.10 NMAC or fails to adequately address the specific criteria set forth in Section 5.100.7.10 NMAC shall be subject to denial of licensure. If the department contemplates denial of licensure to any applicant, the department shall commence proceedings pursuant to and in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978. [5.100.7.18 NMAC - N, 12/26/2017]

History of 5.100.7 NMAC - [RESERVED]

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 100 PRIVATE INSTITUTIONS OF HIGHER EDUCATION PART 8 CLOSURE OR SUBSTANTIAL CHANGE TO LOCATION UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT

5.100.8.1 ISSUING AGENCY: New Mexico Higher Education Department. [5.100.8.1 NMAC - N, 12/26/2017]

5.100.8.2 SCOPE: Provisions of 5.100.8 NMAC apply to all post-secondary institutions operating within the state of New Mexico. [5.100.8.2 NMAC - N, 12/26/2017]

5.100.8.3 STATUTORY AUTHORITY: The Post-Secondary Educational Institution Act, Sections 21-23-1 et seq. NMSA 1978 authorizes the New Mexico higher education department ("department")

to establish standards for closures of post-secondary educational institutions operating in New Mexico. [5.100.8.3 NMAC - N, 12/26/2017]

5.100.8.4 DURATION: Permanent [5.100.8.4 NMAC - N, 12/26/2017]

5.100.8.5 EFFECTIVE DATE: December 26, 2017 unless a later date is cited at the end of a section. [5.100.8.5 NMAC - N, 12/26/2017]

5.100.8.6 OBJECTIVES AND GENERAL PRINCIPLES: No post-secondary institution shall cease operation within New Mexico or make a substantial change to location without providing notice to the department and complying with the provisions set out in this rule. [5.100.8.6 NMAC - N, 12/26/2017]

5.100.8.7 DEFINITIONS:

A. "Custodian of Records" is an entity with which the institution has arranged for the perpetual care, maintenance and accessibility of all records, transcripts, reports and evaluations of all students receiving credit from the institution during the period of its existence. The entity must be in compliance with the Family Educational Rights and Privacy Act and documentation of such compliance shall be submitted to the department.

B. "Department" means the New Mexico higher education department or its designated employee.

C. "Manager" means the chief executive officer, chief operations officer, chief financial officer, senior business or finance officer, senior financial aid administrator, and senior or chief academic officer of an institution's New Mexico facility.

D. "Physical presence" means the ongoing occupation of a physical location in the state for, or the ongoing maintenance of an administrative office to support, the provision of higher education instruction.

E. “Post-secondary educational institution” means an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education.

F. “Substantial change to location” means a relocation of the institution’s physical site that is beyond the proximity a student is normally required to travel for educational offerings.
[5.100.8.7 NMAC - N, 12/26/2017]

5.100.8.8 NOTICE:

A. A post-secondary institution operating with a physical presence in the state of New Mexico shall provide formal written notice of closure to the department immediately upon gaining actual knowledge of the institution’s intent to close but in no case less than 90 days prior to closure.

B. A post-secondary institution operating with a physical presence in the state of New Mexico shall provide formal written notice of substantial change to location to the department immediately upon gaining actual knowledge of the institution’s intent to change location but in no case less than 90 days prior to moving operations.

C. A post-secondary institution operating with a physical presence in the state of New Mexico has a mandatory obligation to report a closure of any other branch, satellite, or main campus associated with the institution immediately upon gaining actual knowledge of the institution’s intent to close but in no case less than 90 days prior to closure.

D. A post-secondary institution has a mandatory obligation to report the closure of any other subsidiary institution or campus associated through the same parent company or organization immediately upon gaining actual knowledge of the institution’s intent to close but in no case less than 90 days prior to closure.
[5.100.8.8 NMAC - N, 12/26/2017]

5.100.8.9 PLAN FOR CLOSURE OR SUBSTANTIAL CHANGE TO LOCATION:

A. A post-secondary institution operating with a physical presence in New Mexico that intends to cease operations or makes a substantial change to location must present a plan to the department.

B. Post-secondary institutions that are required to seek approval of a plan by an accrediting body must submit the plan to the department within seven days of receiving approval by the accrediting body.

C. Post-secondary institutions that are not required to seek approval of a plan by an accrediting body must submit a plan to the department as soon as practical but in no case less than 90 days prior to closure or substantial change to location.

D. The plan must include provisions for teach-out agreements, completion of programs by enrolled students, records maintenance, and identification and location of a responsible agent for the school for a period of at least one year following closure as detailed in this rule.
[5.100.8.9 NMAC - N, 12/26/2017]

5.100.8.10 TEACH-OUT AGREEMENTS:

A. A post-secondary institution operating with a physical presence in the state of New Mexico that has served notice of closure or substantial change to location to the department shall provide to the department a teach-out plan or agreement.

B. A post-secondary institution that is closing or has a substantial change to location shall enter into a teach-out agreement with at least one other private or public institution operating in the state or provide a teach-out plan that allows students to complete their program of study at the institution within a timeframe accepted by the department.

C. A post-secondary institution that has a substantial change to location may be required to present evidence that the institution has made efforts to enter into a teach-

out agreement with an institution within a reasonable proximity.

D. Teach-out plans or agreements shall be arranged at no additional cost to the students beyond that originally agreed to by the student.

E. Licensed post-secondary institution operating under 5.100.7 NMAC must comply with the teach-out plan or agreement provided to the department in its application for licensure unless a substantial change in the teach-out plan or agreement has occurred. If a substantial change in the agreement submitted to the department in the licensure application has occurred, the institution shall seek additional teach-out agreements with at least one institution operating in the state of New Mexico or provide a teach-out plan that allows students to complete their program of study at the institution within a timeframe accepted by the department.

F. The department may determine that a teach-out plan or agreement is not feasible after consideration of evidence submitted to the department. The department may find that teach-out arrangements are not feasible for students in one or more programs offered by the institution, in which case the institution shall refund all tuition and fees paid by the students in question for the current period of enrollment and shall provide appropriate transcripts and evaluations to assist students in transferring their work to another institution.
[5.100.8.10 NMAC - N, 12/26/2017]

5.100.8.11 RECORDS MAINTENANCE:

A. A post-secondary institution operating with a physical presence in the state of New Mexico upon submitting intent to close must ensure that records are in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, and any other authorizing agencies laws, regulations and rules, whichever is longest in time. If another authorizing

agency of the institution requires a longer period of retention than that of 1.21.2 NMAC, the longest retention period shall prevail.

B. If a post-secondary institution discontinues its operation, the manager shall file with the appropriate custodian of records, the original or legible true copies of all educational records required by the agency. A written detailed description for how records will be maintained following the closure shall be provided to the department and a copy of all digital files as a backup to any other records provided to the custodian of records. The written document must include, but is not limited to the following:

(1) certification that the post-secondary institution is in compliance with the functional records retention and disposition schedule in 1.21.2 NMAC, the records retention schedule set by the department, and any other authorizing agencies laws, regulations and rules, whichever is longest in time;

(2) designation of a custodian of records;

(3) physical address of hard copy files;

(4) physical address of digital files; and

(5) process for obtaining transcripts from the custodian of record.

C. The department must be notified on an annual basis of any update related to the custodian of records or upon any change to the custodian of record.

D. The department must be provided a copy of any contractual arrangements made for the perpetual care, maintenance and accessibility of all records.

E. In the event that the post-secondary institution does not comply with the records maintenance provisions cited above, the department may seek a court order to protect and if necessary take possession of the records. The institution's surety bond may be drawn on to cover costs associated with the department's efforts in

securing records.

[5.100.8.11 NMAC - N, 12/26/2017]

5.100.8.12 FINAL EXECUTION REPORT: Before any post-secondary institution terminates its services or sells, transfers or disposes of substantially all of its assets, it shall submit to the department a summary of all actions taken pursuant to the requirements set forth in all applicable Sections of 5.100.8 NMAC. The post-secondary institution must also submit certification that it has met all rules of the department pertaining to the termination of operations by post-secondary educational institutions. [5.100.8.12 NMAC - N, 12/26/2017]

History of 5.100.8 NMAC - [RESERVED]

HEALTH, DEPARTMENT OF

TITLE 7 HEALTH CHAPTER 1 HEALTH GENERAL PROVISIONS PART 29 HEALTH INFORMATION SYSTEM PUBLIC ACCESS WEBSITE

7.1.29.1 ISSUING AGENCY: Department of Health, Epidemiology and Response Division, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502-6110.

[7.1.29.1 NMAC - N, 7.1.29.1 NMAC, 12/26/2017]

7.1.29.2 SCOPE: This rule establishes the provisions of a public access website.

[7.1.29.2 NMAC - N, 7.1.29.2 NMAC, 12/26/2017]

7.1.29.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health pursuant to the authority granted under Subsection E of Section 9-7-6 NMSA 1978 and the Health Information System Act, 24-14A-1 et seq. NMSA 1978.

[7.1.29.3 NMAC - N, 7.1.29.3 NMAC, 12/26/2017]

7.1.29.4 DURATION: Permanent.

[7.1.29.4 NMAC - N, 7.1.29.4 NMAC, 12/26/2017]

7.1.29.5 EFFECTIVE DATE: December 26, 2017, unless a later date is cited at the end of a section.

[7.1.29.5 NMAC - N, 7.1.29.5 NMAC, 12/26/2017]

7.1.29.6 OBJECTIVE: The objective of this rule is to establish provisions that govern a Health Information System Act public access website for health information or health data.

[7.1.29.6 NMAC - N, 7.1.29.6 NMAC, 12/26/2017]

7.1.29.7 DEFINITIONS:

A. "Department" means the department of health.

B. "Health information" or "health data" means any data relating to health care; health status, including environmental, social and economic factors; the health system; or health costs and financing.

C. "Website" means the New Mexico Health Information System Act public access website for health information or health data created under this section.

[7.1.29.7 NMAC - N, 7.1.29.7 NMAC, 12/26/2017]

7.1.29.8 PUBLIC WEBSITE REQUIREMENTS:

A. The New Mexico Health Information System Act public website shall:

(1) be accessible to the public through the sunshine portal;

(2) allow the public to search for healthcare cost, quality and such other information the department publishes pursuant to the Health Information System Act, Sections 24-14A-1 to 24-14A-11 NMSA 1978;

(3) have

a unique and simplified website address;

(4) be directly accessible via the main page of the official department website.

B. The department shall regularly update the Health Information System Act public access website.

[7.1.29.8 NMAC - N, 7.1.29.8 NMAC, 12/26/2017]

History of 7.1.29 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.311.3 NMAC, Section 12, effective 1/1/2018. In 8.311.3.12 NMAC, Subsections A through E were not published as there were no changes.

8.311.3.12 PROSPECTIVE PAYMENT METHODOLOGY FOR HOSPITALS: Payment for all covered inpatient services rendered to eligible recipients admitted to acute care hospitals (other than those identified in Subsections C through D of 8.311.3.10 NMAC) on or after October 1, 1989 shall be made based on a prospective payment approach which compensates hospitals an amount per discharge for discharges classified according to the diagnosis related group (DRG) methodology. The prospective rates for each hospital's MAD discharges will be determined by the department in the manner described in the following subsections.

F. Special prospective payment provisions:

(1) **Outlier cases:**

(a)
Effective for discharges occurring on or after April 1, 1992, outlier

cases are defined as those cases with medically necessary services exceeding \$100,000 in billed charges, or those with medically necessary lengths of stay of 75 calendar days or more, when such services are provided to eligible children up to age six in disproportionate share hospitals, and to eligible infants under age one in all hospitals. These cases will be removed from the DRG payment system and paid at an amount equal to [ninety] eighty-five percent of the hospital's standardized cost. Standardized costs are determined by multiplying the hospital's allowable billed charges by the hospital's cost-to-charge ratio as calculated from the hospital's most recent cost report.

[8.311.3.12 NMAC - Rp, 8.311.3.12 NMAC, 6/1/2016; A, 1/1/2018]

PUBLIC REGULATION COMMISSION

The Public Regulation Commission approved, at its 12/07/2017 hearing, to repeal its rule 17.11.10 NMAC, State Rural Universal Service Fund (filed 12/16/2016) and replace it with 17.11.10 NMAC, State Rural Universal Service Fund, adopted on 12/7/2017 and effective 1/01/2018.

PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 11 TELECOMMUNICATIONS PART 10 STATE RURAL UNIVERSAL SERVICE FUND

17.11.10.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.11.10.1 NMAC - Rp, 17.11.10.1 NMAC, 1/1/2018]

17.11.10.2 SCOPE: This rule applies to all entities that

provide intrastate retail public telecommunication services and comparable retail alternative services in New Mexico.

[17.11.10.2 NMAC - Rp, 17.11.10.2 NMAC, 1/1/2018]

17.11.10.3 STATUTORY AUTHORITY: Sections 8-8-4 and 63-9H-6, NMSA 1978.
[17.11.10.3 NMAC - Rp, 17.11.10.3 NMAC, 1/1/2018]

17.11.10.4 DURATION: Permanent.
[17.11.10.4 NMAC - Rp, 17.11.10.4 NMAC, 1/1/2018]

17.11.10.5 EFFECTIVE DATE: January 1, 2018, unless a later date is cited at the end of a section.
[17.11.10.5 NMAC - Rp, 17.11.10.5 NMAC, 1/1/2018]

17.11.10.6 OBJECTIVE: The purpose of this rule is to provide procedures for administering and implementing the New Mexico state rural universal service fund to maintain and support universal service provided by telecommunications carriers that have been designated as eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission.
[17.11.10.6 NMAC - Rp, 17.11.10.6 NMAC, 1/1/2018]

17.11.10.7 DEFINITIONS: In addition to the definitions contained in Section 63-9H-3, NMSA 1978, as used in this rule:

A. "Access line"
means a dial tone line, or its functional equivalent, that provides local exchange service from a carrier's switching equipment to a point of termination at the customer's network interface and is not limited to wireline or any other technology; for the purposes of this rule, an access line does not include official lines, unbundled network elements/platforms, retail resale, wholesale resale, special access lines and private lines.

B. “Administrator”
means the person designated by the commission to administer the fund.

C. “Area underserved by broadband” means a broadband program proposed project area where at least fifty percent of households lack access to fixed and mobile facilities-based broadband service, at the minimum broadband transmission speeds of 10.0 mbps download/1.0 mbps upload. A household has access to broadband service if the household can readily subscribe to that service upon request.

D. “Area unserved by broadband” means a broadband program proposed project area where at least ninety percent of the households lack access to fixed and mobile facilities-based broadband service, at the minimum broadband transmission speeds of 4.0 mbps download/1.0 mbps upload. A household has access to broadband service if the household can readily subscribe to that service upon request.

E. “Basic local exchange rate” means an incumbent local exchange carrier’s tariffed, monthly, flat single-line rate charged to its retail customers for the provision of local exchange service; for the purposes of this rule, the “residential” and “business” basic local exchange rates shall include any commission-mandated subscriber line charges or extended area service charges.

F. “Broadband internet access service” means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints including any capabilities that are incidental to and enable the operation of the communications service, or a functionally equivalent service, but excluding dial-up internet access service.

G. “Carrier” means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

H. “Commercial mobile radio service (CMRS)”

means a designation by the federal communications commission for any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit.

I. “Communication connection” means a voice-enabled telephone access line, wireless voice connection, unique voice over internet protocol service connection, or other uniquely identifiable functional equivalent as determined by the commission.

J. “Commission”
means the New Mexico public regulation commission.

K. “Contributing company” means any carrier that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

L. “Eligible telecommunications carrier (ETC)”
means a carrier with New Mexico operations that provides intrastate retail public telecommunications services that has been designated as eligible to receive disbursements from the fund or from the federal universal service fund.

M. “Exempt customer” means an end-user of telecommunications service that is the state of New Mexico, a county, a municipality or other governmental entity; a public school district; a public institution of higher education; an Indian nation, tribe, or pueblo; a Native American customer who resides on tribal or pueblo land; a private telecommunications network; or a person eligible to receive reduced rates under a low-income telephone assistance plan created by the federal government or the state of New Mexico.

N. “FCC” means the federal communications commission.

O. “Form 477” means the FCC’s Form 477, Local Telephone Competition and Broadband Report Form, as amended from time to time, filed with the FCC by carriers as required by 47 C.F.R. § 43.11.

P. “Fund” or “state rural universal service fund

(SRUSF)” means the state of New Mexico universal service fund established pursuant to Section 63-9H-6 NMSA 1978 and this rule.

Q. “Imputed benchmark revenue” means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier’s basic local exchange residential and business rates as of July 1, 2014, multiplied by the number of basic local exchange residential and business access lines served by the carrier as of December 31 of the year that precedes the year during which the revenue requirement is being determined pursuant to Subsection E of 17.11.10.19 NMAC; imputed benchmark revenue shall not be less than zero.

R. “Interexchange carrier (IXC)” means an entity that provides intrastate toll services in New Mexico.

S. “Intrastate retail public telecommunications services revenue” means the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico.

T. “Intrastate retail public telecommunications services” means services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller identification (ID); listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message

telephone services (MTS) or toll; CENTREX, centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate retail public telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services.

U. “Intrastate switched access charge” means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission.

V. “Local exchange carrier (LEC)” means an entity certificated to provide local exchange service in New Mexico.

W. “New Mexico operations” means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico.

X. “Rural area” means:

- (1) any unincorporated area; or
- (2) any city, town or incorporated area with a population of 15,000 or less as reflected in the United States census for 2010.

Y. “Service area” means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

Z. “Universal service” means basic local exchange service and comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan, and broadband internet access service to unserved and underserved areas of New Mexico as determined by the

commission.

[17.11.10.7 NMAC - Rp, 17.11.10.7 NMAC, 1/1/2018]

17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES:

The commission may, upon motion of a carrier or the administrator, or upon the commission’s own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier’s tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - Rp, 17.11.10.8 NMAC, 1/1/2018]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

A. Effective July 1, 2015, the residential and business affordability benchmark rates to be utilized in determining the level of support available from the fund are as follows:

(1) the residential benchmark rate shall be equal to the rate required by the federal communications commission (FCC) to maintain federal high cost support, as such rate may change from time to time;

(2) the business benchmark rate shall be carrier-specific and shall be equal to the business basic exchange rate of each local exchange carrier on July 1, 2014, plus the amounts required to increase the carrier’s residential basic local exchange rate on or after July 1, 2015 to match the new residential benchmark rate set forth above, up to a limit of \$35.96;

(3) each local exchange carrier shall, on or before May 1 of each year, advise the commission and the administrator in writing of its residential and business basic local exchange rates to be in effect on July 1 of that year and how they were determined;

(4) increases in the residential basic local exchange rates of incumbent rural telecommunications carriers toward

the residential benchmark rate established in this section shall be implemented by timely filing of tariff revisions with the commission and shall be effective after 10 days’ notice to the carrier’s customers and the commission;

B. The commission may conduct a proceeding to establish new affordability benchmark rates upon its own motion.

[17.11.10.9 NMAC - Rp, 17.11.10.9 NMAC, 1/1/2018]

17.11.10.10 SELECTION OF ADMINISTRATOR:

The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

A. Criteria for selection: the commission will issue a request for proposals to select the administrator; the commission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

(1) is able to be neutral and impartial;

(2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;

(3) is an affiliate of any contributing company;

(4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and

(5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

B. Termination of administrator's contract: the commission may terminate the administrator's contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract.

[17.11.10.10 NMAC - Rp, 17.11.10.10 NMAC, 1/1/2018]

17.11.10.11 EXPENDITURE

AUTHORIZATION: The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund.

[17.11.10.11 NMAC - Rp, 17.11.10.11 NMAC, 1/1/2018]

17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR:

The administrator shall manage the day-to-day operation of the fund in accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

A. Fairly, consistently, and efficiently administer fund collections and disbursements in accordance with commission rules and subject to commission oversight.

B. Establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions.

C. Ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes.

D. Establish

procedures, consistent with the commission's procedural rules and law, and with the commission's approval, for protecting the confidentiality of information submitted pursuant to this rule.

E. Report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require.

F. Prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time.

G. Propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies.

H. Create and maintain the databases necessary to administer the program and account for the funds.

I. Develop appropriate forms for use in collecting information from contributing companies and ETCs.

J. Pay administrative expenses out of the fund in accordance with the budget approved by the commission.

K. Petition the commission to institute an enforcement or other action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law.

L. Conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for

the purpose of the fund.

M. Advise the commission of any anticipated material changes to, or fluctuations in, the collection of fund revenues in a timely manner and make recommendations to the commission on ways to address or correct such changes or fluctuations.

[17.11.10.12 NMAC - Rp, 17.11.10.12 NMAC, 1/1/2018]

17.11.10.13 DISPUTE

RESOLUTION: The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

A. Mediation:

(1) if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a mediator consistent with Subsection B of 17.1.2.20 NMAC;

(2) the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve; the mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;

(3) the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;

(4) the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint;

(5) if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

(6) nothing shall preclude the commission from using different mediation procedures.

B. Arbitration:

(1) a party may request arbitration of any dispute; the party's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

(2) the commission or its authorized representative shall forward the request for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within 10 days of the date of the commission's letter forwarding the

request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within 10 days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

C. Arbitration

Procedures:

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within 60 days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least 10 days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious

and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp,
17.11.10.13 NMAC, 1/1/2018]

17.11.10.14 VARIANCES AND WAIVERS: Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

A. General requirements:

(1) a contributing company or ETC may petition for an exemption or a

variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

B. Contents of the petition. A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp,
17.11.10.14 NMAC, 1/1/2018]

17.11.10.15 GENERAL REPORTING REQUIREMENTS:

A. Reports require declaration: all reports filed with the commission or the administrator must be filed with a declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

B. Time for reporting: where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

C. Reporting forms: contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

D. Electronic filing: the administrator shall accept electronic reporting when practicable.

E. Confidentiality: the commission shall have access to all information reported to the administrator. Contributing companies may request that company-specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment is requested, shall not use such information except

for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

F. The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, or to delete information that is not necessary.

[17.11.10.15 NMAC - Rp,
17.11.10.15 NMAC, 1/1/2018]

17.11.10.16 REVENUE

REPORTS: Each ETC and contributing company shall submit on or before May 1 of each year a revenue report on the form prescribed by the administrator detailing its intrastate retail public telecommunications services revenues for the prior calendar year.

[17.11.10.16 NMAC - Rp,
17.11.10.16 NMAC, 1/1/2018]

17.11.10.17 OTHER

REPORTS: ETCs shall comply with the reporting requirements established by the commission as set forth in 17.11.27 NMAC. In addition, on or before May 1 of each year, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

A. Contributing companies, including ETCs, shall report the number and type of New Mexico access lines and New Mexico communication connections subscribed to in total and within each New Mexico census tract consistent with the reporting required by FCC Form 477, and the number of such access lines and communication connections that are exempt from paying the SRUSF surcharge.

B. Contributing companies shall report the cost of collecting universal service fund (USF) surcharges, fulfilling reporting requirements, and other administrative costs of complying with this rule.

C. ETCs shall report:

(1) all revenues, compensation, payments, or subsidies received from all sources, including, but not limited to end-user customers, the state, and the federal government;

(2) all dividends or equivalents paid to shareholders, cooperative members, or others holding an ownership interest in the ETC; and

(3) compensation, including value of benefits, paid to the five highest-compensated employees of the carrier.

D. In addition, on or before July 1 of each year, ETCs receiving support from the fund (except those receiving only support pursuant to 17.11.11 NMAC) shall file with the commission a report, in a form approved by the commission, demonstrating that the ETC's payments from the fund were used for the purpose stated in Subsection A of 17.11.10.27 NMAC. If any ETC required to file information with the commission under Subsection E of 17.11.10.17 NMAC fails to comply on or before the applicable reporting deadline, the administrator shall withhold any disbursements otherwise due to the non-compliant ETC until the ETC has complied.

[17.11.10.17 NMAC - Rp,
17.11.10.17 NMAC, 1/1/2018]

17.11.10.18 CONTACT

PERSONS: All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.

[17.11.10.18 NMAC - Rp,
17.11.10.18 NMAC, 1/1/2018]

17.11.10.19 ANNUAL DETERMINATION OF FUND:

A. The administrator shall determine the amount of the fund for the next calendar year and submit its findings to the commission on or before September 1 of each year to enable commission approval on or before October 1 of each year in order to provide carriers with sufficient time to implement any change in the

surcharge rate.

B. In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund amount greater than that which the commission has previously established, the commission may order an adjustment to the amount of the fund, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

C. The amount of the fund shall be equal to the sum of each ETC's revenue requirement, calculated pursuant to this section, plus any other fund requirements determined by the commission, including pursuant to 17.11.10.25, 17.11.10.31 or 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance; provided however, the total amount of the fund shall not exceed a copy of thirty million dollars (\$30,000,000) per year.

D. Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

E. Except where the commission has established an alternative or additional amount pursuant to 17.11.10.25 NMAC or 17.11.10.31 NMAC, the revenue requirement for 2018 and each year thereafter for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's 2014 SRUSF revenue requirement adjusted by the annual percentage change in the number of access lines served by the carrier as of December 31 of the prior calendar year compared to the number of access lines served by the carrier as of December 31, 2014, and then reduced by the carrier's imputed benchmark revenue. For 2018, the access lines used for comparison to 2014 shall be as of December 31, 2016. The SRUSF revenue requirement formula under this section may be stated arithmetically as follows: revenue requirement minus imputed benchmark revenue.

F. The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.
[17.11.10.19 NMAC - Rp, 17.11.10.19 NMAC, 1/1/2018]

**17.11.10.20
DETERMINATION OF SRUSF
SURCHARGE RATE AND
CONTRIBUTION:**

A. The administrator shall recommend the amount of the SRUSF surcharge rate for the next calendar year, on or before September 1 to enable commission approval on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies, broadband program grants awarded by the commission, and any other pertinent and reliable information available to the administrator or the commission, and applying the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

B. The commission shall either set a percentage surcharge rate equal to the annual fund requirement determined by the commission divided by the sum of intrastate retail public telecommunications service revenue, or in the alternative, set a fixed charge applicable to each non-exempt communication connection equal to the annual fund requirement determined by the commission divided by the number of non-exempt communication connections for all contributing carriers in New Mexico. The surcharge rate or fixed rate may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year, subject to the annual fund cap.

C. Each contributing company's monthly contribution shall equal the state rural universal service fund (SRUSF) surcharge

rate multiplied by its intrastate retail telecommunications revenues or non-exempt communication connections, as determined by the commission, in New Mexico for the month.

D. If, for any month the administrator finds that the fund balance is insufficient to meet the total obligations of the fund, (including support pursuant to 17.11.10.19 NMAC, 17.11.10.25 NMAC, 17.11.10.31 NMAC, and 17.11.11 NMAC) plus administrative expenses and maintenance of a prudent fund balance, the administrator shall prorate all payments to each ETC, with the exception of payments pursuant to 17.11.10.31 NMAC and 17.11.11 NMAC. In the event the administrator determines that such a prorated reduction in payments is reasonably likely to occur, the administrator shall immediately notify the commission and the commission will take prompt action to increase contribution requirements, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC, or otherwise account for the shortfall and will provide for true-up payments for any underpayments occurring if prorated reduced payments are required before the contribution requirements can be increased. If the fund accumulates a surplus beyond what the administrator and the commission believes is prudent under the circumstances, the administrator may, with the commission's approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

E. Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator.
[17.11.10.20 NMAC - Rp, 17.11.10.20 NMAC, 1/1/2018]

**17.11.10.21 RECOVERY OF
CONTRIBUTIONS:**

A. A contributing company shall recover the amount of its contributions to the fund from its end-user customers in a manner that is not, either by act or omission, deceptive or misleading. Such

recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

B. A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under commission approved modifications to those tariffs.

C. The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user customers.
[17.11.10.21 NMAC - Rp, 17.11.10.21 NMAC, 1/1/2018]

**17.11.10.22 FUND
DISBURSEMENTS:**

A. The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator.

B. The amount of each ETC's monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC, subject to proration as provided in Subsection E of 17.11.10.20 NMAC.

C. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

D. The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.
[17.11.10.22 NMAC - Rp, 17.11.10.22 NMAC, 1/1/2018]

**17.11.10.23 DESIGNATION
OF ETCs:**

A. Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically

designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive support from the fund.

B. Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

C. On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

D. Upon approval of a carrier for ETC status under these rules, the commission may, if requested, establish the carrier's support rate in accordance with the requirements of 17.11.10.25 NMAC. In determining a just and reasonable support rate for an ETC, the commission shall:

(1) consider the cost of efficiently providing services to the proposed service area, including a rate of return determined by the commission to be reasonable, using the most cost-effective technologies, but also taking into consideration existing infrastructure;

(2) consider the amount of support available to the ETC through the federal universal service funds;

(3) ensure that the support rate for a competitive carrier not exceed the equivalent support received through these rules by the incumbent carrier or carriers serving the proposed service area.

E. On its own motion or in response to a petition, the commission may modify an ETC's support rate to reflect more current cost information or changes in service volumes.

[17.11.10.23 NMAC - Rp,
17.11.10.23 NMAC, 1/1/2018]

17.11.10.24 PETITIONS FOR ETC DESIGNATION AND SUPPORT RATES:

A. Any entity seeking designation as a state or federal ETC must file a petition with the commission. In the case of a petition

for ETC designation and support rate, the petition shall:

(1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in 47 CFR 54.207;

(2) demonstrate that the entity meets the requirements in Section 214(e) of the federal act (47 U.S.C. Section 214(e) to be designated as a federal ETC;

(3) demonstrate that the proposed designation is in the public interest;

(4) include the information required by 17.11.10.25 NMAC;

(5) provide a five-year plan demonstrating how support from the fund will be used to improve the petitioner's coverage, service quality or capacity throughout the service area for which it seeks designation;

(6) demonstrate the petitioner's ability to remain functional in emergency situations;

(7) demonstrate that the petitioner will satisfy consumer protection and service quality standards;

(8) offer local usage plans comparable to those offered by incumbent local exchange carriers in the areas for which the petitioner seeks designation;

(9) acknowledge that the petitioner may be required to provide equal access if all other ETCs in the designated area relinquish their designations;

(10) demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;

(11) address the impact of designation of the petitioner on the size of the fund;

(12) address the unique advantages and disadvantages of the petitioner's service offering;

(13) demonstrate the petitioner's willingness and ability to offer service

throughout the designated service area within a reasonable time frame; and

(14) provide such other information as the commission or the administrator may find appropriate.

B. A petition by an existing ETC for a support rate shall demonstrate that granting the proposed support rate is in the public interest and shall include the information required by 17.11.10.25 NMAC.

C. Consideration of the public interest will apply in all ETC designation and support rate proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

D. The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or denying a company's petition. An order approving a petition for ETC designation shall specify the service area for which designation is made and an order approving either a petition for ETC designation or a petition for a support rate shall state the approved support rate.

E. The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

F. The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the fund.

[17.11.10.24 NMAC - Rp,
17.11.10.24 NMAC, 1/1/2018]

17.11.10.25 PETITION FOR SUPPORT BASED ON NEED:

A. An ETC serving in a rural area of the state may petition the commission for support from the fund when such payments are needed to ensure the widespread availability and affordability of universal service in the rural area(s) of the state served by the ETC.

B. In addition to establishing need as described

in Subsection A of this section, a petition for support based on need shall identify the geographic area for which support is requested, and shall demonstrate with particularity how the proposed payments from the fund will be used in a manner consistent with the use of fund support requirements set forth in 17.11.10.27 NMAC.

C. In support of the petition, the ETC must make available to the commission all information supplied by Form 481 (or a similar abbreviated form) for the four quarters prior to the petition filing date, plus New Mexico-specific Form 481 information if the form 481 information is consolidated. The commission may also require additional information from the ETC that it deems necessary, including but not limited to information relating to the ETC's regulated revenues, expenses, and investments, to determine whether support is needed to ensure the widespread availability and affordability of universal service in the area identified in the petition.

D. The commission shall resolve each petition for support based on need with or without a hearing no later than six months following the filing date of the petition, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

E. Companies reporting the use of funds granted by the commission under this section shall provide:

(1) Specific details of projects for which fund support is used; itemized by the categories of capital expenditures (CapEx) and the related operations expenditures (OpEx).

(a) Project descriptions will explain the objectives or intended goal of the project. Such as increased capacity or efficiency, redundancy, expansion of network or services.

(b) Project prioritizations of buildout plans in technical terms that include

locations, maps as applicable, milestones and benchmarks to measure performance and assure compliance. The description shall also provide project status, spending plans and metrics.

(c) Narrative of the projects explain the current and ongoing status of completion or ready for service dates (RFS), and other pertinent facts (i.e., project delays, permit status, surveys, right of ways issues) for reporting purposes. The term ready for service ("RFS") means a description of projects where construction is complete and the project is operational.

(2) The period for the reporting of project details shall be semi-annual, at a minimum, to continue for the period that funds are awarded.

(3) Semi-annual financial reporting on a project specific or company-wide basis, depending if the award is specific to network improvements and projects, or for the financial stability of the ETC receiving the award. [17.11.10.25 NMAC - Rp, 17.11.10.25 NMAC, 1/1/2018]

17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:

A. If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

B. The contributing company shall pay the requested amount within 21 days of the date of the notice or seek dispute resolution as provided in this rule.

C. If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

D. Upon request by the administrator, a complaint filed by an interested party, or on its

own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission's order.

E. The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1, et seq. NMSA 1978. [17.11.10.26 NMAC - Rp, 17.11.10.26 NMAC, 1/1/2018]

17.11.10.27 USE OF FUND SUPPORT:

A. An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 et seq., NMSA 1978, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to maintain and support universal service; provided, however, that each ETC receiving support pursuant to 17.11.10.19 or 17.11.10.25 NMAC must expend no less than sixty percent of the support it receives to deploy and maintain broadband internet access services in rural areas of the state.

B. If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party,

that an ETC has used fund support for purposes other than to preserve and advance universal service, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund and withholding future payments.

[17.11.10.27 NMAC - Rp,
17.11.10.27 NMAC, 1/1/2018]

17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:

A. The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator's or commission's discretion.

B. In the normal course of business, the administrator will give at least three days' notice of its plans to inspect records in the offices of a contributing company or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.

[17.11.10.28 NMAC - Rp,
17.11.10.28 NMAC, 1/1/2018]

17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND: The administrator shall provide the commission with a financial statement of the fund and the administration of the fund on an annual basis by May 1. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.

[17.11.10.29 NMAC - Rp,
17.11.10.29 NMAC, 1/1/2018]

17.11.10.30 ADVISORY BOARD:

A. The commission shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services: rural incumbent telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; interexchange carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated; and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order.

The commission shall resolve any dispute among the carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three years. Members of the board may be reappointed to subsequent terms with the approval of the commission. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

B. The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating

to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

C. The advisory board members shall elect a chair, vice-chair, and secretary to serve on the board for one year, subject to additional terms as elected from within the board. For the purpose of conducting business, a majority of the board members present at any meeting shall constitute a quorum.
[17.11.10.30 NMAC - Rp,
17.11.10.30 NMAC, 1/1/2018]

17.11.10.31 BROADBAND PROGRAM:

A. It is the goal of the commission that New Mexico consumers have access to high-quality broadband service from both wireline and mobile broadband providers. Pursuant to Subsection N of Section 63-9H-6 NMSA 1978, ETCs may separately apply to the commission for grants to fund the construction of facilities that are capable of providing broadband internet access service, to areas unserved or underserved by broadband in the state. Each grant that is awarded will provide up to seventy five percent of the budgeted project cost with the ETC

applying the remainder from its own funds. Projects receiving any source of third-party funding other than potential loan funds, FCC high-cost fund legacy support or connect America fund support (including mobility fund support) will not be eligible. In evaluating applications, the commission shall seek to avoid duplication of service using the same technology. Awards of support under this section shall be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state. For purposes of administering the broadband program, the commission may find that a broadband program proposed project area is a rural area, notwithstanding the definition of rural area in Subsection X of 17.11.10.7 NMAC, if it determines that:

(1) the area otherwise has the characteristics of a rural area;

(2) the area is unserved or underserved by broadband; and

(3) the public interest requires that the area be classified as rural.

B. Funding of the broadband program. Beginning in 2018, and each year thereafter, at least five million dollars (\$5,000,000) of the fund shall be dedicated annually to the broadband program. The amount of funding allocated to the broadband program shall not be subject to proration under Subsection E of 17.11.10.20 NMAC. To the extent a year's broadband program funding is not exhausted by grants awarded during that year, the funds will rollover to the following year.

C. Applicants for broadband program grants may request that company-specific information contained within an application be treated as confidential. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all

information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The commission staff or a third-party contractor, shall keep confidential all company-specific information obtained from applicants for broadband program grants for which confidential treatment is requested, shall not use such information except for purposes of analyzing the applications, and shall not disclose such information in company-specific form unless directed to do so by the commission.

D. Minimum requirements for eligible projects. The commission will consider projects on a technology-neutral basis. Projects that apply technologies including, without limitation, wireline, mobile wireless, and fixed wireless technologies are all eligible for broadband fund grants. A project must meet the following requirements to be eligible for a grant award:

(1) support broadband internet access service at speeds of at least 4 Mbps download/1 Mbps upload to all households and businesses in the proposed project area;

(2) support voice grade telephony service to all households and businesses in the proposed project area. For this purpose, a voice over internet protocol (VOIP) based service is acceptable, as well as traditional voice telephony services and mobile voice services; and

(3) Support access to emergency 911 services.

E. Contents of grant applications. An application for support from the broadband program shall include, at a minimum:

(1) a proposal to build telecommunications network facilities to service an area where the applicant is designated as a state ETC;

(2) a detailed build plan setting forth a description of the facilities to be deployed, including all costs of constructing

facilities;

(3) a map showing where service and coverage will be provided; this requirement can be met by providing;

(a) for a wireline network, a map showing all homes, businesses, and other end user locations passed;

(b) for a wireless network, a coverage map generated using a radio frequency propagation tool generally used in the wireless industry;

(4) an estimate of the number of road miles and square miles to be covered and population and population density of the area covered;

(5) the amount of support requested from the broadband program and the amount of the applicant's financial match, and a description of any type, amount, and purpose of subsidy or financial support the applicant is currently receiving or is scheduled to receive in the area designated in the application;

(6) a description of the technology to be deployed, including data throughput speeds and latency characteristics of the service to be delivered to customers;

(7) a demonstration that the area to be served is an area unserved by broadband or an area underserved by broadband as defined in 17.11.10.7 NMAC. If the area to be served contains both unserved and underserved areas, the application shall identify which portions of the area are unserved and which are underserved;

(8) a demonstration of the estimated customer subscription rates and revenues from the services to be offered as a result of the proposed construction sufficient to justify support from the broadband program;

(9) a commitment to provide a minimum twenty five percent match of funds drawn from the broadband program;

(10) if the project is a wireless network

deployment, a commitment to allow collocation on reasonable terms by other providers of commercial mobile wireless service or any public safety network and to abide by the FCC's collocation requirements for awardees under the federal universal service program;

(11) sample terms and conditions for the service and proposed prices;

(12) a certification by an authorized representative affirming that all information set forth in the application is true and correct; and

(13) any other requirements to ensure accountability as the commission may develop and approve in a proceeding to determine the form and contents of grant applications.

F. The ETC must make the following commitments and include them in its proposed application:

(1) the voice and broadband service must be offered at reasonably comparable rates for comparable services in urban areas;

(2) the voice and broadband service must be provided for at least five years following project completion;

(3) the ETC must abide by commission reporting requirements sufficient to monitor the progress of the project deployment and to ensure that all grant funds are being used efficiently and for the purpose intended; and

(4) the ETC must commit to respond to commission inquiries regarding service-related complaints and commit to attempt to resolve service-related complaints in a reasonable manner.

G. Procedure for awarding support from the broadband fund:

(1) On or before May 1 of each year, the commission shall open a proceeding and establish a 30 day window for filing applications for broadband program support for the following

calendar year. The commission staff, or a third party contractor, shall review all timely applications.

(2) Interested persons may seek intervention in these proceedings, pursuant to 1.2.2.23 NMAC.

(3) On or before September 1, the commission's staff, or a third-party contractor, shall make a presentation to the commission with analysis of the applications for awards. The commission's staff, or a third-party contractor, may communicate with applicants to request additional information or clarify information presented in the applications in order to prepare its presentation. Such presentations shall be considered by the commission but shall not bind the commission.

(4) On or before October 1, the commission shall issue a decision approving, denying, or modifying in whole or in part, each application. Selection of projects will prioritize unserved, underserved, and served areas, in that order.

(5) On or before November 1, any interested person may file with the commission a request for reconsideration of the disposition, in whole or in part, of any award of broadband funds.

(6) On or before December 1, the commission shall approve, deny, or modify support awards by a final order.

H. Conditions for disbursement of awarded funds:

(1) The awardee commits to complete construction of its project within three years from the date of the initial disbursement made pursuant to Paragraph (3) of Subsection H of 17.11.10.31 NMAC.

(2) For each awarded project, project reports shall be submitted to staff, consultant(s), and administrator(s) semiannually that provide the types of information described in Subsection E of 17.11.10.25 NMAC. Within 30 days after project completion, the awardee shall submit a report demonstrating

that the project as completed meets the coverage requirements set forth in the application, including a certification from an officer or director that all program requirements have been met.

(3) The administrator shall disburse one third of the award at the beginning of the project as determined by the commission, one third at the midpoint of the project, and the remaining third upon project completion. The second and third payments are contingent upon the submission of acceptable project status reports pursuant to Paragraph (2) of Subsection H of 17.11.10.31 NMAC. The commission may, within 30 days after submission of a report, order additional information to be provided, suspend payment by the administrator, or take other action as necessary after notice and hearing.

(4) Any applicant found to have willfully misrepresented information in an application, is found to have used support unlawfully, or fails to meet the commitments set forth in the application, may be subject to refund of award funds of other actions of the commission.

[17.11.10.31 NMAC - Rp, 17.11.10.31 NMAC, 01/1/2018]

HISTORY OF 17.11.10 NMAC:
Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 13.10, State Rural Universal Service Fund (filed 11/15/2005) repealed effective 01/01/2015.

17 11.10 NMAC, State Rural Universal Service Fund (filed 01/01/2015) repealed effective 01/29/2016.

17 11.10 NMAC, State Rural Universal Service Fund (filed 01/01/2015) repealed effective 01/01/2017.

17 11.10 NMAC, State Rural Universal Service Fund (filed 12/16/2016) repealed effective 01/01/2018.

Other History:

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 01/01/2015.
17.13.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/29/2016.
17.13.10 NMAC State Rural Universal Service Fund (filed 1/19/2016) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/1/2017.
17.13.10 NMAC State Rural Universal Service Fund (filed 12/16/2016) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 01/01/2018.

REAL ESTATE COMMISSION

On 11-23-2017, the Real Estate Commission repealed its rule 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements filed 1-1-2012, and replaced it with 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, adopted on 12/14/2017; effective date: 1-15-2018

REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 3 REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS

16.61.3.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.3.1 NMAC – Rp. 16.61.3.1 NMAC, 1-15-2018]

16.61.3.2 SCOPE: The provisions in Part 3 of Chapter 61 apply to all applicants for real estate broker licensure in New Mexico.
[16.61.3.2 NMAC – Rp. 16.61.3.2 NMAC, 1-15-2018]

16.61.3.3 STATUTORY AUTHORITY: Part 3 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4, NMSA 1978.
[16.61.3.3 NMAC – Rp. 16.61.3.3 NMAC, 1-15-2018]

16.61.3.4 DURATION: Permanent.
[16.61.3.4 NMAC – Rp. 16.61.4.1 NMAC, 1-15-2018]

16.61.3.5 EFFECTIVE DATE: 1-15-2018, unless a later date is cited at the end of a section.
[16.61.3.5 NMAC – Rp. 16.61.3.5 NMAC, 1-15-2018]

16.61.3.6 OBJECTIVE: The objective of Part 3 of Chapter 61 is to set forth the examination and application requirements for candidates desiring to obtain a New Mexico real estate broker's license.
[16.61.3.6 NMAC – Rp. 16.61.3.6 NMAC, 1-15-2018]

16.61.3.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.3.7 NMAC – Rp. 16.61.3.7 NMAC, 1-15-2018]

16.61.3.8 TYPES OF LICENSES: The New Mexico real estate commission issues two types of real estate broker's licenses; an associate broker's license and a qualifying broker's license. Both types of licenses are issued only to individuals. The requirements for obtaining both types of licenses are described below.
[16.61.3.8 NMAC – Rp. 16.61.3.8 NMAC, 1-15-2018]

16.61.3.9 EXAMINATION AND LICENSING REQUIREMENTS:
A. Associate broker's license: prior to applying for an

associate broker's license, an applicant must pass the real estate broker's examination prescribed by the commission.

B. Examination application.

(1)
Applications to take the broker's examination are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30 hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application to take the broker's examination. Exam candidates who are licensed as associate brokers and are taking the broker's examination to upgrade to qualifying broker are exempt from the three-year time limit and must only provide documentation of course completion.

(2) Exam candidates currently licensed as real estate salespersons or brokers in other states or jurisdictions will be exempt from completing the real estate principles and practice and real estate law courses in New Mexico and from taking the national portion of the broker's examination if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent. A New Mexico associate broker upgrading to qualifying broker will also be exempt from taking the national portion of the broker's exam.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30 hour broker basics course.

(4) License applicants currently licensed by

state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30 hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one 30 hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. Associate Broker License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both

portions of the broker's examination shall be required to re-take both portions of the examinations six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that he/she has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

E. Military service members.

(1) The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker's or qualifying broker's license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.

(2) A license issued pursuant to this part is not

a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal. [16.61.3.9 NMAC – Rp. 16.61.3.9 NMAC, 1-15-2018]

16.61.3.10 QUALIFYING BROKER LICENSING REQUIREMENTS:

To be eligible to apply for a New Mexico qualifying broker's license, an applicant must furnish the commission satisfactory evidence of completing the following::

A. Passage of the broker's examination.

B. At least four years active experience as a licensed associate broker during the 60 month period, immediately preceding the filing of the application.

C. In the case of a qualifying broker who will not be supervising or managing other brokers, at least two years of active experience as a licensed associate broker during the 60 period immediately preceding the filing of the application.

D. Qualifying brokers who have qualified for qualifying broker status under the exception provided in subsection C, must document at least four years of active experience as an associate broker and qualifying broker before being eligible to supervise other brokers.

E. If licensed in another state, not less than four years' experience as the equivalent of an associate broker during the 60 month period immediately preceding the filing of the application with verification in writing by the applicant's qualifying broker(s) or the state's applicable equivalent to a qualifying broker. A candidate for a qualifying broker license from another state will, in all circumstances, be required to fulfill all the remaining requirements, including experience, education and acknowledgement of

responsibilities.

F. Documented qualifying transactional experience totaling 100 points, with at least one transaction accomplished during each of the four years prior to filing of the application. These transactions are to be verified in writing by the applicant's qualifying broker. Transactions involving property owned by the applicant do not count toward the required total. Points are awarded as follows and can be accumulated through any combination of the following activities:

(1) Each sale or lease transaction is deemed to have two sides; one side working with the buyer/tenant and the other side working with the seller/owner. Both transaction sides receive points.

(2) In the event of transactions handled by teams comprised of more than one associate broker the qualifying broker shall monitor the transactions to determine which associate broker is deserving of earning the points allowed, or the division of the allowable points among team members.

(3) Real estate and property management transactions; total points available per transaction side:

(a) Residential sales transactions: five points

(b) Residential lot sale transactions: three points

(c) Residential lease transactions: four points

(d) Commercial improved property sale transactions: eight points

(e) Commercial unimproved lot sale transactions: six points

(f) Commercial lease transactions: six points

(g) Property Management points are accumulated as follows: Points are awarded for each location for which the broker has direct responsibility.

Direct responsibility means acting as an agent for the owner and is not just collecting rent. Property management points are accumulated as follows:

(i) Residential Property Management: Each property receives three points, plus one point for each additional unit in that property to a maximum of twenty five points per property per year. A unit is defined as a separate residence with its own postal address.

(ii) Commercial Property Management: Each property receives four points, plus one point for each individual tenant space in that property to a maximum of twenty five points per property per year. A space is defined as a commercial location that has its own postal address.

(h) Farm and Ranch/Vacant Land - For the purposes of this paragraph a farm or a ranch is defined as a property which is used for commercial agricultural purposes. Farm and Ranch points are awarded as follows:

(i) Less than 100 acres, eight points.

(ii) 100 acres or more, ten points.

(i) Limited Waiver: A waiver may be granted by the Commission to an associate broker who can demonstrate that their particular circumstance, i.e. size of market, lack of property types, health issues, force majeure, make it very difficult to obtain 100 points. The Commission may waive up to 30 points and the transaction per year requirement. Written documentation and statements of proof shall be submitted with the application for waiver. 16.61.3.11 NMAC, Qualifying Broker Candidate Education Requirements for Application.

[16.61.3.10 NMAC – Rp. 16.61.3.9 NMAC, 1-15-2018]

16.61.3.11 QUALIFYING BROKER CANDIDATE EDUCATION REQUIREMENTS FOR APPLICATION:

A. Completion of the commission approved 30-hour

brokerage office administration course, with an in-course instructor-created exam administered by the instructor at the end of the course.

B. Completion of the eight-hour Understanding and Using RANM Forms course (#21020551), or at least eight hours of other Commission-approved contract course(s).

C. Completion of a minimum of eight hours of elective courses in the professional track of the applicant; defined as residential transactions, commercial transactions, property management transactions, ranch and/or vacant land transactions.

D. Attendance at one New Mexico real estate commission meeting, public hearing, or disciplinary hearing. In the event of broker hardship, approved by the Commission, the Real Estate Commission may authorize an equivalent to attendance at a commission meeting by an online download, attendance at any approved equivalent, or by other approved participation.

[16.61.3.11 NMAC – Rp. 16.61.3.9 NMAC, 1-15-2018]

16.61.3.12 QUALIFYING BROKER APPLICATION REQUIREMENTS:

A. A notarized affidavit of the applicant's acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the qualifying broker. Supervision shall be defined in the affidavit as follows:

(1) Review and maintain all records and documents required for real estate related matters processed by personnel supervised by the Qualifying Broker.

(2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance with the Real Estate License Law and Commission Rules.

(3) Supervise advertising of real estate or real estate services conducted on behalf of

others by anyone affiliated with the qualifying broker.

(4)

Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

B. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit this affidavit.

C. A supervisory plan which will outline the qualifying broker's schedule of training and education provided or promoted. The supervisory plan will be applicable to the broker applying to be a qualifying broker and to all other brokers affiliated with them, if any. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit a supervisory plan.

D. Applicants with current licenses who can document that they were New Mexico qualifying brokers on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

E. Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the broker's examination prior to being issued a qualifying broker's license.

F. An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied with documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that

meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

G. Military service members:

(1) The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker's or qualifying broker's license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.

(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal. [16.61.3.12 NMAC – Rp. 16.61.3.9 NMAC, 1-15-2018]

16.61.3.13 QUALIFYING BROKER LICENSE RENEWAL REQUIREMENTS: A qualifying broker applying for renewal of their license shall furnish the Commission satisfactory evidence of successful completion of:

A. The qualifying broker refresher course.

B. A minimum of 36 hours of Commission-approved courses, including

(1) The four-hour Core Course in each year of the broker's licensing cycle

(2) A minimum of eight hours of courses from the qualifying broker's professional track, including

Commission-approved courses in residential transactions; commercial transactions, including courses offered by CCIM, SIOR, and CBI; property management transactions, including courses offered by IREM; and vacant land and/or farm and ranch sales.

C. Attendance at one Commission meeting, rule hearing, or disciplinary hearing. In the event of broker hardship, approved by the Commission, the Real Estate Commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

D. An application for renewal of a qualifying broker's license shall include a notarized affidavit of the applicant's acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the brokerage, including but not limited to:

(1) Review and maintain all records and documents required for real estate related matters processed by the brokerage.

(2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker to ensure compliance with the Real Estate License Law and Commission Rules.

(3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.

(4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

E. A qualifying broker applying for license renewal who will be supervised by another qualifying broker will not be required to submit this affidavit.

F. An application for renewal of a qualifying broker's license shall include a statement affirming that the qualifying broker

substantially fulfilled the supervisory plan filed with the initial application, and a plan outlining the schedule of training and education to be provided or promoted and the policies for supervision in the next licensing cycle. The supervisory plan will be applicable to the applicant for renewal of the qualifying broker's license and all affiliated brokers, if any. A qualifying broker who is supervised by another qualifying broker is not required to submit a supervisory plan. [16.61.3.13 NMAC – Rp. 16.61.3.9 NMAC, 1-15-2018]

**HISTORY OF 16.61.3 NMAC:
Pre-NMAC History:**

The material in this part was derived from that previously filed with the state records center and archives under: Real Estate License Law Manual, filed 10-2-73; REC-9, filed as Rule No. 9 Amendment No. 2 Broker Examinations; Time for Filing; Place of, filed 6-15-79; REC 80-2, filed as Rule No. 9 Amendment No. 3, Broker Examinations; Time for Filing, Place of, filed 7-17-80; REC 70-7, Broker Examinations - Time for Filing - Place of, filed 10-6-81; REC 71-7, Broker Examinations - Time for Filing - Place of, filed 11-29-82; Rule No. 2, Examinations-Requirements/Application for, filed 12-18-87; NMREC Rule No. 2 Examination-Requirements/Application for, filed 10-3-94.

History of Repealed Material:

16 NMAC 61.3, Broker's License: Examination and Application Requirements (filed 6-25-97) repealed 1-1-2000.
16 NMAC 61.3, Broker's License: Examination and Licensing Requirements (filed 12-10-99) repealed 1-1-2002.
16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements (filed 11-30-2001) repealed 1-1-2006.
16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing

Application Requirements (filed 11-16-2005) repealed 12-31-2008.
16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-17-2008) repealed 1-1-2012.
16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-21-2011) repealed 1-15-2018.

Other History:

That applicable portion of NMREC Rule No. 2 Examination-Requirements/Application for (filed 10-3-94) was renumbered, reformatted, and replaced by 16 NMAC 61.3, Broker's License: Examination and Application Requirements, effective 8-15-97.
16 NMAC 61.3, Broker's License: Examination and Application Requirements (filed 6-25-97) was replaced by 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, effective 1-1-2000.
16 NMAC 61.3, Broker's License: Examination and Licensing Application Requirements (filed 12-10-99) was replaced by 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, effective 1-1-2002.
16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements (filed 11-30-2001) was replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 1-1-2006.
16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-16-2005) replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 12-31-2008.
16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-17-2008) replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective

1-1-2012.
16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-21-2011) repealed 1-15-2018.

**REAL ESTATE
COMMISSION**

This an amendment to 16.61.1 NMAC, Section 7, effective 1-15-2018. In 16.61.1.7 NMAC, Subsections A through J and L through HHH were not published as there were not any changes.

16.61.1.7 DEFINITIONS:

K. [~~“Broker duties”~~:-
~~Certain duties owed by brokers to customers, clients, tenants, and other brokers.~~] “Broker duties”:-Certain duties owed by brokers to prospective buyers, sellers, owners and tenants, and broker obligation to other brokers as set forth in 16.61.19.8 NMAC.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2012; A, 1-1-2017; A, 1-15-2018]

**REAL ESTATE
COMMISSION**

This an amendment to 16.61.15 NMAC, Section 8, effective 1-15-2018.

**16.61.15.8 EDUCATION
AND ADVISORY COMMITTEE:**

A. The committee shall meet monthly or as required for the purpose of evaluating applications for real estate course sponsors, courses, and instructors and shall make recommendations to the commission as to its findings.

(1) The committee shall use specific criteria to evaluate a course, an instructor or course sponsor for approval. These

specific criteria shall consider both the instructor's depth of knowledge of the subject and the instructor's ability to convey that knowledge.

(2) The committee shall clearly state in writing to the applicant the reasons for which a course, an instructor or course sponsor are not approved.

(3) A sponsor or instructor applicant not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

B. [The committee shall consist of nine voting members and no fewer than three non-voting instructor/advisory members.—The chair and vice chair shall be appointed from among the voting members. Upon the effective date of this rule, approximately half of the members shall be appointed to two-year terms, and half to three-year terms. Thereafter, all members shall be appointed to three-year terms. Members shall serve a maximum of two three-year terms, but may reapply for membership one year after the expiration of their second term. The commission shall appoint members to fill vacancies until the end of the term of the vacant position.] The committee shall consist of up to nine voting members and not fewer than three non-voting instructor/advisory members. The committee chair and a vice chair shall be elected by the committee from among the voting members. Upon the effective date of this rule, approximately half of the members shall be appointed to two-year terms and half to three-year terms. Thereafter, all members shall be appointed to three-year terms.

C. Members shall serve a maximum of two consecutive terms, but may reapply for membership on year after the expiration of their second term. The commission shall appoint members to fill vacancies until the end of the term of the vacant position.
[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC, A, 1-15-2018]

REAL ESTATE COMMISSION

This an amendment to 16.61.16 NMAC, Section 9, effective 1-15-2018. In 16.61.16.9 NMAC, Subsections A through D and H through P were not published as there were no changes

16.61.16.9 RESPONSIBILITIES

E. [supervise all real estate related activities performed by the brokerage on behalf of others including but not limited to advertising of real estate or real estate services conducted on behalf of others by associate brokers qualifying brokers, and employees and trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers;] Supervise all real estate related activities performed by all personnel, licensed or unlicensed, on behalf of others; as follows:

(1) Review and maintain all records and documents required for real estate related matters processed by all personnel supervised by the qualifying broker

(2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance with the Real Estate License Law and Commission Rules.

(3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.

(4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

F. [execute and maintain current written employment or independent contractor agreements with all persons affiliated with the brokerage, including brokers and brokerage owners whether or not

the brokerage owners are licensed real estate brokers;] All records and documents wherein the qualifying broker and affiliated associate brokers are engaged on behalf of others, or on their own behalf, in real estate related matters; the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office. All such records whether in paper or electronic format shall be retained for a period of not less than six years. In the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement

G. [maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage; the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than six years; in the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;] Supervision of trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers. Such trust account management will conform to other trust account requirements in the commission rules.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1-1-2012; A, 1-1-2017, A, 1-15-2018]

**REAL ESTATE
COMMISSION**

This an amendment to 16.61.19
NMAC, Section 8, effective 1-15-
2018.

16.61.19.8 BROKER

DUTIES; DISCLOSURE: [Before the time a broker generates or presents any written document that has the potential to become an express written agreement, the broker shall disclose in writing to their prospective customer or client, and obtain a written acknowledgement from their prospective customer or client, showing the delivery of the disclosure of the following broker duties:]
Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants as set forth in this part. Brokers shall disclose the applicable set of broker duties owed to buyers, sellers, landlords (owners) of rental property and tenants as set forth in this part prior to the time the broker generates or presents any written document to that party that has the potential to become an express written agreement and obtain from that applicable party written acknowledgement that the broker has made such disclosures. In the case of prospective buyers, sellers, landlord (owners) and tenants to whom the broker is not directly providing real estate services, such disclosure and acknowledgment of receipt shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

A. [honesty and reasonable care as set forth in the provisions of this section:]
Brokers owe the following duties to prospective buyers, sellers, landlords (owners) and tenants:

(1) Honesty and reasonable care and ethical and professional conduct;

(2) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, the New

Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations;

(3) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;

(4) Written disclosure of any potential conflict of interest that the broker has in the transaction including but not limited to:

(a) Any written brokerage relationship the broker has with any other parties to the transaction or;

(b) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

5) Written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

B. [compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, and other applicable local, state, and federal laws and regulations:]
In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this section, brokers owe the following broker duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services, regardless of the scope and nature of those services; brokers working as property managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:

(1) Assistance to the party in completing the

transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services, including:

(a) Timely presentation of and response to all offers or counter-offers; and
(b)

Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
If the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance;

(2) Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;

(3) Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement.

(4) Prompt accounting for all money or property received by the broker;

(5) Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;

(6) Written disclosure of brokerage relationship options available in New Mexico;

(7) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:

(a) That the seller/owner has previously indicated they will accept a sales/lease

price less than the asking or listed price of a property:

(b)

That the seller/owner will agree to financing terms other than those offered;

(c)

The seller/owner's motivations for selling/leasing; or

(d)

Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;

(8) Unless

otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:

(a)

That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;

(b)

The buyer/tenant's motivation for buying/leasing; or

(c)

Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

(9) In the

event the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

C. [performance of any and all written agreements made with the customer or client;] In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this section, brokers working as property managers for a landlord (owner) owe the following duties to tenants:

(1) Prompt

accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;

(2) If a

residential property manager, written disclosure that the broker is the agent of the owner of the property and

not of the tenant; in the commercial property management context, written disclosure of the broker's relationship with the landlord (owner).

D. [assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

(1)

presentation of all offers or counter-offers in a timely manner; and

(2) assistance

in complying with the terms and conditions of the contract and with the closing of the transaction; if the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction;] Broker obligations to other brokers. Brokers owe the following professional obligations to other brokers; however, brokers are not required to provide to one another a list of these broker obligations.

(1) Honesty,

reasonable care, and ethical and professional conduct;

(2) Timely

presentation of offers or counter-offers and responses thereto, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;

(3) Active

participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the contract and with the closing of the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;

(4)

Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules; the New

Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;

(5) Written

disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act;

(6) Written

disclosure of any potential conflict of interest that the broker has in the transaction, including but not limited to, any material interest the broker has in the transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction;

(7) Non-

interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004; A, 3-27-2004; A, 1-1-2006; A, 1-1-2006, A, 1-1-2007; A, 12-31-2008; A, 1-1-2012; A, 1-1-2014. A, 1-15-2018]

End of Adopted Rules

Other Material Related To Administrative Law

ATTORNEY GENERAL, OFFICE OF THE

NOTICE OF FINAL FORM

The Attorney General, pursuant to Section 57-31-5 NMSA 1978, is publishing a final form Distributed Generation Disclosure Statement that may be used to provide the disclosures required by the Distributed Generation Disclosure Act, Sections 57-31-1 to 57-31-5 NMSA 1978 (2017), for agreements with buyers or lessees. The final form will be published in the December 26, 2017, New Mexico Register.

The final form is available at the Office of the Attorney General located in the Paul Bardacke Attorney General Complex in Santa Fe located at 408 Galisteo Street, Consumer & Environmental Protection Division; at the Attorney General's Office located in Albuquerque at 201 3rd Street NW, Suite 300; and at the Attorney General's Office located in Las Cruces at 201 North Church Street, Suite 315.

The final form is also posted on the Office of the Attorney General's website and may be accessed, free of charge, from the following website: www.nmag.gov.

To request that a copy of the final form be mailed to you, please submit your request in writing to:

**Office of the Attorney General
Consumer Protection Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508**

You may also request a copy of the final form by calling the following telephone number: 1-844-255-9210. There is a \$.25 copying charge per page for written and telephone requests for copies of the final form.

I. Party Information.	
<u>Lesser or Lessee</u> Name: _____ Address: _____ Telephone: _____ Email: _____	<u>(Seller or Marketer)</u> Name: _____ Address: _____ Telephone: _____ Email: _____ License No.: _____
<u>System Installer</u> Name: _____ Address: _____ Telephone: _____ Email: _____ State Contractor's License No.: _____	<u>Maintenance Provider</u> (if different from installer) Name: _____ Address: _____ Telephone: _____ Email: _____ State Contractor's License No.: _____
II. Purchase Price, Financing and Payments.	
A. Purchase Price of the Distributed Energy System: \$ _____	
Your Down Payment is: \$ _____ Incentives: \$ _____ Rebates: \$ _____ Other Credits: \$ _____	Amount Due Upon Installation: \$ _____ Amount Due Upon Completion: \$ _____ Amount Due Upon Energization: \$ _____

B. Financing Costs: Final Price to be Paid including Financing Costs \$ _____

Total Amount Financed \$ _____

Your monthly payment will be \$ _____

Your Annual Percentage Rate is ____%

Your monthly payment is due on _____

Total Number of Payments: _____

Date of Final Payment: _____

X. Total Purchase Power Agreement (PPA) Payments are \$ _____

**NOTE: YOU ARE ENTERING INTO AN AGREEMENT TO PURCHASE POWER,
NOT TO PURCHASE THE SYSTEM.
YOU WILL NOT OWN THE SYSTEM AFFIXED TO YOUR PROPERTY.**

Your initial rate per kilowatt-hour ("kWh") for the electricity produced by the system is \$ _____.

Your monthly payments will be the amount of the energy the system produces multiplied by the rate above.

The Initial Term of the PPA: Years ☐ _____ Months ☐ _____

You first Payment is due on the _____ day of the first calendar month your system is energized.

YOUR PPA: HAS ☐ DOES NOT HAVE ☐ A PAYMENT ESCALATOR. If our PPA HAS a PAYMENT ESCALATOR your electricity rate will increase by _____% per year

The license number shall include the Seller's or Marketer's license number, bond information, appropriate solicitation permit and other required licenses.

III. Fees.

A. Late Fee (include the circumstances triggering any late fees). (Identify the page(s) and paragraph(s) of the contract provision(s) that address this fee.) \$ _____.

B. System Removal Fees. (Identify the page(s) and paragraph(s) of the contract provision(s) that address this fee.) \$ _____.

C. System Removal Fees for default. (Identify the page(s) and paragraph(s) of the contract provision(s) that address this fee.) \$ _____.

D. Uniform Commercial Code Notice Removal and Refiling Fees. (Identify the page(s) and paragraph(s) of the contract provision(s) that address this fee.) \$ _____.

E. Maintenance Fees. (Identify the page(s) and paragraph(s) of the contract provision(s) that address this fee.) \$ _____.

F. Internet Connection Fees. (Identify the page(s) and paragraph(s) of the contract provision(s) that address this fee.) \$ _____.

G. Automated Clearing House Fees. (Identify the page(s) and paragraph(s) of the contract provision(s) that address this fee.) \$ _____.

H. (List one-time or recurring fees) (Identify the page(s) and paragraph(s) of the contract provision(s) that address this fee.) \$ _____.

I. (Add spaces as needed.) \$ _____.

IV. Tax Credits, Rebates and Incentives and Renewable Energy Certificates. The distributed energy system is eligible for the following:

A) (Identify Each Tax Credit) (Describe whether, the buyer, lessee, seller or marketer owns the credit, whether the seller or marketer used the credit in determining the price of the system and describe the transferability of the credit.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address this credit.)

\$ _____.

B) (Identify Each Tax Rebate) (Describe whether, the buyer, lessee, seller or marketer owns the rebate, whether the seller or marketer used the rebate in determining the price of the system and describe the transferability of the rebate.) (Describe the ownership and transferability.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address this rebate.)

\$ _____.

C) (Identify Each Tax Incentive) (Describe whether, the buyer, lessee, seller or marketer owns the incentive, whether the seller or marketer used the incentive in determining the price of the system and describe the transferability of the incentive.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address this incentive.)

\$ _____.

D) (Identify Each Renewable Energy Certificate(s)) (Describe whether, the buyer, lessee, seller or marketer owns the certificate, whether the seller or marketer used the certificate in determining the price of the system and describe the transferability of the certificate.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address this fee.)

\$ _____.

E) (Add spaces as needed)

\$ _____.

V. Tax Obligations – You are required to pay the following tax obligations.

A. Business Personal Property Taxes. (Identify the page(s) and paragraph(s) of the contract provision(s) that address this tax obligation.)

\$ _____.

B. Gross Receipts Taxes. (Identify the page(s) and paragraph(s) of the contract provision(s) that address this tax obligation.)

\$ _____.

C. Tax Credit(s) or Incentive(s). (Describe Obligations of the power purchaser or lessee to transfer tax credits or tax incentives of the distributed energy generation system to any other person.) (Identify the page(s) and paragraph(s) of the contract provision(s).)

that address this tax obligation.)

\$ _____.

D. (In the case of a commercial installation) Change In Assessed Property Taxes. (Identify the page(s) and paragraph(s) of the contract provision(s) that address this tax obligation.)

\$ _____.

VI. Transferability of Lease or PPA and the Selling or Refinancing your Home.

A) In the event of the transfer of the real property to which the distributed energy generation system is affixed, the Buyer or Lessee has the following options: (List and describe all options available to the buyer or lessee in connection with the)

1. (The continuation of the agreement between the buyer or lessee and the seller or marketer.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address transferability.);
2. (The termination of the agreement between the buyer or lessee and the seller or marketer.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address termination.); and/or
3. (The transfer of the agreement between the buyer or lessee and the seller or marketer.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address transferability.)

B) (List the restrictions pursuant to the agreement on the buyer's or lessee's ability to modify or transfer ownership of the distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address this tax transferability.) (Identify Third-Party Approver or Reviewer's by Name, Mailing Address and Telephone.)

C) (Whether the warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred to a third party.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address transferability.)

D) (Notice to the buyer or the lessee of the transferability of any warranty obligations to subsequent buyers or lessees.) (Identify the page(s) and paragraph(s) of the contract provision(s) that address transferability.)

VII. Performance Guarantees.

(Any performance guarantees that a seller or marketer may include in an agreement.)

VIII. Design Assumptions.

(The distributed energy generation system design assumptions, including: system size; estimated first-year production; and estimated annual system production decreases, including the overall percentage degradation over the life of the distributed energy generation system.)

IX. Financial and Energy Savings Assumptions, Calculations and Comparative.

(The assumptions and calculations used for any financial and energy savings assumptions, calculations and comparative estimates savings estimates that were provided to the buyer or lessee in a promotional document or sales presentation. If historical information is used, it shall be accompanied by the following statement: "Historical data are not necessarily representative of future results.")

X. Rates Disclosure.

Actual utility rates may increase or decrease and actual savings may vary. For further information regarding rates, you may contact the local utility or the Public Regulation Commission. Tax and other state and federal incentives are subject to change.

XI. Interconnection Disclosure.

Interconnection requirements, including time lines, are established by rules of the Public Regulation Commission and may be obtained from either the Public Regulation Commission or the local utility.

XII. Permits and Inspections.

Within thirty days of completion of installation or modification, the seller or marketer shall provide the buyer or lessee with proof that:

- 1) all required permits for the installation or any modification of the system were obtained prior to installation; and
- 2) the system received was approved by an authorized inspector.

XIII. Security Filings.

Seller or Marketer **WILL** ☐ **WILL NOT** ☐ place a lien on your home as part of any lease or PPA.

Seller or Marketer **WILL** ☐ **WILL NOT** ☐ file a fixture filing or UCC-1 Financing Statement with the County Clerk in your home's Real Property Records.

If the Seller or Marketer filed a fixture filing or UCC-1 Financing Statement pursuant to the Uniform Commercial Code they must provide you a copy of the filed financing statement within thirty calendar days of the filing.

You have the right to rescind this agreement for a period of ____ days (not less than 3 business days) after the agreement is signed. The Seller or Marketer will also provide you two copies of a completed "Notice of Cancellation" form with the contract.

Date: _____	This Document was prepared by: _____
(Buyer or Lessee)	(Seller or Marketer)
Printed Name: _____	Printed Name: _____
Address: _____	Address: _____
Phone: _____	Phone: _____
Email: _____	Email: _____

HEALTH, DEPARTMENT OF

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The New Mexico Department of Health (DOH) gives Notice of Minor, Nonsubstantive Correction.

The following corrections have been identified and amended regarding:

1) Removed subsection A in Section 2 – SCOPE, since there was not subsection B and re-numbered former paragraphs (1) through (3) as subsection A through C;

2) Re-numbered subsection E through H as subsections D through G in Section 9 – AED program requirements.

A copy of this *Notification* will be filed with the official version of the above rule.

Copies of the referenced rule may be accessed through the Department of Health website at www.nmhealth.org or by contacting Benito Gomez at Benito.Gomez@state.nm.us, Department of Health, P.O. Box 26110, Santa Fe NM 87102-6110, or via telephone at (505) 827-2723.

PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS, BOARD OF LICENSURE FOR

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors gives Notice of Minor, Nonsubstantive Correction.

The following corrections have been identified and amended regarding:

Re-numbered items (i) through (v) of subparagraph (a) of paragraph (2) of subsection F of Section 10 - PRACTICE OF SURVEYING.

A copy of this *Notification* will be filed with the official version of the above rule.

Copies of the referenced rule may be accessed through the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors website (www.sblpes.state.nm.us) or by contacting Angelica Urioste at AngelicaM.Urioste@state.nm.us, 2550Cerrillos Rd., Santa Fe, New Mexico 87505 or PO Box 25101, Santa Fe, New Mexico, 87504 or 476-4565.

**End Of Other
Material Related To
Administrative Law**

2018 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	March 1	March 13
Issue 6	March 15	March 27
Issue 7	March 29	April 10
Issue 8	April 12	April 24
Issue 9	April 26	May 15
Issue 10	May 17	May 29
Issue 11	May 31	June 12
Issue 12	June 14	June 26
Issue 13	June 28	July 10
Issue 14	July 12	July 24
Issue 15	July 26	August 14
Issue 16	August 16	August 28
Issue 17	August 30	September 11
Issue 18	September 13	September 25
Issue 19	September 27	October 16
Issue 20	October 18	October 30
Issue 21	November 1	November 13
Issue 22	November 15	November 27
Issue 23	November 29	December 11
Issue 24	December 13	December 27

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

The New Mexico Register is available free online at: <http://www.nmcpr.state.nm.us/nmregister>. For further information, call 505-476-7942.