NEW MEXICO
Commission of Public Records
at the State Records Center and Archives
Your Access to Public Information

New Mexico Register

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

Volume XXX - Issue 3 - February 12, 2019

COPYRIGHT © 2019
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 XXX, Issue 3
February 12, 2019

Table of Contents

Notices of Rulemaking and Proposed Rules

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

---

This Page Intentionally Left Blank

Notices of Rulemaking and Proposed Rules

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Regulation Commission (Commission) gives notice that it will repeal and replace parts of its State Fire Marshal Rules with proposed rule revisions to Parts 1, 3, and 5 of Title 10, Chapter 25 of the New Mexico Administrative Code (10.25.1, 10.25.3, and 10.25.5 NMAC, respectively), and that it will amend Part 6 of Title 10, Chapter 25 of the New Mexico Administrative Code (10.25.6 NMAC) of the State Fire Marshal Rules.

Rulemaking Statutory Authority:
The State Fire Marshal is a division of the Commission pursuant to Subsection F of Section 8-8-6 of the Public Regulation Commission Act, and the Commission is authorized to adopt the State Fire Marshal Rules pursuant to Paragraph (10) of Subsection B of Section 8-8-4, and by Section 8-8-15, of the Public Regulation Commission Act. In addition to having the authority to adopt reasonable rules necessary or appropriate to carry out its powers and duties, the authority to promulgate rules as to the subject matter of the affected parts of Title 10, Chapter 25 of the New Mexico Administrative Code are the State Fire Marshal statutes, Sections 59A-52-1 through 59A-52-26 NMSA 1978, which authorize revisions to Parts 1, 3, 5, and 6, the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978, which authorizes revisions to Part 3, and the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-26 NMSA 1978, authorizes revisions to Parts 1, 3 and 6 of the State Fire Marshal Rules.

Proposed Rule Summary and Explanation of Purpose:
The purposes of the proposed rulemaking revisions to Title 10, Chapter 25 of the New Mexico Administrative Code are: to substantially rewrite Part 5 to update the language and to repeal the currently adopted 2003 International Fire Code standards to be replaced with the 2015 International Fire Code standards, to amend Part 1 to update language to accurately show "New Mexico State Fire Marshal Division" as being the current name of the division, to amend Part 3 to update language to accurately show the "Public Regulation Commission" as being the current name of the commission, and to amend Part 6 to make minor language changes. Copies of the Order Issuing Notice of Proposed Rulemaking containing the full text of the proposed rule as an Exhibit thereto, as well as additional information and filing instructions, may be downloaded from the Proposed Rulemaking section of the Commission's website at http://www.Commission.state.nm.us under Case No. 18-00323-FM or may be otherwise obtained by calling the Commission's Records Management Bureau at (505) 827-6968.

Technical Information:
Proposed revisions to Part 5 of Title 10, Chapter 25 of the New Mexico Administrative Code make reference to various codes. These code references are identified and may be viewed or accessed online as follows:

2015 International Building Code at https://codes.iccsafe.org/content/IBC2015

2015 International Existing Building Code at https://codes.iccsafe.org/content/IEBC2015

2015 International Fire Code at https://codes.iccsafe.org/content/IFC2015

NFPA 1 at https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/Free-access

NFPA 101 at https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/Free-access

2012 Uniform Mechanical Code at http://epubs.iapmo.org/2012/UMC

2012 Uniform Plumbing Code at http://epubs.iapmo.org/2012/UPC

Comments/Deadlines:
Written initial comments and written response comments must be filed with the Commission's Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the Commission Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 by these deadlines: Written initial comments must be filed by Thursday, March 14, 2019, and written response comments must be filed by Thursday, March 21, 2019 at 5:00 p.m. Filed written comments must refer to Case No. 18-00323-FM. All written comments will be posted on the Rulemaking Proceedings section of the Commission's website at http://www.nmprc.state.nm.us under Case No. 18-00323-FM and also are available for public inspection at the Commission's offices at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501.

Rulemaking Public Hearing:
The rulemaking public hearing will be held on Friday, March 22, 2019 beginning at 10:30 a.m. at the Commission's 4th Floor Hearing Room at 1120 Paseo de Peralta in Santa Fe. The purpose of the rulemaking public hearing is to receive oral comments about the proposed rule revisions. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, the time duration for any individual delivering oral comments may be limited by the hearing's Presiding Officer to a set number of minutes, subject to the Presiding Officer's discretion. The Presiding Officer may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that share(s) the same message or seek(s) the same goals, in order to maximize the efficiency of the rulemaking public comment hearing. Because

this case is a rulemaking proceeding, no testimony or other evidence will be taken at the rulemaking public comment hearing. The record of this case will close on Monday, March 25, 2019 at 5:00 p.m.

This official Notice of Proposed Rulemaking is published in the New Mexico Register, and contains official dates and deadlines. A copy of this Notice of Proposed Rulemaking will be posted on the Rulemaking Proceedings section of the Commission's website at http://www.nmprc.state.nm.us under Case No. 18-00323-FM and on the sunshine portal. Because rulemaking public comment hearings are occasionally rescheduled, due to inclement weather conditions or other conditions outside of the control of the Commission, interested persons should access the Proposed Rulemaking section of the Commission's website at http://www.Commission.state.nm.us under Case No. 18-00323-FM, or should contact the Commission through Ms. Kathleen Segura at (505) 827-4501, to confirm the date, time, and place of the hearing. If you are an individual with a disability that requires assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Ms. Segura at least 48 hours prior to the commencement of the rulemaking public comment hearing.

RACING COMMISSION

AMENDED NOTICE OF PUBLIC MEETING AND RULE-MAKING HEARING

The New Mexico Racing Commission (Commission) will hold a Public Meeting and Rule-Making Hearing on March 21, 2019. The Rule-Making hearing will be held during the Commission's regular business meeting with the public session beginning at 9:30 a.m. The Commission will re-convene a regular meeting to adopt the rules and take care of regular business. The Rule Hearing and Commission meeting will be held in the Boardroom located at the New Mexico Racing Commission, 4900 Alameda Blvd., NE, Albuquerque, NM.

The Commission is proposing the following amendments listed below to the Rules Governing Horse Racing in New Mexico to limit payment types that the Commission may accept, offer a new wager to the betting public, update rules pertaining to the medication section, include verbiage allowing licensee to void a claim on a horse, address specific section pertaining to hearings, and modify the duties of the official veterinarian:

15.2.1 NMAC - General Provisions
15.2.3 NMAC - Flat Racing Officials
15.2.4 NMAC - Types of Races
15.2.5 NMAC - Rules of the Race
15.2.6 NMAC - Veterinary Practices, Equine Health, Medication & Trainer Responsibility
15.2.7 NMAC - Pari Mutuel Wagering

A copy of the proposed rule may also be found on http://nmrc.state.nm.us/rules-regulations.aspx., or contact the Commission's Legal Assistant, Kira Frazier at (505) 222-0714, or by regular mail at New Mexico Racing Commission, 4900 Alameda Blvd. NE, Albuquerque, New Mexico 87113.

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 March 21, 2019. 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

The **final** agenda will be available seventy-two (72) hours prior to the meeting. A copy of the **final** agenda may be obtained from Kira Frazier or from the Commission's website.

No technical information served as the basis for the proposed rule.

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

Statutory Authority: Legal authority for this rulemaking can be found in the New Mexico Horse Racing Act, NMSA 1978, Sections 60-1A-1 through 60-1A-30 (2007, as amended through 2017), which, among other provisions, specifically authorizes the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing in the State.

The Commission proposes the following rule amendments:

Subsection B of 15.2.1.9 NMAC: The purpose of the proposed amendment to allow the Racing Commission the ability to be consistent with the policy that is currently in place with regard to the payment types that are accepted at the Commission Offices.
Subsection C of 15.2.1.9 NMAC: The purpose of the proposed amendment is to address the handling of subpoenas, objections to a hearing officer and deadline for a hearing officer to produce their report in a matter and allowing the Commission to engage a court reporter for hearings.

Subsection B of 15.2.3.8 NMAC: The purpose of the proposed amendment is to eliminate the mandate for the stewards to consult with the official veterinarian

regarding a laboratory finding or alleged medication violation.

Subsection A of 15.2.4.8 NMAC: The purpose of the proposed amendment is to include verbiage regarding when a claim on a horse shall be voided.

Subsection C and E of 15.2.5.10 NMAC: The purpose of the proposed amendments is to eliminate the scale of weights, insert verbiage that is cohesive with ARCI Model Rules, include a minimum weight for Quarter Horses and remove the verbiage "and/or".

Subsection A of 15.2.6.8 NMAC: The purpose of the proposed amendment is to replace the word "supervision" with the word "authority" and to eliminate the need for the official veterinarian to recommend to the commission discipline to be imposed on a veterinarian who violates a rule.

15.2.6.9 NMAC: The purpose of the proposed amendments to 15.2.6.9 NMAC are as follows: to reference the current version of the ARCI's document, "Uniform Classification Guidelines for Foreign Substances and Recommended Penalties" and "Model Rule"; in Subsection A to address entries made by a spouse of a suspended licensee; in Subsections C and J to state there is no permissible concentration of "albuterol" allowed in any official sample; Subsection G is amended to follow ARCI model rule regarding androgenic-anabolic steroids; and, in Subsection K, to include the verbiage "premises under the jurisdiction of the New Mexico Racing Commission" as an area where certain items are not permissible.

15.2.7.11 NMAC: The purpose of the proposed new Subsection to 15.2.7.11 NMAC is to offer a new wager to both on and off track patrons. The wager is a multi-leg wager that requires picking one horse in each leg, receiving points depending on the horses finish. Upon conclusion of the leg races, the patron or patrons with the most points, win or share the pool.

SUPERINTENDENT OF INSURANCE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, and proceeding pursuant to the New Mexico Insurance Code, Section 59A-1-1 et seq. NMSA 1978 ("Insurance Code"), proposes to adopt a new rules, 13.1.4 NMAC "Public Rule Hearings", 13.1.5 NMAC " Formal Administrative Hearings", and 13.1.6 NMAC "Informal Administrative Hearings".

The purpose of these rules are to provide procedural rules for public rule hearings and to provide general hearing practice rules for hearings before the OSI.

Statutory authority for promulgation of the proposed new rules is found at Sections 14-4-5.8 NMSA 1978, 59A-2-9 NMSA 1978 and 1.24.25.8 NMAC.

The proposed new rules may be found on the OSI website at http://www.osi.state.nm.us under the "Statutes & Rulemaking" tab and is incorporated by reference into this Notice of Proposed Rulemaking. Copies of the Notice of Proposed Rulemaking and proposed rules are 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 will hold public hearings on the proposed rules on April 12, 2019 beginning at 10:00 a.m. and the rules will be addressed consecutively, at the NM Office of Superintendent of Insurance, 4th Floor Hearing Room, Old PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. The Superintendent or his designee shall act as the hearing officer for this rulemaking. OSI will accept oral comments at the public hearing from members of the public and any interested parties including, but not limited to OSI staff.

Written comments and proposals will be accepted through 4:00 pm on Friday, March 29, 2019. Response comments will be accepted through 4:00 pm on April 19, 2019. 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.: 19-00003-RULE-PC "Public Rule Hearings"
Docket No.: 19-00005-RULE-PC "Formal Administrative Hearings"
Docket No.: 19-00006-RULE-PC "Informal Administrative Hearings"

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 received after 4:00 p.m. will be filed to the docket the next business day.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Melissa Martinez, Law Clerk, Office of 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 close on the earlier of thirty (30) days following the Public Hearing or the date a Final Order is issued in this case.

DONE AND ORDERED this 12th day of February 2019.
/S/JOHN G. FRANCHINI

SUPERINTENDENT OF INSURANCE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, and proceeding pursuant to the New Mexico Insurance Code, Section 59A-l -1 et seq. NMSA 1978 ("Insurance Code"), proposes to adopt a new rule, 13.4.8 NMAC "Public, Staff and Independent Adjusters".

The purpose of this rule is to set forth licensing requirements of public, independent, and staff adjusters in this state. This rule does not apply to persons who are excluded pursuant to Subsection B of Section 59A-13-2 NMSA 1978,

Statutory authority for promulgation of the proposed new rule is found at Sections 59A-2-8, 59A-2-9, and 59A-13-1 et seq. NMSA 1978.

The proposed new rule may be found on the OSI website at http://www.osi.state.nm.us under the "Statutes & Rulemaking" tab and is incorporated by reference into this Notice of Proposed Rulemaking. The proposed rule designation is 13.4.8 NMAC. Copies of the Notice of Proposed Rulemaking and proposed rule are 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 will hold a public hearing on the proposed rule on March 18, 2019 at 10:00 a.m. at the NM Office of Superintendent of Insurance, 4th Floor Conference Room, Old PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.
The Superintendent or his designee shall act as the hearing officer for this rulemaking. OSI will accept oral comments at the public hearing from members of the public and any interested parties including, but not limited to OSI staff, property and workers compensation insurance carriers, and professional adjusters covering residents of this state.

Written comments and proposals will be accepted through 4:00 pm on Thursday, March 14, 2019. Responsive comments will be accepted through 4:00 pm on March 22, 2019. 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.: 19-00001-RULE-PC**

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 received after 4:00 p.m. will be filed to the docket the next business day.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Melissa Martinez, Law Clerk, Office of 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 close on the earlier of thirty (30) days following the Public Hearing or the date a Final Order is issued in this case, whichever is earlier.

DONE AND ORDERED this 12th day of February 2019.
/S/JOHN G. FRANCHINI

SUPERINTENDENT OF INSURANCE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, and proceeding pursuant to the New Mexico Insurance Code, Section 59A-l -1 et seq. NMSA 1978 ("Insurance Code"), proposes to repeal 13.10.8 NMAC.

Rule 13.10.25 NMAC is effective January 1, 2019, therefore this rule 13.10.8 NMAC no longer applies.

Statutory authority for repealing this rule is found at Sections 59A-2-8 and 59A-2-9 NMSA 1978.

OSI will hold a public hearing on the repeal of the rule on March 18, 2019 at 9:00 a.m. at the NM Office of Superintendent of Insurance, 4th Floor Conference Room, Old PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

The Superintendent or his designee shall act as the hearing officer for this rulemaking. OSI will accept oral comments at the public hearing from members of the public and any interested parties including, but not limited to OSI staff and health insurance carriers covering residents of this state.

Written comments and proposals will be accepted through 4:00 pm on Thursday, March 14, 2019. Responsive comments will be accepted through 4:00 pm on March 22, 2019. 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.: 19-00004-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 received after 4:00 p.m. will be filed to the docket the next business day.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Melissa Martinez, Law Clerk, Office of 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 close on the earlier of thirty (30) days following the Public Hearing or the date a Final Order is issued in this case.

DONE AND ORDERED this 12th day of February 2019.
/S/JOHN G. FRANCHINI

SUPERINTENDENT OF INSURANCE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, and proceeding pursuant to the New Mexico Insurance Code, Section 59A-l -1 et seq. NMSA 1978 ("Insurance Code"), proposes to adopt an amendment to 13.10.25 NMAC, Paragraph (2) of Subsection 11, previously issued as an emergency amendment, effective 1/1/2019.

The purpose of the rule amendment is to make permanent the emergency rule amendment that went into effect on January 1, 2019. This emergency rule corrected an error in a previously adopted rule.

Statutory authority for promulgation of the proposed amended rule is found at Sections 59A-2-8, 59A-2-9, and 59A-24A-1 et seq. NMSA 1978.

The proposed amendment may be found on the OSI website at http://www.osi.state.nm.us under the "Statutes & Rulemaking" tab and is incorporated by reference into this Notice of Proposed Rulemaking. The proposed rule designation is 13.10.25 NMAC. Copies of the Notice of Proposed Rulemaking and proposed rule are 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 will hold a public hearing on the proposed rule on March 18, 2019 at 9:30 a.m. at the NM Office of Superintendent of Insurance, 4th Floor Conference Room, Old PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. The Superintendent or his designee shall act as the hearing officer for this rulemaking. OSI will accept oral comments at the public hearing from members of the public and any interested parties including, but not limited to OSI staff and health insurance carriers covering residents of this state.

Written comments and proposals will be accepted through 4:00 pm on Thursday, March 14, 2019. Responsive comments will be accepted through 4:00 pm on March 22, 2019. 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.: 19-00002-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 received after 4:00 p.m. will be filed to the docket the next business day.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Melissa Martinez, Law Clerk, Office of 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 close on the earlier of thirty (30) days following the Public Hearing or the date a Final Order is issued in this case.

DONE AND ORDERED this 12th day of February 2019.
/S/JOHN G. FRANCHINI

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

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

ENVIRONMENT DEPARTMENT
AIR QUALITY BUREAU

20.2.20 NMAC, Lime Manufacturing Plants – Particulate Matter, filed 10/31/02 is hereby repealed, effective 2/25/19. The New Mexico Environmental Improvement Board adopted this change during their 1/25/19 regular meeting.

SUPERINTENDENT OF INSURANCE

This is an amendment to 13.10.29 NMAC, Section 7, effective 2/12/2019.

13.10.29.7 DEFINITIONS:

A. Terms beginning with the letter "A":

(1) "Accrued liability" means liabilities established on the date an injury is sustained or an illness commences.

(2) "Ambulance service" means any transportation service designated and used or intended to be used for the transportation of sick or injured persons.

(3) "Ambulatory surgical center" means a facility where health care providers perform surgeries, including diagnostic and preventive surgeries that do not require hospital admission.

(4) "Appointment waiting time" means the time from the initial request for health care services by a covered person or the covered person's treating provider to the earliest date offered for the appointment for services inclusive of the time for obtaining authorization from the health insurance carrier or completing any other condition or requirement of the carrier or its participating providers.

(5) "Authorized representative of a covered person" means an individual selected and authorized in writing by a covered person to represent the covered person's interests in matters related to the provision of services under a health benefits plan. Health care professionals and health insurance agents and brokers may serve as authorized representatives of covered persons.

(6) "Authorized representative of a health insurance carrier" means an individual or organization that is selected by the insurance company to represent its interests in an aspect of the regulatory or hearing process.

B. Terms beginning with the letter "B":

(1) "Behavioral health services" means assessment, diagnosis, treatment or counseling in the context of a professional relationship to assist an individual or group alleviate behavioral symptoms, conditions or disorders, including mental health diagnoses and substance use disorders, as well as other services to address developmental disability or developmental delay.

(2) "Blanket health insurance" is a form of health insurance covering special groups of not fewer than ten persons that meets the criteria outlined in Section 59A-23-2 NMSA 1978.

(3) "Business day" means a consecutive 24-hour period, excluding weekends or state holidays.

C. Terms beginning with the letter "C":

(1) "Certificate" means any certificate issued under an individual or group accident and health insurance policy that has been delivered or issued for delivery in this state, regardless of the state in which the policyholder is domiciled.

(2) "Certification of service" means a determination by a health insurance carrier that a health care service requested by a health care professional or covered person has been reviewed and, based upon the information available, is a covered benefit and meets the carrier's requirements for medical necessity, appropriateness, health care setting, level of care and effectiveness, and the requested health care service is therefore approved. The certification of service can take place following the health carrier's utilization review process.

(3) "Certified nurse-midwife" means any person who is licensed by the board of nursing as a registered nurse and who is licensed by the New Mexico department of health as a certified nurse-midwife.

(4) "Certified nurse practitioner" means a registered nurse whose qualifications are endorsed by the board of nursing for expanded practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the board of nursing.

(5) "Claim" means a request from a provider for payment for health care services rendered.

(6) "Clinical peer" means a physician or other health care professional who holds a similar non-restricted license in a

state or territory of the United States and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under review.

(7) "Clinical review criteria" means the written screening procedures, decision abstracts, clinical protocols and practice guidelines used by a health insurance carrier to determine the medical necessity and appropriateness of health care services.

(8) "Co-insurance" is a cost-sharing method that requires a covered person to pay a stated percentage of medical or pharmaceutical expenses after the deductible amount, if any, is paid; co-insurance rates may differ for different types of services under the same health benefits plan.

(9) "Copayment" is a cost-sharing method that requires a covered person to pay a fixed dollar amount when a medical or pharmaceutical service is received, with the health insurance carrier paying the allowed balance; there may be different copayment amounts for different types of services under the same health benefits plan.

(10) "Continuous quality improvement" means ongoing and systematic efforts to measure, evaluate, and improve a health insurance carrier's processes and procedures in order to continually improve the quality of health care services provided to covered persons.

(11) "Cost-sharing" means a copayment, co-insurance, deductible, or any other form of financial obligation of a covered person other than premium or share of premium, or any combination of any of these financial obligations as defined by the terms of the health benefits plan.

(12) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefits plan.

(13) "Covered person" or **"enrollee"** means a subscriber, policyholder or subscriber's enrolled dependent or dependents, or other individual participating in a health benefits plan.

(14) "Credentialing" means the process of obtaining, verifying and evaluating information about a provider when the provider applies to become a participating provider within a health insurance carrier's network.

D. Terms beginning with the letter "D":

(1) "Day" or **"Days"** shall be interpreted as follows, unless otherwise specified:

(a) one to five days means only working days and excludes weekends and state holidays; and

(b) six or more days means calendar days, including weekends and state holidays.

(2) "Deductible" means a fixed dollar amount that a covered person may be required to pay during a benefit period before the health insurance carrier begins payment for covered benefits; health benefits plans may have both individual and family deductibles and separate deductibles for specific services.

(3) "Designated rating area" means a geographic unit designated by the superintendent and used by insurers to determine health benefits plan premiums.

E. Terms beginning with the letter "E":

(1) "Emergency care" means health care procedures, treatments or services delivered to a covered person after the sudden onset of what reasonably appears to be a medical or behavioral health condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could be expected by a reasonable layperson to result in jeopardy to a person's physical or mental health or to the health or safety of a fetus or pregnant person, serious impairment of bodily function, serious dysfunction of a bodily organ or part or disfigurement to a person;

(2) "Enrollee" or **"covered person"** means a subscriber, policyholder or subscriber's enrolled dependent or dependents, or other individual participating in a health benefits plan.

(3) "Essential community provider (ECP)" means a provider as defined in 45 C.F.R. §156.235(c).

(4) "Evidence of coverage (EOC)" means a specific document containing a clear, conspicuous, concise and legible written statement of the essential features and services covered by a health benefits plan given to the covered person by the health insurance carrier or group contract holder, which may include a separate summary of benefits as defined in Paragraph [~~(6)~~] (7) of Subsection S of this [~~rule~~] section. The evidence of coverage may serve as a covered person's certificate as defined in Paragraph (1) of Subsection C of this [~~rule~~] section.

(5) "Exception" or **"exclusion"** means any provision in a health benefits plan whereby coverage for a specific hazard, condition, or situation is excluded entirely. It is a statement of a risk or risks not assumed by the health insurance carrier under the plan.

(6) "Exchange" means the New Mexico health insurance exchange, composed of an exchange for the individual market and a small business health options program (SHOP) exchange under a single governance and administrative structure. Also known as the health insurance marketplace.

F. Terms beginning with the letter "F":

(1) "Facility" means an entity providing a health care service, including:

(a) a general, specialized, psychiatric or rehabilitation hospital;

(b) an ambulatory surgical center;

(c) a cancer treatment center;

(d) a birth center;

(e) an inpatient, outpatient or residential drug and alcohol treatment center;

(f) a laboratory, diagnostic or other outpatient medical evaluation or testing center;

(g) a health care provider's office or clinic;

(h) an urgent care center; or

(i) any other therapeutic health care setting.

(2) "Federally qualified health center (FQHC)" means an entity as defined in 42 C.F.R. §405.2401.

(3) "FDA" means the United States food and drug administration.

G. Terms beginning with the letter "G": "Group health insurance" means a form of health insurance covering groups of persons, with or without their dependents, and issued upon the criteria outlined in Section 59A-23-3 NMSA 1978.

H. Terms beginning with the letter "H":

(1) "Health benefits plan" means a policy or agreement entered into, offered or issued by a health insurance carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

(2) "Health care professional" means a physician or other health care practitioner, including a pharmacist or practitioner of the healing arts, who is licensed, certified or otherwise authorized by the state to provide health care services consistent with state law.

(3) "Health care service" means a service, supply or procedure for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease, including, to the extent covered by the health benefits plan, a physical or behavioral health service.

(4) "Health insurance carrier," "health carrier," "carrier" or **"health insurer"** means an entity subject to the insurance laws and regulations of this state, including a health insurance company, a health maintenance organization, a hospital and health services corporation, a provider service network, a non-profit health care plan or any other entity that contracts or offers to contract, or enters into agreements to provide, deliver, arrange for, pay for or reimburse any costs of health care services, or that provides, offers health benefits plans or managed health care plans in this state.

(5) "Health maintenance organization (HMO)" is as defined in Subsection N of Section 59A-46-2 NMSA 1978.

(6) "Hospital" means a facility offering inpatient services, nursing and overnight care for three or more individuals on a 24-hours-per-day, seven-days-per-week basis for the diagnosis and treatment of physical, behavioral or rehabilitative health conditions.

I. Terms beginning with the letter "I": "Initial determination" means a formal written disposition by a health insurance carrier affecting a covered person's rights to benefits, including full or partial denial of a claim or request for coverage or its initial administrative decision pursuant to the grievance procedures set forth at 13.10.17 NMAC.

J. Terms beginning with the letter "J": [RESERVED]

K. Terms beginning with the letter "K": [RESERVED]

L. Terms beginning with the letter "L":

(1) "Limitation" means any provision that restricts coverage under a health benefits plan other than an exception, exclusion or reduction.

(2) "Limited benefits plan" means a health benefits plan offered or marketed as supplemental health insurance coverage that pays specified amounts according to a schedule of benefits to defray the costs of care, services or cost-sharing amounts not covered by a major medical plan. "Limited benefits plan" does not include a short-term, limited-duration plan.

M. Terms beginning with the letter "M":

(1) "Major medical plan" or **"comprehensive plan"** means a health benefits plan, other than a limited benefits plan, that provides fully-insured, expense-based coverage, including a short-term, limited duration plan; a qualified health plan; a managed health care plan; a student health plan or a high-deductible or catastrophic plan.

[~~(1)~~] **(2) "Managed care"** means a system or technique(s) generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed care techniques most often include one or more of the following:

(a) prior, concurrent and retrospective review of the medical necessity and appropriateness of services or site of services;

(b) contracts with selected health care providers;

(c) financial incentives or disincentives for covered persons to use specific providers, services, prescription drugs or service sites;

(d) controlled access to and coordination of health care services by a case manager; and

(e) payor efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care.

[~~(2)~~] **(3) "Managed health care bureau (MHCB)"** means the managed health care bureau within the office of superintendent of insurance.

[~~(3)~~] **(4) "Maternity benefits"** means covered benefits for prenatal, intrapartum, perinatal or postpartum care.

[~~(4)~~] **(5) "Medical necessity"** or **"medically necessary"** means health care services determined by a provider, in consultation with the health insurance carrier, to be appropriate or necessary, according to:

(a) any applicable generally accepted principles and practices of good medical care;

(b) practice guidelines developed by the federal government, national or professional medical societies, boards and associations; or

(c) any applicable clinical protocols or practice guidelines developed by the health insurance carrier consistent with such federal, national and professional practice guidelines. These standards shall be applied to decisions related to the diagnosis or direct care and treatment of a physical or behavioral health condition, illness, injury or disease.

[~~(5)~~] **(6) "Medical record"** means all information maintained by a provider relating to the past, present or future physical or behavioral health of a patient, and for other provision of health care services to a patient. This information includes, but is not limited to the provider's notes, reports and summaries, and x-rays, laboratory, and other diagnostic test results. A patient's complete medical record includes information generated and maintained by the provider, as well as other information provided to the provider by the patient, by any other provider who has consulted with or treated the patient in connection with the provision of health care services to the patient. A medical record does not include the patient's medical billing or health insurance records or forms or communications related thereto.

[~~(6)~~] **(7) "Medicare"** means Title 18 of the Social Security Amendments of 1965, *"Health Insurance for Aged and Disabled*," as then constituted or later amended.

[~~(7)~~] **(8) "Medicare supplement policy"** means a group or individual policy of insurance or a subscriber contract other than a policy issued pursuant to a contract under Section 1876 of the Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g) (1) that is advertised, marketed or designed primarily as a supplement to reimbursements under medicare for the hospital, medical or surgical expenses of persons eligible for medicare; "medicare supplement policy" does not include medicare advantage plans established under medicare part C, outpatient prescription drug plans established under medicare part D or any health care prepayment plan (HCPP) that provides benefits pursuant to an agreement under 42 U.S.C. Section 1833(a)(1)(A) of the Social Security Act.

N. Terms beginning with the letter "N":

(1) "Network" means the group or groups of participating providers who provide health care services under a network plan.

(2) "Network plan" means a health benefits plan that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers and facilities managed, owned or under contract with or employed by the health insurance carrier.

(3) "Nonparticipating provider" means a provider who is not a participating provider as defined in Paragraph (1) of Subsection P of this [~~rule~~] section. Also known as an out-of-network provider or non-contracted provider.

O. Terms beginning with the letter "O": "Obstetrician-gynecologist" means a physician who is eligible to be or who is board certified by the American board of obstetricians and gynecologists or by the American college of osteopathic obstetricians and gynecologists.

P. Terms beginning with the letter "P":

(1) "Participating provider" means a provider who, under an express contract with a health insurance carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment directly or indirectly from the carrier, subject to any cost-sharing required by the health benefits plan. Also known as an in-network provider or contracted provider.

(2) "Physician assistant (PA)" means a skilled person who is a graduate of a physician assistant or surgeon assistant program approved by a nationally recognized accreditation body or who is currently certified by the national commission on certification of physical assistants, and who is licensed to practice medicine, usually under the supervision of a licensed physician.

(3) "Post-service claim" means a claim submitted to a health insurance carrier by or on behalf of a covered person after health care services have been provided to the covered person.

(4) "Practitioner of the healing arts" means a health care professional as defined in Paragraph (2) of Subsection B of Section 59A-22-32 NMSA 1978.

(5) "Preventive care" means health care services provided for prevention and early detection of disease, illness, injury or other health condition.

(6) "Primary care" means health care services for a range of common physical or behavioral health conditions provided by a physician or non-physician primary care practitioner.

(7) "Primary care practitioner (PCP)" means a health care professional who, within the scope of the professional license, supervises, coordinates and provides initial and basic care to covered persons; who initiates the patient's referral for specialist care and who maintains continuity of patient care. Primary care practitioners include general practitioners, family practice physicians, geriatricians, internists, pediatricians, obstetrician-gynecologists, physician assistants and nurse practitioners. Pursuant to 13.10.21.7 NMAC, other health care professionals may also serve as primary care practitioners.

(8)
"Prior authorization" or **"pre-certification"** means a pre-service determination made by a health insurance carrier regarding a covered person's eligibility for health care services based on medical necessity, health benefits coverage and the appropriateness and site of services pursuant to the terms of the health benefits plan.

(9) "Private health insurance cooperative" means a nonprofit corporation formed to arrange for health benefits coverage with health insurance carriers for its participating members, including large and small employers.

(10) "Product" means a discrete package of health insurance benefits that is offered using a particular network type within a service area.

(11)
"Prospective enrollee" means:

(a)
in the case of an individual who is a member of a group, an individual eligible for enrollment in a health benefits plan through the group; or

(b)
in the case of an individual who is not a member of a group or whose group has not purchased or does not intend to purchase a health benefits plan, an individual who has expressed an interest in purchasing individual plan coverage.

(12)
"Prospective review" means utilization review conducted prior to the provision of health care services by the health insurance carrier.

(13)
"Provider" means a licensed health care professional, hospital or other facility authorized to furnish health care services.

(14) "Provider group" means an incorporation or other legal association of providers who work together in proximity and share resources for as well liability that may result from the provision of patient care.

Q. Terms beginning with the letter "Q":

(1) "Qualified health plan (QHP)" means a major medical plan that has been reviewed and deemed by the superintendent to provide essential health benefits, follow established limits on cost-sharing, provide "minimum essential coverage" and meet the other requirements of the Affordable Care Act.

[~~(1)~~] **(2) "Quality assurance plan"** means the ongoing, internal quality assurance program of a health insurance carrier to monitor and evaluate the carrier's health care services, including its system for credentialing health care professionals to become participating providers with a health benefits plan or otherwise provide services to the carrier's covered persons.

R. Terms beginning with "R":

(1)
"Reduction" means any provision that reduces the amount of a benefit; a risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than otherwise would be payable and the reduction has not been used.

(2)
"Registered lay midwife" means any person who practices lay midwifery and is registered as a lay midwife by the New Mexico department of health.

(3)
"Retrospective review" means utilization review that is conducted following the provision of health care services.

S. Terms beginning with the letter "S":

(1) "Second opinion" means an opportunity or requirement for a covered person to obtain a clinical evaluation to assess the medical necessity and appropriateness of the initial proposed health service, by a provider other than one who originally recommended or denied it.

(2) "**Short-term, limited-duration plan**" or **"short-term plan**" means a nonrenewable major medical plan with a specified duration of not more than three months that is issued only to individuals who have not been enrolled in a plan providing the same or similar nonrenewable coverage from any carrier within the past twelve months and which so states in all advertisements, marketing materials and application and policy forms.

[~~(2)~~] **(3)**
"Specialist" means a physician or non-physician health care professional who:

(a)
focuses on a specific area of physical or behavioral health or a specific group of patients; and

(b)
has successfully completed required training and is recognized by the state in which the health care professional practices to provide specialty care.

[~~(3)~~] **(4) "Specialty care"** means advanced, medically necessary care and treatment by a specialist, preferably in coordination with a primary care practitioner or other health care professional, of specific physical or behavioral health conditions or health conditions that may manifest in a particular age group or other subpopulation.

[~~(4)~~] **(5)**
"Stabilize" means to provide physical or behavioral health treatment of a condition as may be necessary to ensure, within a reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual to or from a facility or, with respect to an emergency birth with no complications resulting in a continuing emergency, to deliver the child and the placenta.

[~~(5)~~] **(6)**
"Subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the health benefits plan, or in the case of an individual contract, the person in whose name the contract is issued.

[~~(6)~~] **(7)**
"Summary of benefits" means a summary of the benefits and exclusions required to be given prior

to or at the time of enrollment to a prospective subscriber or covered person by the health insurance carrier.

[~~(7)~~] **(8)** **"Superintendent"** means the superintendent of insurance, the office of superintendent of insurance (OSI), or employees of OSI acting with the superintendent's authorization.

T. Terms beginning with the letter "T":

(1) **"Telemedicine"** or **"Telehealth"** means the use by a health care professional of interactive, simultaneous audio and video or store-and-forward technology using information and telecommunications technologies to deliver health care services at a site other than the site where the patient is located, including the use of electronic media for consultation relating to the diagnosis or treatment of the patient in real time or through the use of store-and-forward technology.

(2) **"Tertiary care facility"** means a hospital unit that provides complete perinatal care and intensive care of intrapartum and perinatal high-risk patients with responsibilities for coordination of transport, communication, education and data analysis systems for the geographic area served.

(3) **"Third-party administrator (TPA)"** is as defined in Subsection B of Section 59A-12A-2 NMSA 1978.

(4) **"Tiered network"** means a network that supports a health benefits plan in which there are at least two quantitatively different cost-sharing levels for participating providers who or which furnish the same covered services.

(5) **"Traditional fee-for-service indemnity benefit"** means a fee-for-service indemnity benefit as defined in Subsection LL of 13.10.17.7 NMAC, as a fee-for-service indemnity benefit, not associated with any financial incentives that encourage covered persons to utilize preferred providers, to follow pre-authorization rules, to utilize prescription drug formularies or other cost-saving procedures to obtain prescription drugs, or to otherwise comply with a plan's incentive program to lower cost and improve quality, regardless of whether the benefit is based on an indemnity form of reimbursement for services.

U. Terms beginning with the letter "U":

(1) **"Urgent care situation"** means a situation in which a prudent layperson in that circumstance, possessing an average knowledge of medicine and health would believe that he or she does not have an emergency medical condition but needs care expeditiously because:

(a) the life or health of the covered person would otherwise be jeopardized;

(b) the covered person's ability to regain maximum function would otherwise be jeopardized;

(c) in the opinion of a physician with knowledge of the covered person's medical condition, delay would subject the covered person to severe pain that cannot be adequately managed without care or treatment; [~~or~~]

(d) the medical exigencies of the case require expedited care; [~~and~~] or

(e) the covered person's claim otherwise involves urgent care.

(2) **"Utilization review"** means a system for reviewing the appropriate and efficient allocation of health care services given or proposed to be given to a patient or group of patients.

V. Terms beginning with the letter "V": [RESERVED]

W. Terms beginning with the letter "W": [RESERVED]

X. Terms beginning with the letter "X": [RESERVED]

Y. Terms beginning with the letter "Y": [RESERVED]

Z. Terms beginning with the letter "Z": [RESERVED]

[13.10.29.7 NMAC - N, 10/01/2018; A, 2/1/2019]

End of Adopted Rules

2019 New Mexico Register

Submittal Deadlines and Publication Dates
Volume XXX, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 15
Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
Issue 10	May 16	May 28
Issue 11	May 30	June 11
Issue 12	June 13	June 25
Issue 13	July 5	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 15
Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

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.** For further information, call 505-476-7941.