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# New Mexico Register

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

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## **The New Mexico Register**

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# New Mexico Register

Volume XXX, Issue 12

June 25, 2019

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## Notices of Rulemaking and Proposed Rules

### GENERAL SERVICES DEPARTMENT

#### NOTICE OF RULE HEARING

The State Purchasing Division of the General Services Department (“GSD/SPD” or “SPD”) hereby gives notice that SPD will conduct a public hearing to obtain public input on the following rulemaking actions:

Amendment of 1.4.4.8 NMAC - Purpose

The hearing is scheduled to occur on **TUESDAY, JULY 30, 2019 AT 9: A.M. IN THE STATE PURCHASING BID ROOM IN THE MONTOYA BUILDING, 1100 ST. FRANCIS DRIVE, SANTA FE, NEW MEXICO.**

Authority: Section 14-11-7 NMSA 1978 as amended.

Purpose: The purpose of this amendment to the rule is to increase the rates for advertisement in newspapers regarding legal notices. Under the current rule the rates are \$.63 cents and \$.49 cents (see below); these rates will be changing to \$.68 cents and \$.52 cents (see below).

Proposed Amendment:

This is an amendment to 1.4.4.8 NMAC, amending the section, effective **AUGUST 27, 2019**, as follows:

**1.4.4.8 PURPOSE:** This rule implements the mandated requirements of Section 14-11-7 NMSA 1978, as amended, and as outlined in 1.4.4.3 NMAC of this rule, the newspaper publisher is entitled to receive no more than:

**A.** [~~\$.63 cents (\$ .63)~~] **\$.68 cents (\$ .68)** for each column line of eight point or smaller type for the first insertion; and

**B.** [~~\$.49 cents (\$ .49)~~] **\$.52 cents (\$ .52)** per line of each subsequent insertion;

**C.** all emblems, display headings, rule work and

necessary blank spaces shall be calculated as solid type and shall be counted and paid for as such.

Summary of full text: The amendment changes the amounts for advertising legal notices in newspapers.

Interested individuals may provide comments at the public hearing and/or submit written or electronic comments to Paul Kippert, via email at [paul.kippert@state.nm.us](mailto:paul.kippert@state.nm.us) or fax at (505) 827-2484, or mail to Paul Kippert, General Services Department, State Purchasing Division, P.O. Box 6850, Santa Fe, New Mexico 87502.

Written comments must be received no later than 5:00 pm on **JULY 30, 2019** prior to the public hearing. However, the submission of written comments as soon as possible is encouraged. Persons may also submit written comments at the public hearing. All comments will be posted on the agency’s website within three days of receipt.

Copies of the proposed rule are available for download on the State Purchasing Division’s website at <https://www.generalservices.state.nm.us/statepurchasing/> and available at the State Purchasing Division located at General Services Department, State Purchasing Division, Joseph Montoya Building, Room 2016, 1100 St. Francis Drive, Santa Fe, New Mexico 87505. A copy of the proposed rule may also be requested by contacting Paul Kippert at (505) 827-0915.

Individuals with disabilities who require this information in an alternative format or need any form or auxiliary aid to attend or participate in the public hearing are asked to contact Paul Kippert at (505) 827-0915 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 a new rule, 7.30.5 NMAC, “Shaken Baby Syndrome Prevention”. The hearing will be held on August 20, 2019 at 9:00 a.m. in the auditorium of the Harold Runnels Building, located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The objective of the Shaken Baby Syndrome Prevention rule is to establish requirements for hospitals and freestanding birth centers to provide training and education to prevent shaken baby syndrome to every parent of every newborn before discharge.

The legal authority authorizing the proposed rule and the adoption of the rule by the Department is at Subsection E of Section 9-7-6 and Section 24-1-13.2, 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/>.

This hearing will be conducted to receive public comment regarding the proposed adoption of the new rule 7.30.5 NMAC. Any interested member of the public may attend the hearing and offer public comments on the proposed new rule during the hearing. Written public comments may be submitted prior to the date of the hearing. Please submit any written comments regarding the proposed rule to the attention of:

Toby Rosenblatt  
Injury and Behavioral Epidemiology Bureau  
Epidemiology and Response Division  
New Mexico Department of Health  
1190 St. Francis Drive  
Sana Fe, NM 87505  
[Toby.Rosenblatt@state.nm.us](mailto:Toby.Rosenblatt@state.nm.us)

All written comments must be received by 5pm on August 10, 2019. All written comments will be published on the agency website at <https://nmhealth.org/publication/regulation/> within 3 days of receipt, and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

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 Franchesca Martinez by telephone at (505) 827-2997. The Department requests 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, 7.30.14 NMAC, "Mandatory Concussion Recognition, Response and Prevention Education". The hearing will be held on August 20, 2019 at 10:00 a.m. in the auditorium of the Harold Runnels Building, located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The objective of the Mandatory Concussion Recognition, Response and Prevention Education rule is to establish uniform brain injury protocols to be used by coaches for brain injuries received by youth athletes in non-scholastic activities, training of coaches and youth athletes, and information to be provided to coaches, youth athletes, and youth athletes' parents or guardians; to require acknowledgement of training and information by participants in youth athletic activities; and to achieve brain injury protocol and certification.

The legal authority authorizing the proposed rule and the adoption of

the rule by the Department is at Subsection E of Section 9-7-6 and Subsection D of Section 22-13-31.1, 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/>.

This hearing will be conducted to receive public comment regarding the proposed adoption of the new rule 7.30.14. Any interested member of the public may attend the hearing and offer public comments on the proposed new rules during the hearing. Written public comments may be submitted prior to the date of the hearing. Please submit any written comments regarding the proposed rules to the attention of:

Toby Rosenblatt  
Injury and Behavioral Epidemiology  
Bureau  
Epidemiology and Response Division  
New Mexico Department of Health  
1190 St. Francis Drive  
Santa Fe, NM 87505  
[Toby.Rosenblatt@state.nm.us](mailto:Toby.Rosenblatt@state.nm.us)

All written comments must be received by 5pm on August 10, 2019. All written comments will be published on the agency website at <https://nmhealth.org/publication/regulation/> within 3 days of receipt, and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

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 Franchesca Martinez by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

## HIGHER EDUCATION DEPARTMENT

### NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the New Mexico Higher Education Department (NMHED or department) will hold a public rulemaking hearing on July 26, 2019. The hearing will begin at 10:30 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed rulemaking adopting a new rule **5.7.35 NMAC GROW YOUR OWN TEACHERS SCHOLARSHIP PROGRAM.**

#### Purpose:

The department proposes adoption of new rule 5.7.35 NMAC. The new proposed rule establishes regulations and procedures for the Grow Your Own Teachers Scholarship Program created by H.B.20, 54th Leg., 1st Sess. (N.M. 2019). The purpose of the program is to encourage educational assistants employed at public schools in New Mexico to complete a public education department approved teacher preparation program at a New Mexico public post-secondary educational institution or a tribal college by providing for professional leave and scholarship awards.

#### Summary of proposed rule:

The department proposes to adopt a new rule which establishes regulations and procedures for the Grow Your Own Teachers Scholarship Program. The proposed rule includes a section which details student eligibility and the procedure for selection of award recipients. The proposed rule also includes a section which establishes maximum award amounts and the maximum duration of the scholarship. In addition, the proposed rule provides procedures for administration of the program by New Mexico public post-secondary educational institutions or tribal colleges, the department and public schools. Lastly, the proposed rule



provides criteria for termination of the scholarship.

**Details for Obtaining a Copy, Public Hearing and Comments:**

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the "Events" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@state.nm.us or (505)476-8411.

A public hearing will be held from 10:30 a.m. until 11:30 a.m. at NMHED on July 26, 2019. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on July 25, 2019.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Chapter 230, Laws of 2019.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@state.nm.us ten (10) business days prior to the hearing.

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**NOTICE OF PUBLIC HEARING**

The New Mexico Human Services Department (HSD) will hold a public hearing to allow public comment to adopt the SNAP and Cash rules. The HSD is amending the rule to be in compliance with the CFR and to align program requirements. The rule will be amended under the statutory authority of the food stamp program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011-2036). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282 and 45 CFR Parts 200-299. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). The hearing will be held on Friday July 26, 2019 at 10:00 a.m. to 11:00 a.m. at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505.

The Department is proposing to: create consistency and compliance with the Code of Federal Regulations (CFR) regarding verifications required at Interim Report and Recertification for SNAP and Cash Assistance benefits. Align current regulations, Paragraph (2) of Subsection C of 8.139.110.12 NMAC, with 7 CFR 273.2(f)(8) (i)(A)-(D) when verifications are deemed outdated at recertification of SNAP benefits. Amend SNAP regulations outlined in Subsection F of 8.139.410.14 NMAC to align ABAWD time limit exemption amounts with proposed rule from the Food and Nutrition Services (FNS) 7 CFR 273.24(g)(1) from fifteen percent to twelve percent as outlined in the Agricultural Improvement Act of 2018. The Department is also proposing to amend Cash Assistance

regulations outlined in 8.102.120.9, 8.102.120.11 and 8.106.120.12 NMAC for alignment and consistency between SNAP and Cash Assistance programs for: verifications required at Interim Report and Recertification; clarification of rule; and reporting timeframes.

The Human Services Register Vol. 42 No. 5 outlining the proposed regulations are available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7250 or 505-827-7254.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, July 26, 2019. The agency shall post all written comments on its website, if one exists, as soon as practicable, and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency. Please send comments to:

Human Services Department  
P.O. Box 2348,  
Santa Fe, New Mexico 87504-2348



You may send comments electronically to: HSD-isrules@state.nm.us

## MEDICAL BOARD

### NOTICE OF PUBLIC RULE HEARING

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, August 8, 2019 at 8:30 a.m. and Friday, August 9, 2019 at 8:30 a.m., and conduct a Public Rule Hearing on Friday, August 9, 2019 at 10:20 a.m. at the New Mexico Medical Board office conference room, located at 2055 South Pacheco St., Bldg. 400, Santa Fe, NM 87505. The Board will reconvene after the Hearing to take action on the proposed rule amendments. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider repealing and replacing 16.10.16 NMAC (Administering, Prescribing, and Distribution of Medications). A copy of the proposed amended rule is available upon request from the Board office at 2055 South Pacheco Street, Bldg. 400, Santa Fe, NM 87505, by phone (505) 476-7220, or on the Board's website at www.nmmb.state.nm.us.

The hearing will be conducted in accordance with the Medical Practice Act, Section 61-6-5. B NMSA 1978, the Uniform Licensing Act Section 61-1-1 through 61-1-31 NMSA 1978, the State Rules Act, Section 14-4-5.3 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views or arguments orally or in writing. The New Mexico Medical Board will consider all written comment on the proposed repeal and replacement of 16.10.16 NMAC that is submitted to the Board no later than 5:00 p.m. Monday, August

5, 2019. Comment must be sent to the New Mexico Medical Board, Attn: Sondra Frank, Esq., Executive Director, 2055 South Pacheco Street, Bldg. 400, Santa Fe, NM 87505. All public comments may be received via mail, electronic mail or fax and will be posted on the Board's website at www.nmmb.state.nm.us within three days of receipt by the Board. All public comments will be made part of the official rule hearing record.

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 in order to attend or participate in the meeting or rule hearing, please contact Amanda Quintana at 505-476-7230 or AmandaL.Quintana@state.nm.us prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Executive director if a summary or other type of accessible format is needed.

### NOTICE OF RULEMAKING

The New Mexico Medical Board may consider the following items of rulemaking at the meeting:

#### Repeal

16.10.16 NMAC  
Administering, Prescribing and  
Distribution of Medications

#### Replacement

16.10.16 NMAC  
Administering, Prescribing and  
Distribution of Medications

#### **16.10.16 NMAC Administering, Prescribing and Distribution of Medications.**

#### **SYNOPSIS:**

The proposed replacement of 16.10.16 updates the intent of part 16 regarding the administering, prescribing and distribution of medications by physician assistants. The statutory authority for the New Mexico Medical Board's promulgation of this rule is found in the Medical Practice

Act (Sections 66-6-1 to -35 NMSA 1978).

The purpose of amending the Part 16 is to conform the regulations to House Bill 215 2017 statutory amendments. Amongst other things, the PA statutory amendment added "collaboration" as a possible status for PAs and added distribution to PA prescribing abilities. The regulation changes are also necessary because the current rule on PA prescribing reflects requirements which have not been statutorily required for many years, including a formulary, direct physician oversight and limits on prescribing.

Specifically, any reference to a formulary is deleted; requirements for physician assistant prescription pads is deleted; and limitations to prescribing by physician assistants is added.

## PUBLIC EDUCATION DEPARTMENT

### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Friday, July 26, 2019 from 9 a.m. to 11 a.m. (MST). The purpose of the public hearing is to receive public input on proposed new rule 6.12.10 NMAC, Medical Cannabis in Schools. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement regarding the rule changes. Written comment will also be accepted at the hearing.

**Explanation of Purpose and Summary of Text.** The purpose of this rule is to establish the criteria for the possession, storage, and

administration of medical cannabis to qualified students for use in the school setting. The proposed rule also outlines medical cannabis restrictions, parental responsibilities, and school district and charter school exemptions.

**Statutory Authorizations:** Sections 9-24-8, 22-2-1, and 22-2-2 NMSA 1978.

**Public Comment.** Interested parties may provide comment at the public hearing or may submit written comments by mail to the Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MST) on Friday, July 26, 2019. The PED encourages the early submission of written comments. The public comment period is from Tuesday, June 25, 2019 to Friday, July 26, 2019 at 5:00 p.m. (MST). The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed new rule may be accessed through the page titled "Rule Notification" on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from the Policy Division at (505) 827-7889 during regular business hours.

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

## PUBLIC EDUCATION DEPARTMENT

### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Friday, July 26, 2019 from 1:00 p.m. to 4:00 p.m. (MDT). The purpose of the public hearing is to receive public input on the proposed repeal and replace of 6.60.3 NMAC, Alternative Licensure; 6.60.7 NMAC, Educator Licensure Application Fee; and 6.65.3 NMAC, Educator Preparation Program Accountability. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

#### Explanation of Purpose and Summary of Text.

The purpose of the proposed repeal and replace of **6.60.3 NMAC, Alternative Licensure** is to update the pathways and requirements for seeking alternative teaching and administrative licensure. Additionally, the structure of the rule was re-organized.

The purpose of the proposed repeal and replace of **6.60.7 NMAC, Educator Licensure Application Fee** is to update educator license fees and clarify the cost for each type of license.

The purpose of the proposed repeal and replace of **6.65.3 NMAC, Educator Preparation Program Accountability** is to clarify expectations for Educator Preparation Programs. Additionally, the structure of the rule was re-organized.

#### Statutory Authorization(s):

Sections 22-2-1 NMSA 1978; 22-2-2 NMSA 1978; 22-8-44 NMSA 1978 and 22-10A-3 NMSA 1978; 22-10A-6 NMSA 1978; 22-10A-8 NMSA 1978; Section 22-10A-19.2 NMSA 1978; Section 21-22E-3 NMSA 1978.

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

**Public Comment.** Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MDT) on Friday, July 26, 2019. The PED encourages the early submission of written comments. The public comment period is from June 25, 2019 to July 26, 2019 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing, are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

**REGULATION AND  
LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

**NOTICE OF PUBLIC HEARING**

The Construction Industries Commission (CIC) of the Construction Industries Division (CID) of the Regulation and Licensing Department will convene a public hearing on the following proposed changes to repeal its rule 14.9.5 NMAC – MEDICAL GAS INSTALLATION AND CERTIFICATION and to replace it with 14.9.5 NMAC – MEDICAL GAS AND VACUUM SYSTEM INSTALLATION AND PROFESSIONAL QUALIFICATIONS STANDARDS. The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views or arguments on the proposed changes, either orally or in writing, and to examine witnesses testifying at the hearing.

The CIC proposes to repeal 14.9.5 NMAC – MEDICAL GAS INSTALLATION AND CERTIFICATION and to replace it with 14.9.5 NMAC – MEDICAL GAS AND VACUUM SYSTEM INSTALLATION AND PROFESSIONAL QUALIFICATIONS STANDARDS in order to update the rules regarding medical gas and vacuum systems and to clarify the rules regarding professional qualification standards.

Section 60-13-6, Subsections F and K of Section 60-13-9 and Subsections B and J of Section 60-13-44 of the Construction Industries Licensing Act, NMSA 1978 authorize the CIC and the CID to adopt rules to carry out the provisions for medical gas and vacuum systems.

The hearing is scheduled as follows:

**CIC hearing – 9:00 a.m., July 30, 2019**, at the New Mexico Regulation and Licensing Department, Toney

Anaya Building – Hearing Room 1 on the 2<sup>nd</sup> Floor, located at 2550 Cerrillos Rd., Santa Fe, NM 87504.

This hearing was previously set for June 18, 2019, at 9:00 a.m. at the New Mexico Regulation and Licensing Department, Toney Anaya Building – Hearing Room 2 on the 2<sup>nd</sup> Floor, located at 2550 Cerrillos Rd., Santa Fe, NM 87504.

Please Note: All persons wishing to participate in the public hearing remotely may do so telephonically dialing into:

Dial-in Number: (515) 739-1015

Meeting ID: 788-223-117

Interested persons may secure copies of the proposed changes by accessing the Construction Industries Division website ([www.rld.state.nm.us/construction](http://www.rld.state.nm.us/construction)) or by requesting from the Santa Fe CID Office – Toney Anaya Building, 2550 Cerrillos Rd. Santa Fe, NM 87504. You may send written comments to: Construction Industries Division P.O. Box 25101, Santa Fe, NM 87504, Attention: Public Comments. Written comments may also be faxed to (505) 476-4702 to the attention of Mary James. All comments must be received no later than 5:00 p.m., on July 26, 2019. All public comments and documentation will be entered into the record during the public hearing. If you require special accommodations to attend the hearing, please notify CID by phone, email or fax, of such needs notifying us as soon as possible to ensure adequate accommodations. Telephone: (505) 476-4616, email: [Mary.James2@state.nm.us](mailto:Mary.James2@state.nm.us); Fax No: (505) 476-4702.

**SECRETARY OF STATE,  
OFFICE OF**

**NOTICE OF PROPOSED  
RULEMAKING**

The Office of the New Mexico Secretary of State (“Office”) hereby

gives notice that the Office will conduct three public hearings on the described rules below.

The first hearing will be held at the State Capitol Room 322, 491 Old Santa Fe Trail, Santa Fe, New Mexico 87501, on Monday, July 29, 2019, from 9:00 am to 12:00 pm; the second hearing will be held at the Vincent E. Griego Chambers, Albuquerque/Bernalillo County Government Center, 1 Civic Plaza NW, Albuquerque, NM 87102, on Tuesday, July 30, 2019, from 9:00 am to 12:00 pm; and the final hearing will be held at the City Council Chambers, City Hall, 700 N Main St, Las Cruces, NM 88001, on Wednesday, July 31, 2019, from 9:00 am to 12:00 pm. Additionally, every effort will be made to ensure that these hearings will be live streamed on the Office’s website.

The purpose of these hearings is to obtain public input on the new election runoff rule, ballot question rule, and the election fee rule to be codified as Parts 1.10.14; 1.10.16; and 1.10.17 NMAC. The public hearings allow members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. These rules are being proposed in order to provide guidance to all persons, candidates, and election officials covered by the election code, to effectively and efficiently administer elections in New Mexico.

**Authority:** NMSA 1978, Sections 1-2-1, 1-16-7, and 1-22-16 of the election code, authorizes the Office to adopt and promulgate rules and regulations to implement and provide uniform effective procedures for runoff elections, how state and local ballot questions are to appear on a ballot, and what fees can be assessed and reimbursed for holding an election.

**1.10.14 NMAC Ranked Choice  
Voting and Top-Two Runoff  
Election Rule**



**Purpose:** The purpose for the runoff rule is to create uniform effective procedures to be followed by municipalities who have chosen to have instant runoff elections. This rule defines certain terms related to ranked choice voting and top-two runoff elections. This rule also provides the process for administering instant runoff elections. This rule was mandated by the legislature in House Bill 407 (N.M. 2019). This rule will apply to any municipality who opts into the Local Election Act and selects to have an instant runoff election.

**Summary of Full Text:** Section *1.10.14.7 NMAC* defines key terms like “choice,” “vote,” and the terms used for tabulating votes to create consistent administration of instant runoff elections. Section *1.10.14.8 NMAC* describes the ballot requirements for instant runoff elections. Section *1.10.14.9 NMAC* provides the procedures to administer and tabulate a runoff election and publication requirements of election results.

#### **1.10.16 NMAC Ballot Questions Rule**

**Purpose:** The purpose of the ballot questions rule is give the Office the ability to shorten the text of proposed local and state ballot questions that will appear on the ballot without affecting the substance of such questions. This rule was mandated by the legislature in House Bill 407 (N.M. 2019). This rule provides guidance to the election clerks and the Office in drafting language for the ballot questions that will appear on the ballot.

**Summary of Full Text:** Section *1.10.16.7 NMAC* is defines key terms like “condensed text” and “ballot question,” to ensure that the language use on a ballot is consistent and accurate. Section *1.10.16.8 NMAC* codifies the procedures in drafting, finalizing, and noticing the actual language of the ballot questions as they will be proposed to the voter,

including how each question will be answered, with a “For” or “Against.”

#### **1.10.17 NMAC Election Fees Rule**

**Purpose:** The purpose for the election fees rule is to create uniform effective procedures to be followed by the Office and county election officials in invoicing for election fees. This rule is being established to help fairly and consistently administer the election costs that have been codified by the legislature in House Bill 407 (N.M. 2019). This rule will apply to all election officials in the state.

**Summary of Full Text:** This rule defines key terms which describe the minimum costs that can be assessed in administering an election. It establishes a reasonableness standard for assessing costs for the use of equipment and other election services in administering an election. Finally, this rule provides a detailed accounting of what services and costs may be reimbursed and what services and costs will not be reimbursed.

#### **Details for Obtaining a Copy of Rules and Submitting Oral or Written Comments:**

Copies of the proposed rules are available on the Office’s website at [www.sos.state.nm.us](http://www.sos.state.nm.us) or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing [sos.rules@state.nm.us](mailto:sos.rules@state.nm.us). Interested individuals may provide comments at the public hearings and/or submit written comments to Dylan Lange, Deputy Elections Director via email at [sos.rules@state.nm.us](mailto:sos.rules@state.nm.us), or [Dylan.Lange@state.nm.us](mailto:Dylan.Lange@state.nm.us), fax (505)827-8081, or by regular mail at Attn: Dylan Lange – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. Written comments must be received no later than 5:00 pm on the date prior to the first hearing. All written public comment will be posted on the website throughout the written comment period at: [www.sos.state.nm.us](http://www.sos.state.nm.us).

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email [Dylan.Lange@state.nm.us](mailto:Dylan.Lange@state.nm.us) (5) business days prior to the hearing.

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

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## Adopted Rules

### Effective Date and Validity of Rule Filings

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

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

**This is an amendment to 8.26.4  
NMAC, Sections 8, 10, 15 and 21,  
effective 6/25/2019.**

#### 8.26.4.8 ELIGIBILITY:

**A.** Any adult age 18 or older who is a legal resident of the United States and who is a resident of New Mexico can apply to become a licensed foster parent.

**B.** Any person wishing to adopt a child in PSD custody shall be a licensed foster parent and shall obtain approval for adoption from PSD.

**C.** CYFD employees and their families who have met all licensing requirements may serve as foster or adoptive parents. A CYFD employee and their family members shall not be allowed to foster or adopt any child with whom the employee is working with in an official capacity.

**D.** A foster or adoptive parent may be a single parent, a married couple or an unmarried couple.

**E.** No persons shall be licensed as foster parents whose own children are currently in foster care. No person shall be licensed as a foster parent whose parental rights have been terminated. Persons whose children have been formerly in foster care placement may be licensed if the assessment of their application determines that the problems leading to the placement have been resolved.

**F.** To be considered for foster care, applicants shall have sufficient income or resources, apart from the reimbursement, to support themselves and their families, which includes shelter, food, utility cost, clothing, and other household expenses;

**G.** Applicants must be able to communicate with the child, the licensing agency, health care providers and other service providers.

**[G] H.** At least one applicant in the home must have functional literacy such as having the ability to read medication labels. [8.26.4.8 NMAC - N, 5/29/2009; A, 8/15/2011; A, 6/25/2019]

**8.26.4.10 CRIMINAL RECORDS CHECKS (CRC):** All persons wishing to become licensed foster care providers for PSD or for a child placement agency must complete a CRC.

**A.** CRCs are required for all applicants and adults living in the home. Applicants who have a completed homestudy by a private agency must complete the CRC requirement for foster care providers.

**B.** CRC clearance letter for all adults living in the home must be received by PSD or the child placement agency (CPA) prior to issuing a license and prior to a child being placed in a home. The CRC unit conducts federal and state criminal record checks for all adults living in the home.

**C.** PSD staff and CPA staff shall register applicants to be fingerprinted.

**D.** PSD staff and CPA staff shall complete the CRC application and submit to the PSD CRC Unit.

**E.** PSD and CPA staff shall conduct a search of the applicant and all adults living in the applicant's home through [www.nmcourts.gov](http://www.nmcourts.gov).

**F.** Licensure shall not be approved in any case in which the CRC results for the applicant or any adult living in the applicant's home reveal any of the following federally mandated automatic disqualifiers:

**(1)** a felony

conviction for child abuse or neglect;

**(2)** a felony conviction for spousal abuse;

**(3)** a felony conviction for a crime against a child, including child pornography;

**(4)** a felony conviction for any crime involving violence, including rape, sexual assault, homicide, robbery, and aggravated assault, but not including other types of assault (not aggravated) or battery; or

**(5)** a felony conviction within the past five years for assault, battery, or a drug or alcohol related offense.

**G.** Applicants who have a conviction for crimes other than those noted above are not automatically disqualified, however this information shall be used to determine suitability for licensure. All police or court records relating to the applicant or other adult living in the home shall be considered in determining suitability for licensure.

**H.** The home study process for any applicant or adult living in the home with a pending criminal charge and no disposition shall be closed. The applicant may reapply after disposition of the charge. [8.26.4.10 NMAC - Rp, 8.27.2.16 NMAC, 5/29/2009; A, 8/15/2011; A, 6/25/2019]

#### 8.26.4.15 FOSTER CARE PROVIDER TRAINING:

**A.** All foster care applicants licensed by PSD and all foster care applicants licensed by child placement agencies shall successfully complete the required pre-service training prior to being licensed in New Mexico.

**B.** All foster care providers licensed by PSD and child placement agencies shall obtain first aid training which must include



cardiopulmonary resuscitation (CPR) certification [~~or show proof of current CPR certification~~].

C. All foster care providers licensed by PSD and all foster care providers licensed by child placement agencies shall participate in at least 12 hours of PSD or agency approved training each year.

(1) Foster care providers licensed by PSD: Six of the 12 required training hours shall be determined by the PSD foster care and adoption bureau. The remaining hours shall be determined by the placement worker in collaboration with the foster family and approved by the county office manager or designee. The PSD worker shall document training hours in FACTS prior to annual re-licensure.

(2) Foster care providers licensed by child placement agencies: Child placement agencies shall provide a minimum of 12 hours of training annually to their licensed families. PSD may in its sole discretion mandate the specific topics in those twelve hours.

[8.26.4.15 NMAC - Rp, 8 NMAC 27.3.12 & 8.27.2.15 NMAC, 5/29/2009; A, 8/15/2011; A, 6/25/2019]

**8.26.4.21 DENIAL, REVOCATION, SUSPENSION, OR NON-RENEWAL OF A LICENSE:**

A. Denial of a license:  
(1) PSD or child placement agency staff may deny an applicant's request for licensure based on a documented professional assessment that the applicant cannot adequately provide safety, permanency, and well-being for children or when in the professional opinion of the licensing agent, conditions in the prospective foster home are not conducive to the fostering of children.

(2) Applicants may be denied licensure at any point in the licensing process. The applicant shall be notified in writing of the denial within 10 business days of PSD or child placement agency's final decision.

(3) Applicants who have been denied an initial foster care provider license may request an administrative review of the reasons for the denial of the initial license. The request must be in writing and within 10 days of date of the notice of denial. This review is an informal process completed by the licensing agent, which may include an informal conference or record review. The administrative review does not create any substantive rights for the family.

B. Revocation or non-renewal of a license: A foster home license may be revoked or not renewed by the licensing agent at any time for reasons which may include but are not limited to:

(1) disqualifying criminal records check results as described herein at Subsection D, E, [~~and~~] or F of 8.26.4.10 NMAC;

(2) disqualifying abuse and neglect check results as described herein at Subsection C, D, E, [~~and~~] or F of 8.26.4.11 NMAC;

(3) failure to comply with 8.26.2, 8.26.4, 8.26.5 NMAC, [~~and~~] or agency policies;

(4) failure to immediately report any arrests to PSD or agency;

(5) failure to report changes in the family, including the addition of new adult household members;

(6) willful misrepresentation of any information during the home study process;

(7) failure to comply with health and safety measures, including those requirements described herein at 8.26.4.13 NMAC;

(8) returning a child to PSD or an agency without seeking support services provided by PSD or the agency or community service providers in order to preserve the placement;

(9) refusal to comply with case plan;

(10) inability to adequately meet the needs of the child;

(11) failure to include children in family activities;

(12) overuse or inappropriate use of respite care and reasonable and prudent parenting;

(13) failure to actively preserve connections with foster children and their birth families and community of origin such as:

(a) siblings or other birth relatives;

(b) church community; and

(c) fictive kin, or the child's friends;

(14) failure to demonstrate the ability to provide emotional support during fundamental times of a child's life;

(15) repeated refusals by the family to accept children who have been matched for placements;

(16) failure to participate in required training;

(17) failure to comply with PSD decisions regarding the child's safety, permanency, and well-being;

(18) misuse or abuse of substances including but not limited to:

(a) alcohol;

(b) illegal substances;

(c) legal prescription and non-prescription drugs;

(19) exposure of the child to cigarette smoke and tobacco products; and

(20) a documented professional assessment that continued licensure would be contrary to the safety, permanency, and well-being of the child, or in the opinion of the licensing agent that conditions in the foster home are not conducive to the fostering of children.

C. Corrective Action Plan (CAP): Corrective action plans may be implemented as an alternative to revocation of a license when, in PSD or the child placement agency's assessment, the foster care provider is capable of resolving the violations within a period of six months.

(1) It shall be PSD or the child placement agency's sole discretion whether a foster care provider may continue to have children placed in their home during the pendency of a CAP;

(2) A CAP must be in writing, signed and dated by the foster care provider and the licensing agent.

(3) The CAP shall set forth the policy violations of the foster care provider as described herein at Paragraphs (1) - (21) of Subsection B of 8.26.4.21 NMAC;

(4) The CAP shall set forth the conditions the foster care provider must meet in order to rectify the policy violations and the deadline within which they must meet the conditions. Conditions may include, but are not limited to the following:

- (a) additional training;
- (b) increased scheduled or unscheduled home visits by PSD or the child placement agents;
- (c) compliance with the case plan for the child;
- (d) participation in therapeutic, parenting, or other services.

(5) Failure of the foster care provider to agree to the terms of a CAP shall result in revocation for the policy violations that led to the proposed CAP;

(6) Failure to comply with the conditions of the CAP may result in revocation of the foster care license.

**D.** Suspension of a license: Suspension of a license can be voluntary or involuntary and last not more than six months.

(1) Voluntary reasons for suspension must be approved by the licensing agency and may include, but not limited to:

- (a) medical conditions;
- (b) adoption; or
- (c) life changes within the household.

(2) Involuntary reasons for suspension may include all the reasons described herein at Paragraphs (1) - (21) of Subsection B of 8.26.4.21 NMAC, as well as:

(a) screened-in abuse or neglect referrals; or

(b) during the period of a corrective action plan.

**E.** Notification: The foster care provider shall be notified in writing, by return of receipt mail, of the reason for revocation, involuntary suspension or non-renewal of the license and shall provide the foster care provider the opportunity to request an appeal before an impartial hearing officer appointed by or approved by the CYFD secretary where the family has the opportunity to present evidence on their behalf and to be assisted by counsel. The foster family shall request an appeal within 10 business days of receipt of the notification of the proposed action. If the family does not request an appeal within the 10 business days, then the decision to revoke, suspend or not renew a license shall be final. Administrative hearings are conducted in accordance with 8.8.4 NMAC.

**F.** Reinstatement of license: A foster care provider whose license has been revoked, suspended, or not renewed may petition the licensing agency that issued the license to have the license reinstated upon proof that the noncompliance with the policies has ceased. The best interest of children shall be the primary consideration in determining whether reinstatement is appropriate. PSD or the child placement agency must ensure that all licensing requirements are met prior to reinstatement. A PSD decision to reinstate a license must be approved by the PSD regional managers. [8.26.4.21 NMAC - Rp, 8.27.2.25 & 26 NMAC, 5/29/2009; A, 3/31/2010; A, 8/15/2011; A, 6/25/2019]

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
STATE PARKS DIVISION**

**This is an amendment to 19.5.2 NMAC, adding a new Section 38 and amending Sections 39, 40, 41 and 42, effective 6/25/2019.**

**19.5.2.38 FOSTER**

**FAMILIES:** Foster parents and children in their custody who are New Mexico residents are entitled to free day use of parks. To obtain a free annual day use pass for entry to parks the foster parent shall present a current New Mexico driver's license or other state of New Mexico issued photo identification and a current New Mexico children, youth and families department foster parent certification card.

[19.5.2.38 NMAC – N, 6/25/2019]

**~~[19.5.2.38]~~ 19.5.2.39 PARK PASSES:**

**A.** Concessionaires. The director or director designee (see Subsection Q of 19.5.7 NMAC) may issue park passes to concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents for access to and from the concession. Concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents using the park, lake or facilities away from the concession premise shall pay the appropriate fees.

**B.** Contractors. The director or director designee (see Subsection Q of 19.5.1.7 NMAC) may issue park passes to division contractors, suppliers or agents or other persons providing services to a park for access to the park. Division contractors, suppliers or agents or other persons providing services to a park using the park or its facilities for purposes other than providing services to a park shall pay the appropriate fees.

**C.** Access to private property. The director or director designee may issue park passes to persons needing to pass through

a park to access private property. Persons with such park passes shall only use the park passes to travel through the park. If they use the park or its facilities they shall pay the appropriate fees.

**D.** Park support groups and volunteers. The director or director designee may issue park passes to individuals who are members of a park support group that has entered into an agreement with the department or, as provided in division policy, to volunteers who significantly contribute to the division.

**E.** Complimentary park passes. The director or director designee (see Subsection Q of 19.5.1.7 NMAC) may issue complimentary passes as rainchecks to visitors for unused services or to resolve visitor complaints about park operation or maintenance.

**F.** Official use passes. The director may issue "official use only" passes to state government executive branch officials with direct oversight of the division, park advisory board members and state legislators for the performance of their official duties.

**G.** Advertising and promotions. To promote the parks or in exchange for advertising or promotion of parks, the director may issue free or discounted park passes or not charge fees if the director obtains the secretary's approval after the division provides the secretary with written justification showing that the issuance of park passes for promotion or advertising or not charging fees for promotional purposes provides a benefit to the division. Reduced rates for advertising must be equal to or exceed the value of the park passes that the division provides in exchange for receiving the reduced rates. [19.5.2.39 NMAC - Rn, 19.5.2.38 NMAC, 6/25/2019]

~~[19.5.2.39]~~ **19.5.2.40** SPECIAL USE PERMITS:

**A.** The division shall authorize public assemblies involving groups of more than 10 people; public assemblies involving groups of 10 people or less that are

using stages, platforms or structures; or special events within the state parks system only by special use permit and only after payment of associated fees. Persons shall submit applications for special use permits to the superintendent of the park where the special event or public assembly is proposed at least 15 calendar days prior to the special event or public assembly, or at least 30 calendar days prior to the special event if the special event is a regatta, motorboat or boat race, marine parade, tournament or exhibition. The director may waive the time limits for submittal of special use permit applications where arrangements can be made in a shorter time without placing an undue administrative burden on staff or when no special arrangements are necessary.

**B.** Persons shall complete the division-provided special use permit, which may include the park where the special event or public assembly is proposed; the location of the proposed special event or public assembly within the park; the date of the proposed special event or public assembly; start and end times for the proposed special event or public assembly; the number of people expected to attend; a detailed description of the proposed special event or public assembly; the applicant's name, address and phone number; a hold harmless requirement if the applicant is a non-governmental entity; insurance coverage; and designation of the type of proposed special event or public assembly (*i.e.* special use, marine event, park event, etc.).

**C.** The superintendent shall approve the special use permit, approve the special use permit with conditions or deny the special use permit as provided in ~~[19.5.2.39 through 19.5.2.41]~~ **19.5.2.40 through 19.5.2.42** NMAC. The superintendent shall not issue a special use permit for a period of more than 14 consecutive calendar days without the director's approval. The director may approve a special use permit for more than 14 consecutive calendar days if the event will exceed 14 consecutive

calendar days. The park may charge fees in addition to the special use permit fee to cover costs of additional staff, facilities, etc. needed for the special event or public assembly. The division may enter into an agreement with the special use permittee to have the special use permittee pay a fee equal to the estimated fees, such as day use fees, that individuals attending the special event would have paid in fees in lieu of such fees.

**D.** No person shall violate a condition or restriction attached to or indicated on the special use permit. The division may revoke a permit if the permit holder violates 19.5.2 NMAC. The superintendent may also revoke a special use permit for any of the conditions that constitute grounds for denial of a special use permit as provided in Subsection B of ~~[19.5.2.40]~~ **19.5.2.41** NMAC for special events and Subsection B of ~~[19.5.2.41]~~ **19.5.2.42** NMAC for public assemblies, or for violation of the terms and conditions of the special use permit. Such a revocation shall be made in writing, with the reasons for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation may be made to be followed by written confirmation within 72 hours.

[19.5.2.40 NMAC - Rn & A, 19.5.2.39 NMAC, 6/25/2019]

~~[19.5.2.40]~~ **19.5.2.41** SPECIAL EVENTS:

**A.** Special events are allowed in a park if the applicant has obtained a special use permit from the superintendent.

**B.** The superintendent shall deny a special use permit if such activities would:

- (1) cause injury or damage to park resources;
- (2) be contrary to the purposes for which the park is established or operated; or unreasonably impair the purposes for which the park is established or operated;

(3) unreasonably interfere with interpretive, visitor service or other

program activities, or with the division's administrative activities;

(4) substantially impair the operation of the division's public use facilities or services of concessionaires or contractors;

(5) present a danger to the public health and safety;

(6) result in significant conflict with other existing uses; or

(7) not comply with the laws or policies of the landowner (e.g. United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers, New Mexico state land office, etc.).

C. As a condition of the special use permit's issuance, the superintendent may require:

(1) for non-New Mexico government or non-federal government applicants, the filing of a bond payable to the director, in an amount adequate to cover costs such as restoration, rehabilitation and cleanup of the area used, and other costs resulting from the event; or

(2) the acquisition of liability insurance in which the state, department and division, and if applicable the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir, are named as co-insured in an amount sufficient to protect the state, the department and the division, and if applicable the landowner.

D. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park for the purposes for which it is established or operated. It may also contain reasonable limitations on the equipment used and the time and area within which the special event is allowed.

[19.5.2.41 NMAC – Rn, 19.5.2.40 NMAC, 6/25/2019]

~~[19.5.2.41]~~ 19.5.2.42 PUBLIC ASSEMBLIES, MEETINGS:

A. Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within parks.

A special use permit issued by the park [~~superintenenet~~] superintendent is required for public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views that involve groups of:

(1) more than 10 people; or

(2) 10 people or less who are using stages, platforms or structures.

B. The superintendent shall, without unreasonable delay, issue a special use permit on proper application unless:

(1) a prior application for a special use permit for the same time and place has been made that has been or will be granted and the activities authorized by that special use permit do not reasonably allow multiple occupancy of that particular area;

(2) it reasonably appears that the event will present a danger to the public health or safety; or

(3) the event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, interference with program activities or impairment of public use facilities.

C. If the superintendent denies a special use permit, the superintendent shall inform the applicant in writing with the reasons for the denial set forth.

D. The superintendent shall designate on a map, which shall be available in the office of the superintendent, the locations available for public assemblies. Locations may be designated as not available if such activities would:

(1) cause injury or damage to park resources;

(2) unreasonably interfere with interpretive, visitor service or other

program activities, or with the division's administrative activities;

(3) substantially impair the operation of public use facilities or services of division concessionaires or contractors; or

(4) present a danger to the public health and safety.

E. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

F. It is prohibited for persons engaged in activities permitted or authorized pursuant to ~~[19.5.2.41]~~ 19.5.2.42 NMAC to obstruct or impede pedestrians or vehicles, harass park visitors, interfere with park programs or create security or accessibility hazards.

[19.5.2.42 NMAC - Rn & A, 19.5.2.41 NMAC, 6/25/2019]

~~[19.5.2.42]~~ 19.5.2.43 RESEARCH AND COLLECTIONS:

A. Academic research activities, including plant and animal collecting, are allowed in a park if the person or entity has obtained a research permit through the division's resource program.

B. The division shall deny a research permit if such activities would:

(1) cause undue injury or damage to park resources;

(2) be contrary to the purposes for which the park is established or operated; or unreasonably impair the purposes for which the park is established or operated;

(3) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;

(4) substantially impair the operation of the division's public use facilities



or services of concessionaires or contractors;

(5) present a danger to the public health and safety;

(6) result in significant conflict with other existing uses;

(7) not comply with the laws or policies of the landowner (e.g. United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers; New Mexico state land office, etc.); or

(8) not comply with federal or state laws concerning threatened and endangered species or cultural resources.

C. As a condition of the research permit's issuance, the division may require:

(1) the acquisition of liability insurance in which the state, department and division, and if applicable the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir, are named as co-insured in an amount sufficient to protect the state, the department and the division, and if applicable the landowner; or

(2) the permittee to submit to the resource program a written report summarizing the data collected within six months of completion of the permitted activity.

D. The research permit may contain such conditions as are reasonably consistent with protection and use of the park for the purposes for which it is established or operated. It may also contain reasonable limitations on the equipment used and the time and area within which the research activity is allowed.

E. The park may charge fees to cover costs of additional staff, facilities, etc. needed for the research activities. [19.5.2.43 NMAC - Rn, 19.5.2.42 NMAC, 6/25/2019]

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
STATE PARKS DIVISION**

**This is an amendment to 19.5.6  
NMAC, Section 15, effective  
6/25/2019.**

**19.5.6.15 SPECIAL USE  
PERMIT:** \$15.00 (see [19.5.2.39]  
19.5.2.40 NMAC)

[19.5.6.15 NMAC - Rp 19 NMAC  
5.6.15, 5/1/2004; A, 1/1/2008; A,  
1/1/2013; A, 6/25/2019]

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
STATE PARKS DIVISION**

**This is an amendment to 19.5.7  
NMAC, Sections 3 and 9, effective  
6/25/2019.**

**19.5.7.3 STATUTORY  
AUTHORITY:** 19.5.7 NMAC is  
authorized pursuant to [~~NMSA 1978,  
Section 9-1-5(E) and Section 16-2-2  
et seq.~~] Subsection E of Section 9-1-5  
NMSA 1978 and Section 16-2-2 et  
seq. NMSA 1978.

[19.5.7.3 NMAC - N, 1/1/2008; A,  
6/25/2019]

**19.5.7.9 ACTIVITIES  
NOT REQUIRING A FILM  
PERMIT:**

A. An individual or  
entity does not need to obtain a film  
permit:

(1) when using  
a camera or other audio or video  
recording device for the individual's  
or entity's own personal use in areas  
open to visitors;

(2) for  
commercial photography, so long as  
the project does not require a film  
permit for any of the reasons stated in  
19.5.7.8 NMAC; or

(3) when  
filming, photographing or audio  
recording a news event that occurs in  
a park.

B. When a film permit  
is not required pursuant to Subsection

A of 19.5.7.9 NMAC, a special use  
permit may be required pursuant  
to [19.5.2.39] 19.5.2.40 NMAC,  
depending on the scope of the activity.  
[19.5.7.9 NMAC - N, 1/1/2008; A,  
1/1/2013; A, 6/25/2019]

**HEALTH, DEPARTMENT  
OF**

The New Department of Health  
approved the repeal of its rule 16.11.2  
NMAC - Certified Nurse-Midwives  
(filed 8/15/2013) and replaced it with  
16.11.2 NMAC - Certified Nurse-  
Midwives (adopted on 5/20/2019),  
and effective 6/25/2019.

**HEALTH, DEPARTMENT  
OF**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 11 MIDWIVES  
PART 2 CERTIFIED  
NURSE-MIDWIVES**

**16.11.2.1 ISSUING**

**AGENCY:** New Mexico Department  
of Health.

[16.11.2.1 NMAC - Rp, 16.11.2.1  
NMAC, 6/25/2019]

**16.11.2.2 SCOPE:** This  
rule applies to any person seeking to  
practice or currently practicing as a  
certified nurse-midwife in the state of  
New Mexico.

[16.11.2.2 NMAC - Rp, 16.11.2.2  
NMAC, 6/25/2019]

**16.11.2.3 STATUTORY**

**AUTHORITY:** This rule is  
authorized by Subsection E of Section  
9-7-6 NMSA 1978, Subsection R of  
Sections 24-1-3 and 24-1-4.1, NMSA  
1978.

[16.11.2.3 NMAC - Rp, 16.11.2.3  
NMAC, 6/25/2019]

**16.11.2.4 DURATION:**

Permanent.

[16.11.2.4 NMAC - Rp, 16.11.2.4  
NMAC, 6/25/2019]

**16.11.2.5 EFFECTIVE DATE:** June 25, 2019, unless a later date is cited at the end of a section. [16.11.2.5 NMAC - Rp, 16.11.2.5 NMAC, 6/25/2019]

**16.11.2.6 OBJECTIVE:** This rule governs the licensure and practice of certified nurse-midwives (CNMs) in New Mexico. [16.11.2.6 NMAC - Rp, 16.11.2.6 NMAC, 6/25/2019]

**16.11.2.7 DEFINITIONS:**

**A. “ACNM”** means the American college of nurse-midwives.

**B. “AMCB”** means American midwifery certification board.

**C. “Addiction”** is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opiate or opioid therapy for pain and should not by themselves be considered addiction.

**D. “Board”** means the certified nurse-midwifery advisory board established under these rules.

**E. “Certified nurse-midwife (CNM)”** means an individual educated in the two disciplines of nursing and midwifery, who is certified by the AMCB or its designee and who is licensed under this rule.

**F. “Chronic pain”** means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. For purposes of this rule, chronic pain does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably

be expected to result in a terminal condition.

**G. “CNM license”** means a document issued by the department identifying a legal privilege and authorization to practice within the scope of this rule.

**H. “Contact hour”** means 50-60 minutes of an organized learning experience relevant to CNM practice, approved by one of the following:

- (1) accreditation council for continuing medical education (ACCME);
- (2) ACNM;
- (3) American college of obstetricians and gynecologists (ACOG);
- (4) American academy of physician assistants (AAPA);
- (5) American academy of nurse practitioners (AANP);
- (6) nurse practitioners in women’s health (NPWH); or
- (7) other clinician-level continuing education accrediting agencies approved by the department.

**I. “Continuance”** means the adjournment or postponement of a trial or other proceeding to a future date.

**J. “Controlled substance”** means any drug or therapeutic agent listed in Schedules I through V of Sections 30-31-6 to 30-3-10 NMSA 1978, Controlled Substances Act, or rules adopted thereto, which is commonly understood to include narcotics.

**K. “Dangerous drug”** means a prescription drug other than a controlled substance that has been determined by law to be unsafe for self-administration and is included in Sections 26-1-1 to 26-1-26 NMSA 1978, New Mexico Drug, Device and Cosmetic Act, and in Sections 30-31-6 NMSA, Controlled Substances Act.

**L. “Department”** means the New Mexico department of health.

**M. “Division”** means the public health division.

**N. “National practitioner data bank (NPDB)”** means the web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers.

**O. “Pain”** means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage or described in terms of such inflammation and damage, which could include acute, persistent, or chronic pain.

**P. “Peer review”** means the assessment and evaluation of CNM practice by other CNMs and other health care providers to measure compliance with established institutional or legal standards. In the peer review process, a CNM’s practice undergoes scrutiny for the purpose of professional self-regulation.

**Q. “Physical dependence”** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**R. “Prescription monitoring program (PMP)”** means a centralized electronic system within the New Mexico board of pharmacy that collects, monitors, and analyzes data submitted by dispensing practitioners and pharmacies related to the prescribing and dispensing of controlled substances. The data are used to support efforts in education, research, enforcement, and abuse prevention.

**S. “Primary care”** means the provision of integrated, accessible health care services by clinicians who are accountable for addressing the large majority of presenting health care needs, developing sustained partnerships with clients, and practicing within the context of family and community.

**T. “Quality assurance”** means monitoring



structural, procedural, and outcome indicators as they relate to accepted standards.

**U. “Quality improvement”** means modifying the process for providing care in order to improve outcomes. Modifications are based upon the measurement of parameters such as evidence-based best practices, patient satisfaction, clinical outcomes, population-specific care, culturally appropriate care, appropriate use of technology and resources, and access to care.

**V. “Therapeutic purpose”** means the use of pharmaceutical and non-pharmaceutical treatments and the spectrum of available modalities that conforms substantially to accepted guidelines.

**W. “Tolerance”** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug’s effects over time.

**X. “Valid CNM-client relationship”** means a professional relationship between the CNM and the client for the purpose of maintaining the client’s well-being. At minimum, this relationship is an interactive encounter between the CNM and client involving an appropriate history and physical or mental examination; ordering labs or diagnostic tests sufficient to make a diagnosis; and providing, prescribing, or recommending treatment, or referring to other health care providers. A patient record must be generated by the encounter. The relationship includes:

(1) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is indicated and necessary for treatment of a condition when the CNM prescribes a dangerous drug or controlled substance;

(2) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is not contraindicated for the individual;

(3) the CNM provides a client with appropriate information on the proper dosage,

route, frequency, and duration of a drug treatment;

(4) the CNM informs the client of possible untoward effects and side effects of a proposed treatment;

(5) the CNM provides care for a client in the event of an untoward effect or a side effect that requires care;

(6) the CNM provides for client education regarding a condition and the condition’s treatment to enhance client compliance with plan of care;

(7) the CNM provides for appropriate follow-up care, including further testing, treatment and education, as appropriate; and

(8) the CNM documents, at minimum, the indication, drug, and dosage of any prescribed drugs in a health record for the individual.

[16.11.2.7 NMAC - Rp, 16.11.2.7 NMAC, 6/25/2019]

#### **16.11.2.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:**

**A.** ACNM “core competencies for basic midwifery practice”.

**B.** ACNM “standards for the practice of midwifery”.

**C.** ACNM handbook: “the home birth practice manual”. [16.11.2.8 NMAC - Rp, 16.11.2.8 NMAC, 6/25/2019]

#### **16.11.2.9 LICENSURE:**

**A. Licensure requirements:** A CNM practicing in New Mexico shall hold a license that meets the New Mexico board of nursing’s requirement to practice as a registered nurse in New Mexico and shall hold current certification by AMCB or its designee. The department may deny licensure, including renewal or reinstatement of licensure, to a CNM whose midwifery or nursing license has been subject to disciplinary action in any jurisdiction. If denied, re-application will only be considered after a minimum of

one year from date of initial denial, and the re-application must be accompanied by full disclosure and complete record of previous actions. A CNM license is not transferable.

#### **B. Initial licensure:**

(1) An applicant for licensure to practice as a CNM in New Mexico shall submit to the department:

(a) a completed application;

(b) proof of holding a valid license that meets the New Mexico board of nursing’s requirement to practice as a registered nurse in New Mexico;

(c) proof of current certification by AMCB or its designee;

(d) the fee designated in Subsection E of this section.

(2) An initial CNM license may be issued at any time upon submission and verification of the materials required in Paragraph (1) of this subsection and shall expire on the expiration date of the registered nurse license issued by the New Mexico board of nursing. A CNM license shall be valid for a maximum of two years.

(3) If a license is denied on initial application, the applicant may reapply after one year and upon meeting all the requirements under Subsection B of 16.11.2.9 NMAC.

(4) Any final action denying a license to an applicant is an event reportable to the NPDB.

#### **C. Licensure renewal:**

(1) A CNM’s renewed license shall expire on the expiration date of the registered nurse license issued by the New Mexico board of nursing.

(2) An applicant for licensure renewal shall submit to the department:

(a) a completed application postmarked or electronically submitted at least 25 calendar days before the expiration of the CNM license;

(b) proof of holding a valid license that meets the requirement of the New Mexico board of nursing to practice as a registered nurse in New Mexico for the period the renewed CNM license will cover;

(c) proof of current certification by AMCB or its designee;

(d) proof of having met the continuing education and quality management requirements in Paragraphs (3) and (4) of this subsection; and

(e) the fee designated in Subsection E of this section;

(f) an additional fee designated in Subsection E of this section for applications postmarked, hand delivered, or electronically submitted after the fifth day of the month after the license is expiring.

(3) Continuing education: CNMs must complete a minimum of 30 contact hours during the two years preceding license renewal.

(a) 15 of the contact hours shall be pharmacology-related. As part of the pharmacology-related contact hours, a CNM who holds a CNM license shall submit with the first license renewal application proof of completing a minimum of five contact hours on any of the following topics:

(i) the CNM rule as it applies to management of chronic pain,

(ii) the pharmacology and risks of controlled substances,

(iii) the problems of abuse and addiction, or

(iv) state and federal regulations for the prescription of controlled substances.

(b) With each subsequent license renewal application, a CNM shall submit proof of completing a minimum of two contact hours on the above topics.

(c) The following options, subject to

audit and approval by the department, may be accepted in place of continuing education contact hours, except for the pharmacology-related contact hours requirement:

(i) preparation and presentation of a nurse-midwifery topic that has received contact hour approval by any of the organizations listed in Subsection G of 16.11.2.7 NMAC, will count for twice the number of contact hours for which the presentation is approved; the same presentation cannot be credited more than once;

(ii) sole or primary authorship of one nurse-midwifery related article published in a department-approved professional medical or midwifery journal may be accepted in place of 10 contact hours per licensure period;

(iii) completion of a formal university or college course directly related to nurse-midwifery practice; each university or college unit shall be credited as 15 hours of continuing education; and

(iv) acting as primary preceptor for a nurse-midwifery or certified midwifery student; each 10 hours of precepting shall be credited as one continuing education hour; verification shall be provided by an accreditation commission for midwifery education (ACME) accredited nurse-midwifery education program; acting as primary preceptor for a licensed midwifery student upon verification of out of hospital setting practice by the CNM, prior to preceptor relationship This option shall not be accepted in place of pharmacology-related contact hours.

(4) Quality management: documentation of participation during the preceding two years in a system of quality management meeting the approval of the department is required for license renewal. Quality management includes peer review, quality assurance and quality improvement as defined in Subsections P, U, T of 16.11.2.7 NMAC.

(5) If license renewal is denied, the applicant may request an administrative hearing under the terms set forth by Paragraph (5) of Subsection C of 16.11.2.11 NMAC.

**D. Reinstatement of a lapsed CNM license.** The requirements for reinstatement of a CNM license that has lapsed are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except that the applicant may submit an application at any time within four years of the license’s lapsing and the fee is higher than a renewal, as designated in Subsection E of this section.

**E. Fees:** the department shall charge applicants the following fees for licensure services:

- (1) two hundred dollars (\$200) for initial licensure;
- (2) one hundred dollars (\$100) for license renewal;
- (3) one hundred and fifty dollars (\$150.00) additional for renewing a license when the complete application is not postmarked, hand delivered, or electronically submitted by the fifth calendar day of the month of the current license’s expiration date;
- (4) one hundred and fifty dollars (\$150.00) additional to a renewal licensure fee for reinstatement of a lapsed or a revoked license;
- (5) twenty-five dollars (\$25.00) for verifying licenses by FAX or letter;
- (6) thirty dollars (\$30.00) for a hard copy of a license certificate (8 ½” x 11” size).

**F. Change of address or other contact information:** a CNM shall report a change of any contact information to the department within 30 days of the change. [16.11.2.9 NMAC - Rp, 16.11.2.9 NMAC, 6/25/2019]

**16.11.2.10 PRACTICE OF THE CERTIFIED NURSE-MIDWIFE:**

**A. Scope of practice:**  
Practice by CNMs encompasses independently providing a full range of primary health care services for women from adolescence to beyond menopause. These services include primary care; gynecologic and family planning services; pre-conception care; care during pregnancy, childbirth, and the postpartum period; care of the normal newborn; and treatment of male partners for sexually transmitted infections. Midwives provide initial and ongoing comprehensive assessment, diagnosis, and treatment. They conduct physical examinations; independently prescribe, distribute, and administer dangerous drugs, devices, and contraceptive methods, and controlled substances in Schedules II through V of Sections 30-31-1 NMSA 1978, Controlled Substances Act; admit, manage, and discharge patients; order and interpret laboratory and diagnostic tests; and order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with clients/patients in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals, and birth centers. A CNM practices within a health care system that provides for consultation, collaborative management, or referral as indicated by the health status of the client. A CNM practices in accordance with the ACNM "standards for the practice of midwifery". A CNM who expands beyond the ACNM "core competencies" to incorporate new procedures that improve care for their clients/patients shall comply with the guidelines set out in the ACNM "standards for the practice of midwifery", standard VIII. Practice guidelines for home births should be informed by the most recent edition of the "ACNM home birth practice manual."

**B. Prescriptive authority:**

(1) Dangerous

drugs: A CNM who prescribes, distributes, or administers a dangerous drug or device shall do so in accordance with Section 26-1 NMSA 1978, New Mexico Drug, Device and Cosmetic Act.

(2) Controlled substances:

(a) A CNM shall not prescribe nor distribute controlled substances in Schedule I of Section 26-1 1978 NMSA, Controlled Substances Act..

(b) A CNM shall not prescribe, distribute, or administer controlled substances in Schedules II-V of the Controlled Substances Act unless the CNM is registered with the New Mexico board of pharmacy and the United States drug enforcement administration (DEA) to prescribe, distribute, and administer controlled substances.

(c) A CNM who prescribes, distributes, or administers a controlled substance in Schedules II-V of Section 26-1 NMSA 1978, Controlled Substances Act, shall do so in accordance with the Controlled Substances Act.

(d) An individual employed as a CNM by the United States military, the United States veterans administration, or the United States public health service, and operating in the official capacity of that employment, who is prescribing, distributing or administering controlled substances under that facility's United States drug enforcement administration registration is exempt from the Subparagraphs (a), (b) and (c) of Paragraph (2) of this subsection.

(e) A CNM may prescribe, provide samples of, and dispense any dangerous drug to a patient if, at the time of the prescription, the CNM has a valid CNM-client relationship with the patient, as defined in 16.12.2.7 NMAC.

(3) Prescriptions: A CNM may prescribe by telephone, by written prescription, by e-mail, or through an electronic health record (EHR) system.

Controlled substances may only be

prescribed by written prescription. A CNM prescription shall have the CNM's name, office address, and telephone number printed on it. In the event that a CNM is writing a prescription printed with the names of more than one CNM, the name of the CNM writing the individual prescription shall be indicated. The name and address of the client, the date of the prescription, the name and quantity of the drug prescribed, and directions for use shall be included on a prescription.

(4) Labeling:  
When distributing a drug, a CNM shall label it with the client's name and date of birth; the date; instructions for use; and the CNM's name, address, and telephone number.

**C. Guidelines for management of chronic pain or other conditions with controlled substances.** The treatment of chronic pain or other conditions with various modalities, including controlled substances such as opiates and opioids, is a legitimate practice when done in the usual course of CNM practice. The goal when treating chronic pain is to reduce or eliminate pain and also to avoid development of or contribution to addiction, drug abuse, and overdosing. Effective dosages should be prescribed, with both under- and over-prescribing to be avoided, using patient protection as a guiding principle. The CNM should provide control of the patient's pain for its duration, while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors. A CNM may treat patients with addiction, physical dependence, or tolerance who have legitimate pain, however such patients require very close monitoring and precise documentation.

(1) If, in a CNM's professional opinion, a patient is seeking pain medication for reasons that are not medically justified, the CNM is not required to prescribe controlled substances for the patient.

(2) When prescribing, dispensing, or administering controlled substances

for management of chronic pain, a CNM shall:

- (a) obtain a PMP report for the patient covering the preceding 12 months from the New Mexico board of pharmacy and any other state's report that is applicable and available;
- (b) complete a history and physical examination and include an evaluation of the patient's psychological and pain status, any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of medical indications or contra-indications related to controlled substances;
- (c) be familiar with and employ screening tools, as well as the spectrum of available modalities for therapeutic purposes, in the evaluation and management of pain, and consider an integrative approach to pain management in collaboration with other care providers, including but not limited to acupuncturists, chiropractors, doctors of oriental medicine, exercise physiologists, massage therapists, pharmacists, physical therapists, psychiatrists, or psychologists;
- (d) develop a written individual treatment plan taking age, gender, and culture into consideration, with stated objectives by which treatment can be evaluated, such as degree of pain relief, improved physical and psychological function, or other accepted measures, and include any need for further testing, consultation, referral, or use of other treatment modalities as appropriate;
- (e) discuss the risks and benefits of using controlled substances with the patient or legal guardian and document this discussion in the medical record;
- (f) make a written agreement with the patient or legal guardian outlining patient responsibilities, including a provision stating that the chronic pain patient will receive all chronic

pain management prescriptions from one practitioner and one pharmacy whenever possible;

- (g) maintain complete and accurate records of care provided and drugs prescribed, including the indications for use, the name of the drug, quantity, prescribed dosage, and number of refills authorized;
- (h) when indicated by the patient's condition, consult with health care professionals who are experienced in the area of the chronic pain or other conditions, though not necessarily specialists in pain control, both early in the course of long-term treatment and at least every six months;
- (i) when treating patients with drug addiction or physical dependence, use drug screening prior to and during the course of treatment to identify the drugs the patient is consuming and compare the screening results with patients' self-reports (this should be included in the written agreement, see Subparagraph (f) above);
- (j) note possible indications of drug abuse by a patient and take appropriate steps to further investigate and to avoid contributing to drug abuse; such steps may include termination of treatment. Information about some of the indications may be available only through PMP reports. The following list of possible indications of drug abuse is non-exhaustive:
  - (i) receiving controlled substances from multiple prescribers;
  - (ii) receiving controlled substances for more than 12 consecutive weeks;
  - (iii) receiving more than one controlled substance analgesic;
  - (iv) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone;
  - (v) overutilization, including but not limited to early refills;

(vi) appearing overly sedated or intoxicated upon presentation; or

(vii) an unfamiliar patient requesting a controlled substance by specific name, street name, color, or identifying marks.

**D. Prescription Monitoring Program (PMP) Requirements:**

The department requires participation in the PMP to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals. Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting. A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record. A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V for each patient. The practitioner shall document the review of these



reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

(1) A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V:

(a) for a period of four days or less; or  
 (b) to a patient in a nursing facility; or  
 (c) to a patient in hospice care.  
 (d) or when prescribing, dispensing, or administering of: testosterone, pregabalin, lacosamide, ezogabine or stimulant therapy for pediatric patients less than age 14.

(2) Upon review of a prescription monitoring report for a patient, the practitioner shall identify, be aware, and document if a patient is currently:

(a) receiving opioids from multiple prescribers;  
 (b) receiving opioids and benzodiazepines concurrently;  
 (c) receiving opioids for more than 12 consecutive weeks;  
 (d) receiving more than one controlled substance analgesic;  
 (e) receiving opioids totaling more than 90 morphine milligram equivalents per day;  
 (f) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as any of the following indicators:  
 (g) over-utilization;  
 (h) requests to fill early;  
 (i) requests for a controlled substance or specific opioid by specific name,

street name; color, or identifying marks;

(j) requests to pay cash when insurance is available;

(k) receiving opioids from multiple pharmacies; or

(l) appearing overly sedated or intoxicated upon presentation.

(3) Receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone.

(4) Upon recognizing any of the above conditions described in item (iv) of Subparagraph (j) of Paragraph (2) of Subsection C 16.11.2.10 NMAC, the practitioner, using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(5) Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a patient's initial enrollment into the Opioid Treatment Program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in Schedule II-V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the patient's medical record.

**E. Other rules: a CNM shall fulfill the requirements of all relevant department rules including:**

(1) "bureau of vital records and health statistics," 7.2.2 NMAC;

(2) "control of disease and conditions of public health significance," 7.4.3 NMAC;

(3) "newborn genetic screening," 7.30.6 NMAC;

(4) "prevention of infant blindness," 7.30.7 NMAC;

(5) "requirement for freestanding birth centers," 7.10.2 NMAC; and

(6) "birthing workforce retention fund," 7.30.9 NMAC.  
 [16.11.2.10 NMAC - Rp, 16.11.2.10 NMAC, 6/25/2019]

**16.11.2.11 LICENSE DENIAL, SUSPENSION, OR REVOCATION; DISCIPLINARY ACTION:**

The department may deny, revoke, or suspend any license held or applied for or reprimand or place a license on probation on the grounds of incompetence, unprofessional conduct, or other grounds listed in this section, pursuant to Subsection R of Section 24-1-3, NMSA 1978.

**A. Grounds for action.**

(1) Incompetence. A CNM who fails to possess and apply the knowledge, skill, or care that is ordinarily possessed and exercised by CNMs or as defined by the ACNM "core competencies for basic midwifery practice" is considered incompetent. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. Conduct of such a character that could result in harm to the client or to the public from the act or omission or series of acts or omissions constitutes incompetence, whether or not actual harm resulted.

(2) Unprofessional conduct. For purposes of this rule "unprofessional

conduct” includes, but is not limited to, the following:

- (a) verbally or physically abusing a client;
- (b) engaging in sexual contact with or toward a client;
- (c) abandonment of a client;
- (d) engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
- (e) practice that is beyond the scope of CNM licensure;
- (f) dissemination of a client’s health information or treatment plan to individuals not entitled to such information and where such information is protected by law from disclosure;
- (g) falsifying or altering client records or personnel records for the purpose of reflecting incorrect or incomplete information;
- (h) obtaining or attempting to obtain any fee for client services for one’s self or for another through fraud, misrepresentation, or deceit;
- (i) aiding, abetting, assisting, or hiring an individual to violate any rule of the department;
- (j) failure to follow established procedure regarding controlled substances;
- (k) failure to make or to keep accurate, intelligible entries in records as required by the ACNM “standards for the practice of midwifery”;
- (l) obtaining or attempting to obtain a license to practice certified nurse-midwifery for one’s self or for another through fraud, deceit, misrepresentation, or any other act of dishonesty in any phase of the licensure or relicensure process;
- (m) practicing midwifery in New Mexico without a valid New Mexico

license or permit or aiding, abetting or assisting another to practice midwifery without a valid New Mexico license;

- (n) delegation of midwifery assessment, evaluation, judgment, or medication administration to a non-licensed person; or
- (o) failure to provide information requested by the department pursuant to this rule within 20 business days of receiving the request.
- (3) Failure to comply with the New Mexico Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA 1978.
- (4) Dereliction of any duty imposed by law.
- (5) Conviction of a felony.
- (6) Failure to report in writing to the division any complaint or claim made against the CNM’s practice as a registered, certified, or licensed health care provider in any jurisdiction, including as a registered nurse. Such notification shall include the credentialing jurisdiction and the location, time, and content of the complaint or claim. It shall be made within 20 business days of the CNM becoming aware of the complaint or claim.
- (7) Conduct resulting in the suspension or revocation of a registration, license, or certification to perform as a health care provider.
- (8) Failure to report a CNM who appears to have violated the rule for the practice of certified nurse-midwifery. Anyone reporting an alleged violation of this rule shall be immune from liability under this rule unless the person acted in bad faith or with malicious purpose.
- (9) Violation of any of the provisions of this rule.

**B. Non-disciplinary proceedings:** For non-disciplinary actions involving denial of renewal of a license the applicant will be provided a notice of contemplated

action and the right to the hearing procedures set forth in Paragraphs (4) and (5) of Subsection (C) 16.11.2.11 NMAC.

**C. Disciplinary proceedings:** Disciplinary proceedings shall be conducted in accordance with Sections 61-1-1 through 61-1-31 NMSA 1978 of the Uniform Licensing Act (UCLA). Disciplinary proceedings related to a CNM’s treatment of a patient, for chronic pain or other conditions, with a controlled substance shall be conducted in accordance with Sections 24-2D-1 through 24-2D-6 NMSA 1978 of the Pain Relief Act, in addition to this rule.

- (1) Filing of a complaint:
  - (a) A written complaint must be filed with the division before a disciplinary proceeding may be initiated.
  - (i) A complaint is an allegation of a wrongful act(s) or omission(s).
  - (ii) An allegation of a wrongful act may include knowledge of a judgment or settlement against a licensee.
  - (b) A written complaint may be filed by any person, including a member of the board.
- (2) Investigation of a complaint.
  - (a) All complaints alleging a violation of the rules adopted by the department shall be investigated to determine whether a violation of applicable law or rule has occurred.
  - (b) The investigation may result in a notice of contemplated action (NCA) being issued by the department if a violation occurred or it may result in a dismissal of the complaint if no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.
- (3) Notice of contemplated action.
  - (a) The NCA shall be drafted by the department.



**(b)**

The director of the division, or her/his designee shall sign all NCAs.

**(c)**

The NCAs shall contain written information in accordance with the requirements of the ULA and shall be served on the licensee in accordance with the ULA.

**(4)** Request

for a hearing, notice of hearing and request for continuance.

**(a)**

Every licensee shall be afforded notice and an opportunity to be heard.

**(b)**

Within 20 days of receiving the NCA, a licensee may request a hearing in writing by certified mail. The department shall notify the licensee of the time and place of hearing within 20 days of receipt of the request. The hearing shall be held no more than 60 nor less than 15 days from the date of service of the notice of hearing. However, if the ULA designates time requirements different from the above stated time requirements, the ULA time requirements shall prevail. The department shall notify the licensee of these prevailing time requirements when it sends the NCA.

**(c)**

The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative attorney of the department at any time prior to the hearing; if a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval; the proposed stipulation and agreement does not divest the department of its authority to require a formal hearing or final approval, amendment, or rejection; if a settlement is not reached, a hearing shall be held.

**(d)**

Once a hearing has been scheduled, if a request for a continuance is made it shall be presented to the department's hearing officer, in writing, at least 10 days prior to the scheduled hearing. The hearing officer may approve or deny the request.

**(e)**

If a person fails to appear after requesting a hearing, the department

may proceed to consider the matter and make a decision.

**(f)**

If no request for a hearing is made within the time and manner stated in the NCA, the department may take the action contemplated in the NCA. Such action shall be final and reportable to NPBD.

**(g)**

The department shall keep a record of the number of complaints received and the disposition of said complaints as either substantiated or unsubstantiated.

**(5)**

Administrative hearing.

**(a)**

All hearings shall be conducted by a hearing officer designated by the secretary or authorized representative of the department. The hearing officer shall have authority to rule on all non-dispositive motions.

**(b)**

All hearings before the department shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the hearing pursuant to the ULA.

**(i)**

Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

**(ii)**

Disciplinary action against a CNM license must not be based solely on hearsay evidence.

**(c)**

The hearing officer may take testimony, examine witnesses and direct a continuance of any case.

**(d)**

The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the department.

**(e)**

The hearing officer shall issue a report and recommended finding to the department secretary.

**(f)**

Decision of the department: the secretary of the department shall

render a final administrative determination after reviewing the report and recommended findings issued by the hearing officer. Copies of the written decision shall be mailed via certified mail to the licensee in accordance with the ULA and placed in the CNM's licensure file. The department shall mail a copy of the written decision to the authority(ies) that license(s) the CNM as a registered nurse and shall report the decision to the NPDB if the decision is to uphold the disciplinary action.

#### **D. Reinstatement of a suspended or revoked license.**

**(1)** Individuals

who request reinstatement of their license or who request that their probation be lifted or altered shall provide the department with substantial evidence to support their request. This evidence must be in the form of notarized written reports or sworn written testimony from individuals who have personal knowledge of the individual's activities and progress during the period of probation, suspension, or revocation.

**(2)** For

reinstatement of licenses for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, requests for reinstatement of a revoked license shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date of the order of revocation or suspension is the controlling date, unless otherwise specified in the order. Reinstatement of a revoked license requires proof of meeting the renewal requirements set forth in this rule and payment of the reinstatement of current or lapsed license fee.

**(3)** Requests

for reinstatement of a suspended license shall be considered at such time as provided by the department in the order of suspension. Reinstatement of a suspended license requires proof of meeting the renewal requirements as set forth in this rule, any remedial education, supervised practice or other condition specified

in the order for suspension required by the department and payment of the reinstatement of current or lapsed license fee.

(4) When a license is revoked solely because the licensee is not in compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978, the license shall be reinstated upon presentation of a subsequent statement of compliance.

[16.11.2.11 NMAC - Rp, 16.11.2.11 NMAC, 6/25/2019]

#### 16.11.2.12 ADVISORY

**BOARD:** The department shall appoint a CNM advisory board to make recommendations to the department regarding the regulation of CNMs.

A. The board shall be comprised of:

(1) three New Mexico licensed CNMs, at least one of whom is actively practicing midwifery;

(2) one New Mexico licensed midwife (LM) who is actively practicing midwifery;

(3) two members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;

(4) one actively practicing board-certified obstetrician-gynecologist physician; and

(5) one employee of the division.

B. Board members other than the department representative shall be appointed for staggered terms up to three years in length. Board members shall serve on a voluntary basis without compensation. They shall not serve for more than two consecutive terms. The department representative shall not be subject to term limits.

C. The board shall meet a minimum of two times a year when a meeting of the board is called by the director of the division.

D. Board members may submit requests for reimbursement of in-state travel and

per diem for attending board meetings in accordance with the Per Diem and Mileage Act, Section 10-8-1 to -8 NMSA 1978 department of finance administration rules, Section 2.42.2 NMAC.

E. Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings shall be deemed to have resigned from the board.

[16.11.2.12 NMAC - Rp, 16.11.2.12 NMAC, 6/25/2019]

#### 16.11.2.13 SEVERABILITY:

If any part or application of these rules is determined to be illegal, the remainder of these rules shall not be affected.

[16.11.2.13 NMAC - Rp, 16.11.2.13 NMAC, 6/25/2019]

#### HISTORY OF 16.11.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives.

DPHW 67-24, Nurse Midwife Regulations For New Mexico, filed 12/12/1967.

HSSD 76-2, Nurse Midwife Regulations For New Mexico, filed 1/20/1976.

HED-80-6 (HSD), Regulations Governing the Practice of Certified Nurse Midwives, filed 10/17/1980.  
DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives, filed 11/04/1991.

#### History of Repealed Material:

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) repealed 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) repealed 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 8/15/2013) repealed 6/25/2019.

#### Other History:

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives (filed 11/04/1991) was renumbered into first version of

the New Mexico Administrative Code as 16 NMAC 11.2, Certified Nurse Midwives, effective 10/31/1996.

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) was replaced by 16.11.2 NMAC Certified Nurse Midwives, effective 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 8/15/2013) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 6/25/2019.

## SUPERINTENDENT OF INSURANCE, OFFICE OF

### TITLE 13 INSURANCE CHAPTER 1 INSURANCE GENERAL PROVISIONS PART 4 PUBLIC RULE HEARINGS

#### 13.1.4.1 ISSUING

**AGENCY:** New Mexico Office of Superintendent of Insurance.

[13.1.4.1 NMAC - N, 7/1/2019]

**13.1.4.2 SCOPE:** This rule applies to all proceedings within the New Mexico office of superintendent of insurance in which the superintendent adopts rules pursuant to the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978 (1967, as amended through 2017).

[13.1.4.2 NMAC - N, 7/1/2019]

#### 13.1.4.3 STATUTORY

**AUTHORITY:** Section 14-4-5.8 NMSA 1978; 1.24.25.8 NMAC.

[13.1.4.3 NMAC - N, 7/1/2019]

#### 13.1.4.4 DURATION:

Permanent.

[13.1.4.4 NMAC - N, 7/1/2019]

#### 13.1.4.5 EFFECTIVE

**DATE:** July 1, 2019, unless a later date is cited at the end of a section.

[13.1.4.5 NMAC - N, 7/1/2019]

**13.1.4.6 OBJECTIVE:** To provide procedural rules for public

rule hearings for use by the New Mexico office of superintendent of insurance consistent with the State Rules Act and to facilitate public engagement with the superintendent's rulemaking process in a transparent, organized, and fair manner. [13.1.4.6 NMAC - N, 7/1/2019]

**13.1.4.7 DEFINITIONS:** This rule adopts the definitions found in Section 14-4-2 NMSA 1978 and in 13.1.1.7 NMAC. In addition:

**A. "Final order"** also means "concise explanatory statement" as described in Section 14-4-5.5 NMSA 1978;

**B. "Logical outgrowth"** occurs when a final rule differs from the proposed rule if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period;

**C. "OSI"** means the New Mexico office of superintendent of insurance

**D. "Recommended decision"** means the written decision of any designated hearing officer which contains a description of the rulemaking proceeding, a summary of any written comments submitted to the superintendent, a summary of any oral comments made at the public hearing, any analysis or conclusions of the designated hearing officer, and recommendations to the superintendent concerning adoption, rejection, or amendment of the proposed rule.

[13.1.4.7 NMAC - N, 7/1/2019]

**13.1.4.8 INITIATION OF THE RULEMAKING PROCESS BY THE SUPERINTENDENT:**

**A.** The rulemaking process may be initiated by the superintendent through a notice for a rule hearing that is publicly posted pursuant to this rule.

**B.** The superintendent shall proceed with the rulemaking process by posting public notice, publishing the proposed rule for comment, and setting a public rule

hearing in accordance with the State Rules Act and any other applicable law.

**C.** Once the superintendent initiates the rulemaking process, the superintendent must maintain a record as prescribed in Section 14-4-5.4 NMSA 1978.

[13.1.4.8 NMAC - N, 7/1/2019]

**13.1.4.9 INITIATION OF THE RULEMAKING PROCESS BY THE PUBLIC:**

**A.** Any person may file a petition for rulemaking with the superintendent.

**B.** A petition for rulemaking shall be made in writing and include an explanation of the purpose or statement of reasons for the proposed rule. A petition shall include a citation to the legal authority authorizing the superintendent to adopt the rule and a copy of or citation to technical information, if any, that serves as the basis for the proposed rule. A petition should be as clear as possible and may include the proposed rule in underline and strikethrough format, consistent with requirements of the state records administrator.

**C.** The superintendent shall, if required by law, consider the petition and make a determination within 30 calendar days whether to grant or deny the petition. If the superintendent denies the petition, the superintendent shall issue a final order explaining the reason for denial. No affirmative duty to respond to a public petition is created by these rules. If a public right to petition the superintendent exists in the insurance code, the superintendent must follow all timelines or responses governed by the insurance code.

**D.** Once the superintendent initiates the rulemaking process, the superintendent must maintain a record as prescribed in Section 14-4-5.4 NMSA 1978.

[13.1.4.9 NMAC - N, 7/1/2019]

**13.1.4.10 RULEMAKING NOTICE:** The superintendent shall

provide to the public, as defined in Section 14-4-2 NMSA 1978, notice of the proposed rulemaking a minimum of 30 calendar days prior to the public rule hearing and in accordance with requirements of Section 14-4-5.2 NMSA 1978.

[13.1.4.10 NMAC - N, 7/1/2019]

**13.1.4.11 WRITTEN COMMENT PERIOD:**

**A.** The public comment period must be at least 30 calendar days, beginning after publication of the notice in the New Mexico register and issuance of the rulemaking notice. The superintendent shall not adopt a proposed rule before the end of the public comment period.

**B.** As long as the public comment period is at least 30 calendar days, the public comment period will close for initial comments at 4:00 p.m. on the day of the public hearing, or on the last day of the public hearing if the public hearing extends for more than one day. For purposes only of responses to written comments or oral comments at the public hearing, the public response period will extend at least 10 calendar days beyond the public hearing or close of the 30 day comment period, whichever is later, unless the necessity of adopting or publishing the rule by a certain date makes the extension of the public response period impractical.

**C.** A person may submit, by mail or electronic form, written comments or responses to comments on a proposed rule, and those comments or responses shall be made part of the record. Written comments may be submitted through the end of the public comment period, and responses to comments may be submitted for an additional 10 days, unless the necessity of adopting or publishing the rule by a certain date makes a response period impractical.

**D.** The superintendent may decide to amend the comment period, or response period, if the superintendent provides to the public, as defined in Section 14-4-2 NMSA 1978, notice of the changes.

**E.** The superintendent shall post all written comments and responses on the OSI website, as soon as practicable, and no more than three business days following receipt to allow for public review. All written comments and responses received by the superintendent shall also be available for public inspection at the main office of OSI.  
[13.1.4.11 NMAC - N, 7/1/2019]

**13.1.4.12 PUBLIC HEARING:**

**A.** Prior to adopting a proposed rule, the superintendent must hold a public rule hearing. The purpose of the hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed rule. The superintendent, at the superintendent's discretion, directly or through a designated hearing officer, may determine whether to hold more than one hearing.

**B.** The superintendent may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask questions and provide comments for clarification purposes only, but should refrain from providing opinions or engaging in discussion regarding the merits of the proposed rule or any public comment presented. All written comments submitted during the public comment period, as well as any written comments submitted during the hearing, will be made part of the record.

**C.** Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath unless required by law or separate rule. Any individual who provides public comment at the hearing may be questioned by the superintendent or hearing officer or, at the discretion of the superintendent or hearing officer, or as otherwise provided by law, by other persons at the hearing.

**D.** The hearing shall be conducted in a fair and equitable manner. The superintendent or hearing officer may determine the format in which the hearing is conducted (e.g. introduction of each part or section one at a time for comment), but the hearing will be conducted in a simple and organized manner that facilitates public comment and a clear rulemaking record.

**E.** The rules of evidence do not apply to public rule hearings and the superintendent or hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

**F.** The superintendent must hold the hearing in a venue that reasonably accommodates all persons who wish to participate or observe, and appropriate audio equipment should be secured to ensure all in attendance can hear the proceeding and be heard when presenting comment. Reasonable efforts shall be made to accommodate the use of audio and video recording devices. Hearings shall be open to the public, but are not subject to the New Mexico Open Meetings Act.

**G.** The hearing shall be recorded by any stenographic method in use in the district court or by audio recording.  
[13.1.4.12 NMAC - N, 7/1/2019]

**13.1.4.13 RULEMAKING RECORD AND ADOPTION OF RULE:**

**A.** The superintendent shall maintain a record of the rulemaking proceeding as required in Section 14-4-5.4 NMSA 1978, and any written comment, document, or other exhibit entered into the record during the rule hearing shall be labeled clearly. Pre-filed written comments are part of the rulemaking record without the need for formal admission. Pre-filed comments include, but are not limited to: the petition; public notices of the rulemaking, including any lists of individuals to whom notice was mailed or sent electronically;

the proposed rule in underline and strikethrough format; and any written comment submitted during the comment period prior to the rule hearing. Written comments or other documents introduced during the hearing should be admitted into the record after being marked as an exhibit.

**B.** If the rule hearing is conducted by a designated hearing officer, the complete rulemaking record, including any memoranda summarizing the contents of the hearing, if written, shall be compiled and forwarded to the superintendent with sufficient time to review. The superintendent shall review the rulemaking record and the hearing officer's recommended decision before rendering a final decision on the proposed rule.

**C.** The superintendent may adopt, amend, or reject the proposed rule. Any amendments to the proposed rule must fall within the scope of the current rulemaking proceeding. Amendments to a proposed rule are within the scope of the rulemaking if the amendments:

(1) are a logical outgrowth of the rule proposed in the notice; or

(2) are proposed, or are reasonably suggested, by comments made during the comment period, and the 10 day response period after the close of the comment period has been provided; and

(a) any person affected by the adoption of the rule, if amended, should have reasonably expected that any change from the published proposed rule would affect that person's interest; or

(b) the subject matter of the amended rule or the issues determined by that rule are the same as those in the published proposed rule.

**D.** The date of adoption of the proposed rule shall be the date the final order is signed by the superintendent, unless otherwise specified in the final order.

**E.** The final order may adopt by reference some or all of



any recommended decision and shall include by reference or otherwise, but not be limited to, the following:

- (1) citation to specific statutory or other authority authorizing the rule;
  - (2) effective date of the rule;
  - (3) date of adoption of the rule, if different than the date of the final order;
  - (4) reasons for adopting the rule, including any findings otherwise required by law of the superintendent, and a summary of any independent analysis done by the superintendent;
  - (5) reasons for any change between the published proposed rule and the final rule; and
  - (6) reasons for not accepting substantive arguments made through public comment.
- [13.1.4.13 NMAC - N, 7/1/2019]

#### 13.1.4.14 FILING AND PUBLICATION; EFFECTIVE DATE:

**A.** Within 15 calendar days after the date of adoption of a rule, the superintendent shall file the adopted rule with the state records administrator and shall provide to the public the adopted rule and final order in accordance with the State Rules Act.

**B.** Unless another date is stated in the superintendent's final order, or otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico register.

[13.1.4.14 NMAC - N, 7/1/2019]

**13.1.4.15 EMERGENCY RULES:** The superintendent shall comply with the rulemaking procedures in Section 14-4-5.6 NMSA 1978, regarding the promulgation of emergency rules.

[13.1.4.15 NMAC - N, 7/1/2019]

**History of 13.1.4 NMAC:**  
[RESERVED]

## SUPERINTENDENT OF INSURANCE, OFFICE OF

### TITLE 13 INSURANCE CHAPTER 1 INSURANCE GENERAL PROVISIONS PART 5 FORMAL ADMINISTRATIVE HEARINGS

**13.1.5.1 ISSUING AGENCY:** New Mexico Office of Superintendent of Insurance.  
[13.1.5.1 NMAC - N, 7/1/2019]

**13.1.5.2 SCOPE:** Except as otherwise provided, the rules in this part govern every adjudicatory proceeding conducted pursuant to a notice of hearing issued by the superintendent of insurance on any matter delegated to the superintendent under the Insurance Code, and to any request for hearing submitted to the superintendent, unless a more specific statutory or regulatory provision applies to the specific hearing type being conducted. The rules in this part do not apply to (1) an informal hearing conducted pursuant to Section 59A-4-18 NMSA 1978 and its implementing rules, (2) if the law governing a request for hearing requires the superintendent to commence the hearing fewer than 91 days from the hearing request, or (3) to any hearing governed by 13.10.17 NMAC.

[13.1.5.2 NMAC - N, 7/1/2019]

**13.1.5.3 STATUTORY AUTHORITY:** Section 59A-2-9 NMSA 1978.  
[13.1.5.3 NMAC - N, 7/1/2019]

**13.1.5.4 DURATION:** Permanent.  
[13.1.5.4 NMAC - N, 7/1/2019]

**13.1.5.5 EFFECTIVE DATE:** July 1, 2019 unless a later date is specified at the end of a section.  
[13.1.5.5 NMAC - N, 7/1/2019]

**13.1.5.6 OBJECTIVE:** The purpose of this rule is to provide procedures to govern formal administrative hearings held before the superintendent.

[13.1.5.6 NMAC - N, 7/1/2019]

#### 13.1.5.7 DEFINITIONS:

**A. "Attorney"** for purposes of this rule, "attorney" means only an individual who is licensed to practice law in New Mexico or who has requested temporary licensure under the New Mexico supreme court's *pro hac vice* rules.

**B. "Day or Days"** shall be interpreted as follows, unless otherwise specified:

(1) **"Business day"** means Monday through Friday, excluding any days that state offices are officially closed;

(2) one to five days means only business days; and

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

**C. "Hearing"** means an on-the-record adjudicatory proceeding before the superintendent or the before a hearing officer appointed by the superintendent.

**D. "Hearing officer"** is the superintendent, or a person designated by the superintendent pursuant to Section 59A-2-7 NMSA 1978, to serve as a neutral decision maker in a proceeding.

**E. "Order"** means any directive, command, determination of a disputed issue, or ruling on a disputed matter issued by the superintendent or a hearing officer in a proceeding governed by these rules.

**F. "OSI"** means the New Mexico office of superintendent of insurance.

**G. "Party"** means a person who participates in a proceeding governed by these rules by order of the superintendent.

**H. "Pleading"** means any written request, motion, or proposed action filed by a party in a docketed proceeding, as set forth in 13.1.5.10 NMAC.

**I. "Proceeding"** means any formal adjudicatory proceeding, case or hearing conducted by the superintendent pursuant to these rules.



**J. “Request for hearing”** means a formal written request for an opportunity to appear before the superintendent and offer testimony, to call witnesses, present evidence and ask questions, that is submitted by a person with respect to a particular matter where OSI has statutory or regulatory authority to conduct an adjudicatory proceeding.

**K. “Sua Sponte”** means any determination of the superintendent or of his designee made without prompting of the parties.

**L. “Superintendent”** means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope of the superintendent’s official duties and with the superintendent’s authorization.  
[13.1.5.7 NMAC - N, 7/1/2019]

**13.1.5.8 REVISION OF STANDING ORDERS:**  
The superintendent may issue or withdraw standing procedural orders addressing general practice issues and filing protocols for the handling of matters to be adjudicated before the superintendent. Such standing orders will be available for public inspection at OSI office facilities, on the OSI website, and in any applicable information provided with a notice of hearing. Parties appearing before the superintendent are expected to comply with standing orders.  
[13.1.5.8 NMAC - N, 7/1/2019]

**13.1.5.9 REQUESTING A HEARING:**

**A. Written request required.** Any person seeking a hearing before the superintendent shall file a written request for a hearing using the form available on the OSI website or as otherwise directed by the superintendent. The request shall include all of the following:

(1) a brief summary identifying the nature of the dispute;

(2) the applicable statute, rule, bulletin or order in dispute in the matter;

(3) a statement of the jurisdictional basis for the superintendent to adjudicate the matter;

(4) the triggering action of the superintendent, such as an order, denial, suspension, revocation, penalty, fine, rule, or interpretative publication;

(5) the requestor’s reason for challenging that action or inaction; and

(6) the mailing address of the requestor.

**B. Request rejected.**

The superintendent may reject any request for hearing if the superintendent lacks jurisdiction to adjudicate the matter; the matter is moot; or the request for hearing is procedurally or substantively deficient.

(1) If a request for hearing is rejected, the superintendent will notify the requestor in writing with a brief explanation of the rejection.

(2) If the request for hearing is deficient for any reason other than lack of subject matter jurisdiction or mootness, the requestor may correct any deficiency and resubmit the request for hearing.

**C. Designation of hearing officer and docket.** Upon receipt of a request for hearing that contains all information required by Subsection A of this section and over which the superintendent has jurisdiction, the superintendent may designate a hearing officer to preside in the matter based on the knowledge, expertise, experience, efficiency, and staffing needs of the office. The superintendent may subsequently reassign the matter to a different hearing officer, if necessary. The superintendent shall assign a docket number to be referenced in all subsequent communications and filings concerning the matter.

**D. Intervenors.** Any person showing that they will be substantially and specifically affected

by the proceeding shall be allowed to intervene as a party in the whole or any portion of the proceeding.

(1) Whether to allow intervention for any other interested person is at the sole discretion of the superintendent.

(2) OSI staff may intervene in any proceeding as a matter of right by filing a notice of intervention.

[13.1.5.9 NMAC - N, 7/1/2019]

**13.1.5.10 REPRESENTATION AT HEARING, FORMAL ENTRY OF APPEARANCE, SUBSTITUTION OF COUNSEL, AND WITHDRAWAL FROM REPRESENTATION:**

**A. Representation.**

Unless otherwise expressly authorized by statute, only the person challenging the action or a bona fide majority owner if the party is a business entity, or that person’s attorney may represent the person in a proceeding.

**B. Entry of appearance.**

Any attorney wishing to represent a party shall file a formal written entry of appearance in the docket of the proceeding. The entry of appearance shall list the attorney’s mailing address, phone and fax number (if any), and an email address (if any). Any attorney wishing to substitute in for a previous attorney shall file a substitution of counsel containing the same information required in the initial entry of appearance.

**C. Withdrawal.** An attorney who intends to withdraw from representation of a party must do so in accordance with the rules of professional conduct.

(1)

Withdrawing counsel must file in the docket a written request to withdraw from representation that indicates when counsel notified the party of the withdrawal, and of the date and time of the scheduled hearing.

(2)

The superintendent may deny a request to withdraw from representation only when withdrawal would have a clear, materially adverse effect on the represented party’s interests and

impede the conduct of a full, fair, and efficient hearing.

[13.1.5.10 NMAC - N, 7/1/2019]

### 13.1.5.11 FILING OF PLEADINGS:

**A. Opening the docket.** A docket shall be opened in the OSI records management system immediately upon the superintendent's determination that the requestor shall be granted a hearing.

(1) The superintendent shall direct that the requestor's original request for hearing be filed to the docket.

(2) The superintendent shall establish the caption for the docket, which caption shall be used thereafter for any matters pertaining to the hearing. The caption shall establish the nature of the matter and shall include the docket number.

(3) Every written document that is submitted to the superintendent or exchanged between the parties for consideration, including pleadings such as motions, responses and objections, all evidentiary documents and any other filings shall include the caption and shall be filed to the docket.

**B. Public access.** Unless otherwise determined by the superintendent upon consideration of a request by a party for confidentiality, all dockets shall be open for public inspection.

**C. Filing restrictions and service.**

(1) OSI shall accept filings through mail, facsimile, or electronic mail.

(2) Any item that is filed to the docket shall also be contemporaneously served upon all parties of record and on the hearing officer.

(3) All filings shall include a certificate of service that documents the method of service used. A represented party shall only be served through counsel.

(4) Electronic and in-person filing shall be accepted on business days between 8:00 and

4:00 pm. Pleadings shall be marked as filed on the business day that OSI receives the pleading.

**D. Filing requirements.**

(1) All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion cannot be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

(2) Absent any order to the contrary, no pleading shall exceed 10 pages, excluding the caption and certificate of service, of double-spaced (except for block quotations), 12-point font. Only relevant excerpts of a motion exhibit shall be filed, with the pertinent portions highlighted, underlined, or otherwise emphasized. All exhibits and attachments shall identify the total number of pages, and consecutive page numbers (e.g., "Page 1 of 10"). Only single-sided documents shall be accepted for filing or into a record at a hearing.

**E. Request for concurrence.** Before submission of any motion, request for relief or request for continuance, the requesting party shall make reasonable efforts to consult with each other party about that party's position on the motion unless the nature of the pleading is such that it can be reasonably assumed the requested relief would be opposed. The moving party shall state the position of each other party in the pleading.

**F. Responses to pleadings.**

(1) Unless a different deadline has been established by the hearing officer, each non-moving party shall have 14 days to file a written response to a pleading.

(2) If a deadline for filing would fall on a

non-business day, the deadline shall be the next business day.

(3) The hearing officer shall have the discretion to extend or shorten the response deadline.

(4) Failure to file a response in opposition may be presumed to be consent to the relief sought.

(5) The hearing officer is not required to make a default ruling on any motion if the relief sought could be contrary to the facts or law on the issues.

**G.** In the event of a procedural defect or other error with the manner, method, or content of a submitted pleading, the hearing officer or records manager may communicate such error to the filing party and withhold filing of the pleading until the moving party remedies the procedural defect. Examples of a procedural defect include, but are not limited to, failure to certify service, failure to comply with the page limitations, failure to confer with other parties, failure to use the form or follow the specific filing method required by OSI, submission of double-sided documents, failure to properly number pages, failure to use the correct caption of reference the assigned docket number, or failure to comply with an applicable standing order.

[13.1.5.11 NMAC - N, 7/1/2019]

### 13.1.5.12 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:

**A. Purpose of prehearing conferences.** The hearing officer may direct representatives for all parties to meet together or with the hearing officer present for a prehearing conference to consider any or all of the following:

(1) simplify, clarify, narrow or resolve the pending issues;

(2) stipulations and admissions of fact and of the contents and authenticity of documents;

(3) expedition of discovery and presentation of evidence, including, but not limited to, restriction on the number of exhibits and expert, economic or technical witnesses;

(4) matters of which administrative notice shall be taken; and

(5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

**B. Conduct of prehearing conferences.**

(1) Prehearing conferences conducted by the hearing officer may be electronically, but not stenographically, recorded. Should a party request that the recording be transcribed, that party shall pay any costs of transcription.

(2) The hearing officer may issue a written order that recites the results of the conference. Such order shall include rulings upon matters raised at the conference, together with appropriate directions to the parties. The order shall control the subsequent course of the proceeding, unless superseded by a subsequent order.

**C. Status conferences.**

(1) The hearing officer may require the parties to submit a written report of any conference ordered to be conducted between the parties updating the status of the proceeding in light of the conference.

(2) The hearing officer may conduct a status conference upon the request of either party or on the hearing officer's own initiative, at which time the hearing officer may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a proceeding.

[13.1.5.12 NMAC - N, 7/1/2019]

**13.1.5.13 HEARING LOCATION, TIME AND PLACE, NOTICE OF HEARING:**

**A. Location.**

(1) In the absence of any statutory requirements to the contrary, all hearings conducted by OSI shall occur in Santa Fe, unless the hearing officer orders the parties to appear at another location in New Mexico.

(2) The parties may express a mutual preference for location of the hearing in their request for hearing.

(3) In selecting a location other than Santa Fe, the hearing officer shall consider and give weight to the location and wishes of the parties, witnesses, access for a hearing officer with expertise in the matter, and the scheduling and staffing needs of OSI.

(4) If selection of a location other than Santa Fe would cause an unreasonable, undue burden to any party, that party may file a written objection to the selected location within 10 days of issuance of the notice of hearing, articulating the reasons supporting the objection. The hearing officer shall promptly review the objection and, upon a showing of an unreasonable, undue burden, may move the hearing to another more reasonable location and the superintendent may designate another hearing officer if necessary.

**B. Notice.** OSI shall notify the parties to the hearing of the date, time and, place scheduled for the hearing at least fourteen days before the scheduled hearing. This notice shall be directed to the party's attorney, or to the last known address of any unrepresented party. Notice will be sent by US mail unless the parties have requested an alternate method of notification that is acceptable to OSI.

[13.1.5.13 NMAC - N, 7/1/2019]

**13.1.5.14 TELEPHONIC, VIDEOCONFERENCE AND OTHER EQUIVALENT ELECTRONIC METHOD HEARINGS:**

**A.** If not otherwise prohibited by statute, rule, or court ruling, the hearing officer may conduct the hearing in person or by telephone, videoconference, or other equivalent electronic method. The hearing officer shall cause a stenographic or audio recording to be made of all proceedings involving the presentation of evidence, points, authorities or argument pertaining to the merits of the matter before the hearing officer.

**B.** If the hearing is to be conducted by telephone, videoconference or other equivalent electronic method, the notice shall so inform the parties. Either party may file a written objection to conducting the hearing by telephone, videoconference, or other equivalent electronic method within 10 days of the notice of hearing. Failure to timely object to the conduct of a hearing by telephone, videoconference, or other equivalent electronic method constitutes consent to the hearing proceeding in that manner and waiver of any other applicable statutory in county hearing requirement.

**C.** Upon receipt of a timely objection, the hearing officer shall consider the applicable legal requirements; the location of the parties and witnesses; the complexity of the particular matter; the availability of necessary electronic equipment for conduct of a full and fair hearing by telephone, videoconference, or other equivalent electronic method; and the basis of the objection in determining whether the hearing should occur at a specific location rather than by telephone, videoconference, or other equivalent electronic method.

**D.** Provided that the requesting party has not previously demanded an in-person hearing or otherwise objected to conducting the matter by telephone, videoconference, or other equivalent electronic methods, any party may request to appear directly or have a witness on their behalf appear by telephone, videoconference, or alternative electronic means by filing a request



at least three business days before the scheduled hearing. The filing of a request to appear by telephone, videoconference, or other alternative electronic method shall be deemed as a total and complete waiver of any in-person hearing right, and deemed as consent for all parties, all witnesses, and the hearing officer to appear by telephone, videoconference, or other equivalent electronic methods.

**E.** All parties appearing by telephone, videoconference, or other electronic method shall provide the hearing officer with a working email address or facsimile number for the exchange of all documentary evidence before or during the hearing.

**F.** Failure to follow the hearing officer's instructions for participating in the hearing by telephone, videoconference, or other equivalent electronic method will be treated as a non-appearance at the hearing.

**G.** Any technical issues shall be promptly reported to the hearing officer.

**H.** In the event that technical or other computer problems prevent a hearing by videoconference or other electronic method from occurring or otherwise interferes with maintaining or developing a complete record at the hearing, the parties agree and consent that the assigned hearing officer may continue the matter to a different time before expiration of the statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the remaining portion of the hearing by telephone.

**I.** If the assigned hearing officer determines during the course of the hearing, either *sua sponte* or upon argument of a party, that an in-person hearing is necessary to adequately complete the record, address credibility issues, or is otherwise necessary to ensure a full or fair hearing process, the hearing officer may recess a hearing occurring by telephone, videoconference, or other equivalent electronic method and reconvene the proceeding as an in-person hearing.  
[13.1.5.14 NMAC - N, 7/1/2019]

#### 13.1.5.15 CONTINUANCES:

**A.** At the request of a party, a witness, or upon the hearing officer's own determination, a hearing may be continued for good cause. The hearing officer shall consider only written continuance requests made at least three working days prior to the scheduled hearing absent extraordinary, unforeseen circumstances that the requesting party or witness could not have known earlier. An order to grant or deny the request may be issued prior to the scheduled hearing or if there is insufficient time to issue an order prior to the scheduled hearing, the hearing officer may grant or deny the request on the record at the hearing. No continuance request shall be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing before expiration of any statutory jurisdictional deadline.

**B.** Within the jurisdictional time limits set by statute, the superintendent or hearing officer may *sua sponte* continue any matter as necessary to address OSI staffing needs, to ensure efficient and adequate use of state resources, and to manage the hearing docket. To this end, the hearing officer may contact the parties to inquire about the status of a scheduled case.

**C.** No case shall be continued, even with a showing of good cause or an emergency circumstance, beyond any mandatory, applicable jurisdictional time limit on the case.

[13.1.5.15 NMAC - N, 7/1/2019]

#### 13.1.5.16 ATTIRE AT

**HEARING:** All attorneys and other authorized representatives must be attired in a dignified, professional manner at all times during the hearing. Witnesses shall dress in a respectful manner. No attire or dress as to create a distraction to the orderly conduct of the hearing will be permitted.

[13.1.5.16 NMAC - N, 7/1/2019]

#### 13.1.5.17 BURDEN OF PROOF, PRESENTATION OF CASE, EVIDENCE:

**A. Burden of proof.** Unless otherwise specified by statute, the burden of proof in a proceeding is the preponderance of evidence.

**B. Presentation order.** The party with the burden of proof in the case shall ordinarily present their case first, followed by the opposing party, if any, unless the hearing officer makes reasonable exceptions related to the availability of the witnesses, representatives or other scheduling concerns.

**C. Opening statements.** The hearing officer may require or allow opening statements as the circumstances justify. Opening statements are not ordinarily evidence, but without objection, may be adopted as evidence by sworn oath of the party-witness who made the opening statement.

**D. Testimony under oath.** All testimony must be given under oath and shall be subject to questioning of each other party. The hearing officer may also ask questions of the witness as appropriate. At the hearing officer's discretion, redirect and re-cross may be allowed.

**E. Closing arguments.** The parties may make closing arguments, either orally at the conclusion of the case or, upon order of the hearing officer, in writing after conclusion of the hearing.

**F. Post-hearing briefs.** The hearing officer may also order the parties to submit further briefing on any issue in the case, and to submit proposed findings of fact and conclusions of law. The hearing officer shall establish a timeline for submission of any post-hearing pleadings, including time for the parties to exchange briefs, as the hearing officer finds necessary. No decision-writing deadline commences until the parties have submitted any ordered post-hearing briefing or submission.

**G. Rules of evidence.**  
**(1) Formal** rules of evidence and civil procedure shall not apply in a proceeding unless



otherwise expressly and specifically required by statute, regulation, or order of the hearing officer. The rules of evidence and civil procedure pertaining to privilege shall always apply regardless of the level of formality in a particular proceeding.

(2) Relevant and material evidence shall be admissible. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded.

(3) A party may offer exhibits, such as records of transactions.

(a) The party shall have the exhibits numbered by the stenographer prior to the hearing.

(b) The party shall provide copies of the evidence to the stenographer, all parties and to the hearing officer.

(c) Exhibits must be introduced and explained by a witness, who must be prepared to answer questions from the parties and the hearing officer.

(d) The hearing officer shall be asked by the party offering an exhibit to accept the exhibit into evidence. The hearing officer may be asked to consider all exhibits introduced by a witness at the conclusion of that witness's testimony or at the conclusion of that party's case in chief.

(e) The stenographer shall retain on copy of all exhibits that are admitted and shall make them a part of the record.

(4) The hearing officer shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

#### H. Taking notice.

(1) The hearing officer may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute.

(2)

The hearing officer may take administrative notice at any stage in the proceeding, whether *sua sponte* or at the request of a party.

(3) A party may dispute the propriety of taking administrative notice, including the opportunity to refute a noticed fact.

#### I. Objections.

(1) A party objecting to evidence, qualifications of an expert, a line of questioning, or the response shall timely and briefly state the grounds for the objection.

(2) Rulings on objections may be addressed on the record at the time of the objection, reserved for ruling in a subsequent written order, or noted as a continuing, ongoing objection for which ruling is reserved to later in the proceeding.

J. Audio or video evidence. Any party wishing to submit a video or audio recording into the record shall provide a complete tangible, playable copy that can be retained as part of the record.

K. Size of exhibits. In general, documentary evidence shall be no larger than 8.5 inches by 11 inches unless expressly allowed by the hearing officer. The hearing officer may admit larger documentary exhibits presented at hearing, provided the proponent of such exhibits provides the hearing officer with a copy of the exhibit reduced to 8.5 inches by 11 inches. After the hearing at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the record of the hearing. Arrangements to provide a reduced copy of a large exhibit shall be undertaken in advance of the hearing. Failure by the proponent to provide a reduced copy shall be deemed a withdrawal of the exhibit.

L. Substitutions for objects. In lieu of the introduction of tangible objects as exhibits, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as a verbal description of the pertinent characteristics of the object

for the record.

[13.1.5.17 NMAC - N, 7/1/2019]

#### 13.1.5.18 WITNESSES, EXPERT WITNESSES, AND INVOCATION OF THE RULE:

##### A. Use of witnesses.

Any person having relevant, material knowledge related to one of the issues in a hearing may testify as a witness under oath in a proceeding. Upon affirming the oath, the witness may be questioned by any party and by the hearing officer.

B. Method of appearance. Unless a more specific provision applies, witnesses are ordinarily expected to appear in the same manner or by the same method as the parties in a proceeding, absent express preapproval of the hearing officer allowing an appearance by a different method. For example, if the hearing is scheduled to be conducted in person in a specific place, the witnesses are also ordinarily expected to appear in person at that same place; however, if the matter is set to occur by telephone or videoconference, then the witnesses may ordinarily appear by telephone or videoconference.

C. Hearing officer as a witness. The current or previously assigned hearing officer in a matter shall not be called and shall not be a witness in the proceeding.

D. Use of expert witnesses.

(1) If either party intends to call and treat a particular witness as an expert witness in the proceeding, the party must identify the purported expert to the other parties and to the hearing officer at least seven days before the scheduled hearing, or with sufficient time before completion of the discovery deadline specified in a scheduling order to allow for deposition.

(2) The party shall include the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and a listing of any materials the expert reviewed as part of reaching his or her expert opinion.

(3) The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert when the expert is called to testify.

**E. Use of exclusionary rule.** At the hearing, any party can invoke the exclusionary rule to exclude all witnesses other than the real party in interest, their representative, one main case agent, and any designated expert witness from the proceeding until the time of the witness's testimony. If the rule has been invoked, the witnesses shall not discuss their testimony with each other until the conclusion of the proceeding. When the rule has been invoked, any witness who remains in the hearing after conclusion of their testimony shall not be recalled as a witness in the proceeding, except that any witness may observe the testimony of an expert witness and be recalled to provide any subsequent rebuttal testimony.

**F. OSI staff as experts.**

(1) The hearing officer may request one or more members of OSI staff to be present at the hearing to assist the hearing officer with any matters within the expertise of the staff person.

(2) The staff person may be called as a witness by the hearing officer and examined by the parties and the hearing officer.

(3) Any party may call the staff person as a witness.

(4) Each other party shall have the opportunity to cross-examine a staff person who is called as a witness. In the discretion of the hearing officer, the hearing officer may permit re-direct or re-cross-examination of the staff person.

(5) The hearing officer shall not discuss the case with the staff person outside the hearing or off the record.

(6) Any staff person requested to be present by the hearing officer shall not be subject to the exclusionary rule.

[13.1.5.18 NMAC - N, 7/1/2019]

### 13.1.5.19 HEARING OFFICER POWERS AND RESPONSIBILITIES:

#### A. General authority.

The superintendent may preside over OSI's hearings or may designate a hearing officer to preside instead.

**B. Duties of the hearing officer.** The hearing officer shall conduct fair and impartial hearings, take all necessary action to avoid delay in the proceedings and maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

(1) to administer or have administered oaths and affirmations;

(2) to cause depositions to be taken;

(3) to require the production or inspection of documents and other items;

(4) to require the answering of interrogatories and requests for admissions;

(5) to rule upon offers of proof and receive evidence;

(6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in proceeding, including qualification of expert witnesses and admission of exhibits;

(10) to require the filing of briefs on specific legal issues prior to or after the hearing;

(11) to cause a docket to be opened and a complete record of a hearing to be made;

(12) to make and issue decisions and procedural orders;

(13) to issue subpoenas in the name of the superintendent;

(14) if acting on behalf of the superintendent, to issue a recommendation to the superintendent regarding the final resolution of the matter; and

(15) to appropriately sanction, up to exclusion, indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or other improper conduct that interferes with the conduct of a fair and orderly hearing or the development of a complete record.

**C. Independence of the hearing officer.** In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any other officer, employee or agent of OSI, except that a hearing officer appointed by the superintendent shall be subject to the direction of the superintendent.

**D. Ex parte communication.** In the performance of these functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter. An improper *ex parte* communication occurs when the hearing officer discusses or otherwise communicates regarding the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

**E. Final order.** After a thorough review of the record and any recommendation prepared by a designated hearing officer, the superintendent shall issue a final order. No party or member of OSI staff shall engage in any *ex parte* communication with the superintendent in an attempt to influence his final decision.

[13.1.5.19 NMAC - N, 7/1/2019]

### 13.1.5.20 CLOSED OR PUBLIC HEARING, SEALED RECORDS, AND DELIBERATIVE NOTES OF HEARING OFFICER:

**A. Closed hearings.**

Unless otherwise provided by law, ordered by the hearing officer for good cause, or required to prevent disclosure of confidential information, all hearings and the record are open to the public. Any party to a proceeding may submit a written request to close the hearing and the record to the public, which shall be granted if authorized by statute, regulation, or rules recognized by law to preserve confidentiality or to protect a party from harassment or reprisal. Any proceedings and records that involve an individual's medical issues shall be closed to the public.

**B. Open hearings.**

If the hearing is open to the public, members of the public and the media may attend the hearing so long as they do not interrupt, interfere with or impede the orderly, fair, and efficient hearing process. With prior consent of the hearing officer, media members may record the proceeding from a fixed location in the hearing room. The hearing officer may direct any member of the public, including media members, to leave the proceeding if they engage in any conduct that interferes with the hearing officer's ability to maintain order, develop the record, and provide a fair and efficient hearing process. The proceedings shall be made available telephonically to members of the public, including the media, upon prior request.

**C. Sealed records.**

Upon request of any party, and upon a showing of good cause, the hearing officer shall seal a particular exhibit, document, or portions of a witness's testimony from public disclosure if such items contain statutorily-protected confidential information, privileged information, or otherwise contain private identification information of a party or third party that is immaterial to a substantive issue in the proceeding or if its materiality is substantially outweighed by the prejudice of public release of the information. Upon issuance of an order sealing such documents or exhibits, these records shall remain under seal throughout the

proceeding and shall be returned to the submitting party at the conclusion of the appeal period or the appeal.

The opposing party shall be entitled to promptly review these documents in preparing for the hearing, and may rely on those documents during the hearing as necessary to ensure a fair hearing process; however, the opposing party shall not maintain its own copy of the sealed document after conclusion of the hearing nor reveal, discuss, or disclose the contents of these sealed documents to any other party outside of the hearing process.

**D. Notes of**

**deliberation.** The hearing officer's notes taken during the course of the hearing, notes generated during the decision-making process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure.

[13.1.5.20 NMAC - N, 7/1/2019]

**13.1.5.21 SUBPOENAS:**

Any request for issuance of subpoenas in matters subject to these rules shall be guided by Rule 45 of the rules of civil procedure for the district courts of New Mexico, except where provisions of that rule conflict with the powers of the superintendent.

Any subpoena issued shall be in the name of the superintendent.

The party requesting the subpoena shall prepare a proposed subpoena, submit the proposed subpoena to each other party and to the hearings officer for approval, and shall timely and reasonably serve the subpoena on the person or entity subject to the subpoena. Unless good cause is shown for a shorter period, a subpoena shall provide at least 10 days- notice before compelled attendance at a hearing or deposition, and at least 10 days- notice before compelled production of materials.

All returns or certificates of service on served subpoenas shall be filed in the docket of the proceeding, copied to the opposing party, and be made part of the record of the proceeding.

[13.1.5.21 NMAC - N, 7/1/2019]

**13.1.5.22 LANGUAGE**

**INTERPRETERS:** A party to a proceeding who needs language interpreter services for translation of one language into another is responsible for arranging such service for the hearing. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a matter before the superintendent must be approved by the hearing officer and shall affirm the interpreter's oath applicable in New Mexico courts. Upon reasonable notice by the party, any interpreter required to be provided under the American with Disabilities Act shall be provided for by the superintendent. [13.1.5.22 NMAC - N, 7/1/2019]

**13.1.5.23 FAILURE TO APPEAR:****A. Entry of default**

**order.** If a party fails to appear for a properly noticed hearing, either in person, through a permissible representative or telephonically with prior approval of the hearing officer, the person waives the right to protest or challenge the action that is the subject of the hearing notice. The matter shall go on the record for the limited purpose of addressing notice and non-appearance, and a final order shall be entered based on the waiver of the hearing by failing to appear.

**B. Evidence of notice.**

In considering the non-appearance and whether the person received appropriate notice necessitating issuance of the order, the hearing officer may consider the contents of the docket, information conveyed to or known by OSI, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal service or other mail tracking services, and arguments offered by any present party, all of which may be addressed on the record of the hearing or in any subsequent order.

**C. Written order**

**required.** Oral rulings based on a party's failure to appear are not final



until reduced to writing. The hearing officer may issue a different written order as new information arises after the hearing regarding whether the notice of hearing was properly sent to the correct address or otherwise properly served.

[13.1.5.23 NMAC - N, 7/1/2019]

### 13.1.5.24 RECONSIDERATION:

#### A. Time to file.

A party may file a motion for reconsideration within 15 days after the date of the final order. Any other party may file a response no more than 15 days after the motion for reconsideration was filed. Motions for reconsideration that are not filed within this deadline may be denied automatically. A timely filed motion for reconsideration shall be decided based on the merits, whether or not a response is filed.

#### B. Posture.

The prevailing party shall not file a motion for reconsideration. However, if a requested action is granted in part and denied in part, either party may file a motion for reconsideration.

#### C. Basis for motion.

Motions for reconsideration shall not endeavor to present new evidence previously available, or discoverable through reasonable diligence, to the parties before the hearing. Motions for reconsideration shall not reargue the weight of evidence already ruled nor reiterate legal arguments already ruled upon. However, a motion for reconsideration may address gross factual or legal errors or omissions contained in the final decision and order.

[13.1.5.24 NMAC N, 7/1/2019]

### 13.1.5.25 APPEALS

**FOLLOWING HEARING:** Each order issued by the superintendent shall include information about the appeal process for the type of case at issue. Once the appeal is filed in the appropriate court, the appealing party shall provide a court-endorsed copy of the appeal to the superintendent so that the OSI records manager can prepare and submit the proper record.

[13.1.5.25 NMAC - N, 7/1/2019]

### 13.1.5.26 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE

**RECORD:** Any party may access and copy any writing filed to the docket. Copies of an audio recording or written transcript of the proceeding shall be arranged through the stenographic service. OSI may charge a reasonable fee for copies made, consistent with its fee schedule under the Inspection of Public Records Act. OSI may also require the requesting party to submit a computer storage device, such as a compact disc, dvd disc, blu-ray disc, usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record.

[13.1.5.26 NMAC - N, 7/1/2019]

#### History of 13.1.5 NMAC:

[RESERVED]

## SUPERINTENDENT OF INSURANCE, OFFICE OF

### TITLE 13 INSURANCE CHAPTER 1 INSURANCE GENERAL PROVISIONS PART 6 INFORMAL ADMINISTRATIVE HEARINGS

#### 13.1.6.1 ISSUING AGENCY:

New Mexico Office of Superintendent of Insurance.

[13.1.6.1 NMAC - N, 7/1/2019]

**13.1.6.2 SCOPE:** The rules in this part govern every informal proceeding conducted pursuant to a notice of hearing issued by the Superintendent of Insurance pursuant to Section 59A-4-18 NMSA 1978.

[13.1.6.2 NMAC - N, 7/1/2019]

#### 13.1.6.3 STATUTORY

**AUTHORITY:** Sections 59A-2-9 and 59A-4-18 NMSA 1978.

[13.1.6.2 NMAC - N, 7/1/2019]

#### 13.1.6.4 DURATION:

Permanent.

[13.1.6.4 NMAC - N, 7/1/2019]

#### 13.1.6.5 EFFECTIVE DATE:

July 1, 2019 unless a later date is

specified at the end of a section.

[13.1.6.5 NMAC - N, 7/1/2019]

**13.1.6.6 OBJECTIVE:** The purpose of this part is to provide rules of procedure to govern informal hearings before the superintendent.

[13.1.6.6 NMAC - N, 7/1/2019]

**13.1.6.7 DEFINITIONS:** These rules incorporate the definitions found in 13.1.5.7 NMAC.

[13.1.6.7 NMAC - N, 7/1/2019]

### 13.1.6.8 REQUESTING A HEARING:

**A. Written request required.** Any person seeking an informal hearing before the superintendent shall file a written request using the form available on the OSI website or as otherwise directed by the superintendent. The request shall include the language **“Request for Informal Hearing”** and the following:

(1) all of the items listed in Paragraphs (1) through (6) of Subsection A of 13.1.5.9 NMAC; and

(2) one of the following:

(a) a written protest or request for hearing challenging that action or inaction; or  
(b)

a request for the superintendent to issue an order declaring the rights or obligations of the requestor under a specific statute, rule or bulletin within the jurisdiction of the superintendent, and concrete facts showing the requestor’s interest in the declaration.

#### B. Request rejected.

The superintendent shall reject any request for an informal hearing if the request relates to a matter that requires the superintendent to act in fewer than 91 days after the request is made, or for any of the reasons listed in Subsection B of 13.1.5.9 NMAC.

(1) If a request for hearing is rejected, the superintendent will notify the requestor in writing with a brief explanation of the rejection.

(2) If the request for hearing is deficient for any



reason, the requestor may correct any deficiency and resubmit the request for hearing.

(3) If the superintendent otherwise determines that it would be more appropriate for the matter to proceed as a formal hearing under rule 13.1.5 NMAC, the superintendent may convert the request for informal hearing to a request for formal hearing upon written notice to the requestor.

**C. Designation of hearing officer and docket.** The superintendent shall proceed as set forth in Subsection C of 13.1.5.9 NMAC.

**D. Waiver of right.** A request for an informal hearing constitutes a waiver of any right the requestor may have to a hearing under any other provision of the Insurance Code, or its implementing rules, unless the superintendent, *sua sponte*, or for good cause shown, orders the hearing to proceed pursuant to 13.1.5 NMAC.

**E. Intervenors.** Request to intervene shall be handled as set forth in Subsection D of 13.1.5.9 NMAC.

**F. Characterization of request.** A hearing request that does not include the language "Request for Informal Hearing" will be treated as a request for a formal hearing governed by 13.1.5 NMAC. [13.1.6.8 NMAC – N, 7/1/2019]

**13.1.6.9 INFORMAL HEARING PROCESS AND DECISION:** Any matter or question that is the subject of a notice of an informal hearing shall be determined based solely on the exhibits and pleadings submitted to the superintendent pursuant to these rules. The superintendent shall have 45 days to determine the matter or question following the date set for closing the record. The date set for closing the record shall not be more than 45 days or less than 30 days after issuance of the notice of an informal hearing. [13.1.6.9 NMAC - N, 7/1/2019]

**13.1.6.10 REPRESENTATION AT HEARING, FORMAL ENTRY OF APPEARANCE, SUBSTITUTION OF COUNSEL, AND WITHDRAWAL FROM REPRESENTATION:** Rules pertaining to legal representation at hearing are as set forth in 13.1.5.10 NMAC.

[13.1.6.10 NMAC - N, 7/1/2019]

**13.1.6.11 FILING OF PLEADINGS:** Rules pertaining to filing for pleadings are as set forth in 13.1.5.11 NMAC.

[13.1.6.11 NMAC - N, 7/1/2019]

**13.1.6.12 CONTINUANCES:** Rules pertaining to handling of continuances are as set forth in 13.1.5.15 NMAC.

[13.1.6.12 NMAC - N, 7/1/2019]

**13.1.6.13 BURDEN OF PROOF, PRESENTATION OF CASE, EVIDENCE:** Rules pertaining to burden of proof, conduct of the case and use of evidence are as set forth in 13.1.5.17 NMAC, with the following modifications:

**A.** A party may submit written arguments any time before the record closes, or as otherwise ordered by the hearing officer.

**B.** If OSI staff has not already entered an appearance, the hearing officer may request briefing from OSI staff, subject to the right of any party to object or respond to the submission.

[13.1.6.13 NMAC - N, 7/1/2019]

**13.1.6.14 HEARING OFFICER POWERS AND RESPONSIBILITIES:**

**A. General authority.** The superintendent may preside over OSI's hearings or may designate a hearing officer to preside instead.

**B. Duties of the hearing officer.** The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties as set forth in Paragraphs

(1) through (15) of Subsection B of 13.1.5.19 NMAC, to the extent applicable for informal hearings.

**C. Independence of the hearing officer.** In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any other officer, employee or agent of OSI, except that a hearing officer appointed by the superintendent shall be subject to the direction of the superintendent.

**D. Ex-parte communication.** The rules pertaining to ex-parte communication for an informal hearing are as set forth in 13.1.5.19 NMAC.

**E. Final order.** After a thorough review of the record and any recommendation prepared by a designated hearing officer, the superintendent shall issue a final order. No party or member of OSI staff shall engage in any *ex parte* communication with the superintendent in an attempt to influence his final decision. [13.1.6.14 NMAC - N, 7/1/2019]

**13.1.6.15 CLOSED OR PUBLIC HEARING, SEALED RECORDS, AND DELIBERATIVE NOTES OF HEARING OFFICER:**

The rules pertaining to public access to hearings and related records are as set forth in 13.1.5.20 NMAC. [13.1.6.15 NMAC - N, 7/1/2019]

**13.1.6.16 RECONSIDERATION:** Rules pertaining to requests of reconsideration are as set forth in 13.1.5.24 NMAC. [13.1.6.16 NMAC - N, 7/1/2019]

**13.1.6.17 APPEALS FOLLOWING HEARING:** Rules pertaining to appeals following hearing are as set forth in 13.1.5.25 NMAC. [13.1.6.17 NMAC - N, 7/1/2019]

**13.1.6.18 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE RECORD:** Rules pertaining to requests for copies of hearing-related

matters following hearing are as set forth in Section 13.1.5.26 NMAC. [13.1.6.18 NMAC - N, 7/1/2019]

**History of 13.1.6 NMAC:**  
**[RESERVED]**

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**End of Adopted Rules**

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**Other Material Related to Administrative Law**


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**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**
**NOTICE OF PUBLIC COMMENT**

The Human Services Department is required by the Federal Community Opportunity Accountability Training and Education Services (COATS) Reauthorization Act of 1998 to submit a State Plan to the U.S. Department of Health and Human Services, Office of Community Services in order to receive a grant or allotment for the (CSBG) program. The Department is required to offer a 30-day comment period for the CSBG State Plan prior to submittal.

The proposed CSBG State Plan is available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. If you do not have Internet access, a copy of the proposed State Plan may be requested by contacting the Income Support Division's Work and Family Support Bureau (WFSB) at 505-827-7251. The Department proposes to implement the plan effective October 1, 2019. All comments received will be considered for the New Mexico CSBG State Plan.

The hearing will be held from 10:00 to 11:00 am on July 25, 2019 at the New Mexico Human Services Department, 39-B Plaza La Prensa, Small Conference Room, Santa Fe, NM 87507. Parking accessible for persons with physical impairments is available.

Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-827-7251.

If you are a person with a disability and you require this information in an alternative format, or you

require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written or recorded comments to:

Human Services Department  
Attn: CSBG Program Manager  
P.O. Box 2348 1474 Rodeo Road  
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: [HSD-isdrules@state.nm.us](mailto:HSD-isdrules@state.nm.us)

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**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**
**NOTICE OF PUBLIC HEARING**

The Human Service Department is required by Federal Law to file a State Plan that describes how the Department will administer the State's Low Income Home Energy Assistance Program (LIHEAP). The State Plan must be submitted every year to the United States Department of Health and Human Services (DHHS), Administration for Children and Families (ACF). The Department is required to offer a 30-day comment period for the LIHEAP State Plan that includes Weatherization prior to submittal.

The Department proposes the New Mexico LIHEAP State Plan covering the period of October 1, 2019 to September 30, 2020. All comments received will be considered for the New Mexico LIHEAP State Plan.

The proposed State Plan is

available on and can be printed from the Department's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. A copy of the proposed LIHEAP State Plan is available in written format upon request. Please call the Income Support Division at 1-505-827-7266 to request a copy. You may also send a request to:

Human Services Department  
Income Support Division  
Attn: Work and Family Support  
Bureau/ LIHEAP  
39-B Plaza La Prensa  
Santa Fe, New Mexico 87507-2348

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

A public hearing to receive testimony on this proposed regulation will be held on July 25, 2019, from 9:00 a.m. to 10:00 a.m. The hearing will be held in the Income Support Division conference room, located at 39-B, Plaza La Prensa, Santa Fe, NM 87507. Accessible parking for persons with physical impairments is available.

Interested persons may address written or recorded comments to:

Human Services Department  
39-B Plaza La Prensa  
Santa Fe, NM 87507-2348

Interested persons may also address comments via electronic mail to: [HSD-isdrules@state.nm.us](mailto:HSD-isdrules@state.nm.us).

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**PHARMACY, BOARD OF****NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The New Mexico Board of Pharmacy gives Notice of a Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the following rule:

For 16.19.7.16 NMAC, the entire section text was deleted. Accordingly, a new section 16.19.7.17 NMAC was added with the new section title "INPATIENT HOSPITAL PHARMACY LIMITED DISPENSING, HOSPITALIZATION DISCHARGE" and with the new text. For both sections, history notes were updated to reflect the repealed section 16 and the new section 17.

A copy of this Notification will be filed with the official version of the above rule.

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**End of Other Material  
Related to Administrative  
Law**



# 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          |
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| 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.