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# New Mexico Register

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

**Volume XXX - Issue 14 - July 30, 2019**

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## **The New Mexico Register**

Published by the Commission of Public Records,  
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

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

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# New Mexico Register

Volume XXX, Issue 14

July 30, 2019

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## Notices of Rulemaking and Proposed Rules

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT EARLY CHILDHOOD SERVICES DIVISION

#### NOTICE OF RULEMAKING AND CONTINUING PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rule regarding CHILD CARE ASSISTANCE as authorized by Section 9-2A-7 NMSA 1978:

8.15.2.7 NMAC – DEFINITIONS  
8.15.2.9 NMAC – PRIORITIES FOR ASSISTANCE  
8.15.2.12 NMAC – RECERTIFICATION  
8.15.2.13 NMAC – CLIENT RESPONSIBILITIES  
8.15.2.15 NMAC – PROVIDER REQUIREMENTS  
8.15.2.17 NMAC – PAYMENT FOR SERVICES

No technical scientific information was consulted in drafting this proposed rule.

Purpose of proposed rule: The purpose of the rule is to amend the eligibility levels for child care assistance, to eliminate the waiting list for child care assistance, to provide an explanation of the co-payment calculation and where to find the co-payment schedule, to comply with federal regulation to pay for registration/educational fees for children receiving child care assistance benefits on behalf of client, and to address the overlap of care hours under payment for services. Pursuant to the continuation of this rule change, amendments were made to the following sections: 8.15.2.9 NMAC; 8.15.2.12 NMAC; and 8.15.2.13 NMAC.

Copies of the proposed rule may be

found at CYFD's website at <https://www.newmexicokids.org/> or may be obtained from 1120 Paseo De Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing that was originally scheduled for July 8, 2019 will held on Friday, August 30, 2019 at 10:00 a.m. in Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debra Gonzales at [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the proposed rule, from any interested member of the public, may also be submitted via email to [CYFD-ECS-PublicComment@state.nm.us](mailto:CYFD-ECS-PublicComment@state.nm.us) with the subject line "8.15.2 NMAC Public Comment," or via first class mail to, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160 or by hand delivery to Kimberly Brown. The comment period ends at the conclusion of the public hearing on August 30, 2019.

**AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA**

El Departamento de Niños, Jóvenes y Familias de Nuevo México por este medio da aviso como se requiere bajo la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que propone adoptar enmiendas a las siguientes reglas con respecto a ASISTENCIA DE CUIDADO INFANTIL según autorizado por la sección 9-2A-7 NMSA 1978:

8.15.2.7 NMAC – DEFINICIONES  
8.15.2.9 NMAC – PRIORIDADES PARA ASISTENCIA  
8.15.2.12 NMAC – RECERTIFICACIÓN  
8.15.2.13 NMAC – RESPONSABILIDADES DEL CLIENTE  
8.15.2.15 NMAC – REQUISITOS DEL PROVEEDOR  
8.15.2.17 NMAC – PAGOS POR SERVICIOS

No se consultó información científica o técnica cuando se redactaron las propuestas leyes administrativas.

**Propósito de las propuestas leyes administrativas:** El propósito de las leyes administrativas es enmendar los niveles de elegibilidad para la asistencia de cuidado de niños, eliminar la lista de espera para asistencia, proporcionar una explicación del cálculo de copago y dónde encontrar el programa de tarifas para copago, y estar conforme con regulación federal de pagar las tarifas educacionales y de registración para niños recibiendo beneficios de asistencia de cuidado de niños en nombre del cliente, y abordar el traslape de horas de cuidado bajo pago por servicios. Se hicieron enmiendas a las siguientes secciones: 8.15.29.F. NMAC; 8.15.2.12 NMAC; y 8.15.2.13 B. NMAC.

Copias de las propuestas leyes administrativas pueden ser localizadas en el sitio de la red de CYFD @ <https://www.newmexicokids.org/> o se pueden obtener en: 1120 Paseo De Peralta, Santa Fe, New México, 30 días antes de la Audiencia Pública.

**Aviso de Audiencia Pública de leyes administrativas:** La audiencia pública de leyes administrativas que originalmente fue programada para el lunes 8 de julio de 2019 será el viernes, 30 de agosto, 2019 a las 10:00 a.m. en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502, en la sala Apodaca Hall. La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia de CYFD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado en asistir la audiencia tendrá una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista o argumentos, sobre las propuestas. Personas con discapacidades que necesiten cualquier forma de asistencia auxiliar para asistir o participar en la audiencia pública deben comunicarse con Debra Gonzales [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibidas por lo menos diez días antes de la fecha programada para la audiencia.

**Aviso de aceptación de comentario público por escrito:** Comentarios públicos por escritos, incluso presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados a través de correo electrónico a: [CYFD-ECS-PublicComment@state.nm.us](mailto:CYFD-ECS-PublicComment@state.nm.us), especificando en la línea de Asunto: "8.17.2 NMAC Public Comment," o por correo de primera clase a Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, o se puede entregar en mano a: Kimberly Brown. El período de comentarios termina a la conclusión de la audiencia pública del 30 de agosto de 2019.

**Amended Sections to Proposed Rule / Reglas Propuestas**

**8.15.2.9 PRIORITIES FOR ASSISTANCE:**

\*\*\*

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time [subject to the availability of funds and renewable subject to the availability of funds] and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. ~~[The department reserves the right to expand the eligibility requirement up to two hundred percent of the federal poverty level based on budget availability. Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list.]~~ The department prioritizes child care services within priority four for children with special needs, disabilities, ~~[teen parents and homeless families]~~ homeless families, and for teen parents.

\*\*\*

**8.15.2.12**

**RECERTIFICATION:** Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred fifty percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, or proof of school enrollment. Changes in income, household size, employment, training

or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification.

**8.15.2.13 CLIENT**

**RESPONSIBILITIES:** Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

A. Co-payments:

Co-payments are paid by all clients receiving child care assistance benefits, except for CPS child care, at-risk child care, and qualified grandparents or legal guardians as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC. ~~[Co-payments are based upon the size and income of the household.]~~ Co-payments are determined by income and household size. The co-payment schedule is published yearly at <https://cyfd.org/child-care-services>.

B. ~~[Co-payments for each additional child are determined at one half of the co-payment for the previous child.]~~ Co-payments described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for calculating the co-payment for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the copayment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The first child is identified as the child requiring the most hours of child care.

(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

C. ~~[Co-payments for children in part-time care are determined based upon the block of time that the child is in care.]~~

Each child’s co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

- (1) full time care will be based on one hundred percent of the base co-payment;
- (2) part time 1 care will be based on seventy-five percent of the base co-payment;
- (3) part time 2 care will be based on fifty percent of the base co-payment; and
- (4) part time 3 care will be based on twenty-five percent of the base co-payment.

**Original Proposed Rule/Reglas Propuestas**

**8.15.2.7 DEFINITIONS:**  
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[FF. —“Waiting list” means a list of families who have applied for child care services during a period of lack of funding.]

[GG.] FF. “Working” means employment of any type, including self-employment. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

**8.15.2.9 PRIORITIES FOR ASSISTANCE:**  
\*\*\*

C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. [If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list.] The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents. [If budget availability permits, the department reserves the right to transfer priority one B families whose income exceeds one hundred percent of the federal poverty level but is at or below two hundred

percent of the federal poverty level to the priority four category:]  
\*\*\*

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below ~~[two]~~ one hundred sixty percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time ~~[subject to the availability of funds and renewable subject to the availability of funds]~~ and will remain eligible at or below two hundred percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. ~~[The department reserves the right to expand the eligibility requirement up to two hundred percent of the federal poverty level based on budget availability. Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list.]~~ The department prioritizes child care services within priority four for children with special needs, disabilities, ~~[teen parents and homeless families]~~ homeless families, and for teen parents.

\*\*\*

**8.15.2.12 RECERTIFICATION:** Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client’s record. Co-payment, if

applicable, is re-determined at the time of recertification.

**8.15.2.13 CLIENT RESPONSIBILITIES:** Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for CPS child care, at-risk child care, and qualified grandparents or legal guardians as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC. ~~[Co-payments are based upon the size and income of the household:]~~ Co-payments are determined by income and household size. The co-payment schedule is published yearly at <https://cyfd.org/child-care-services>.

B. ~~[Co-payments for each additional child are determined at one half of the co-payment for the previous child:]~~ Co-payments described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The first child is identified as the child requiring the most hours of child care.

(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

C. ~~[Co-payments for children in part-time care are determined based upon the block of time that the child is in care:]~~ Each child’s co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

(1) full time care will be based on one hundred percent of the base co-payment;

(2) part time 1 care will be based on seventy-five percent of the base co-payment;



- (3) part time 2 care will be based on fifty percent of the base co-payment; and
- (4) part time 3 care will be based on twenty-five percent of the base co-payment.

\*\*\*

**8.15.2.15 PROVIDER REQUIREMENTS:**

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**D.** Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the placement agreement. Failure to comply with this requirement may result in sanctions or suspension of the child care assistance agreement.

(1) ~~[In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.]~~ Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.

(2) ~~[Providers may charge a registration/educational fee to a child care assistance family comparable to but not to exceed that charged to private pay families. The registration/educational fee shall be charged no more than once every six months and shall be limited to materials and supplies. If the department determines that the provider is charging fees that are unreasonable and pose an undue burden to child care assistance families, the department may suspend the child care assistance contract.]~~ In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

\*\*\*

**8.15.2.17 PAYMENT FOR SERVICES:**

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**C.** The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider's license being suspended or expiring.

~~[C:]~~ **D.** The amount of the payment is based upon the age of the child and average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

~~[D:]~~ **E.** The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of [6]8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

~~[E:]~~ **F.** Hours of care shall be rounded to the nearest whole number.

~~[F:]~~ **G.** Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$720.64	\$589.55	\$490.61	\$436.27
Licensed group homes (capacity: 7-12)			

Infant	Toddler	Pre-school	School-age
\$586.07	\$487.11	\$427.13	\$422.74
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$566.98	\$463.50	\$411.62	\$406.83
Registered homes and in-home child care			
Infant	Toddler	Pre-school	School-age
\$289.89	\$274.56	\$251.68	\$251.68

[G.] H. The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable.

[H.] I. Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I. below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

(2) The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee’s national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

[F.] J. The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$88.00	\$88.00	\$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$180.00	\$180.00	\$180.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$250.00	\$250.00	\$250.00	\$250.00
4 Star FOCUS Child Care Centers			

Infant	Toddler	Pre-school	School-age
\$280.00	\$280.00	\$250.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00

[F-] K. In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

[K-] L. Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.

[E-] M. The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

[M-] N. If a significant change occurs in the client’s circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

[N-] O. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

[O-] P. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds.

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT  
EARLY CHILDHOOD SERVICES  
DIVISION**

**NOTICE OF RULEMAKING AND  
PUBLIC RULE HEARING**

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14 - 4 - 5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION as authorized by Section 9 - 2A - 7 NMSA 1978:

- 8.8.3.6 NMAC - OBJECTIVE
- 8.8.3.7 NMAC - DEFINITIONS
- 8.8.3.11 NMAC - COMPLIANCE EXCEPTIONS
- 8.8.3.13 NMAC - ARRESTS, CONVICTIONS AND REFERRALS
- 8.8.3.16 NMAC - ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS

No technical scientific information was consulted in drafting these proposed rules.

**Purpose of proposed rules:** The purpose of the rules is to amend the background check requirements to clarify that abuse and neglect screens in each state where the applicant resided within the last five years will

only be conducted for applicants applying pursuant to 8.16.2 NMAC and 8.17.2 NMAC. In addition, language is added to incorporate a two - step clearance process for applicants applying pursuant to 8.16.2 NMAC and 8.17.2 NMAC. A notice of provisional employment or background check eligibility will be required prior to commencing employment and will include a timeline for issuance of the notice. These amendments are to comply with federal requirements. Additional minor changes will be made to clarify existing language within 8.8.3 NMAC.

Copies of the proposed rules may be found at CYFD’s website at <https://www.newmexicokids.org/> or may be

obtained from 1120 Paseo De Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

**Notice of public rule hearing:** The public rule hearing will be held on Thursday, August 29, 2019 at 10:00 a.m. in Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debra Gonzales at [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

**Notice of acceptance of written public comment:** Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may also be submitted via email to CYFD - ECS-PublicComment@state.nm.us with the subject line "8.8.3 NMAC Public Comment," or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502 - 5160. The comment period ends at the conclusion of the public hearing on August 29, 2019.

#### **AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA**

El Departamento de Niños, Jóvenes y Familias de Nuevo México por este medio da aviso como se

require bajo la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC propone adoptar enmiendas a las siguientes reglas con respecto a PROVISIONES GENERALES DEL DEPARTAMENTO DE NIÑOS, JÓVENES Y FAMILIAS, GOVERNANDO LA COMPROBACIÓN DE ANTECEDENTES Y HUELLAS Y VERIFICACION DE HISTORIAL DE EMPLEO según lo autorizado por la sección 9-2A-7 NMSA 1978:

8.8.3.6 NMAC – OBJETIVO  
8.8.3.7 NMAC – DEFINICIONES  
8.8.3.11 NMAC – EXCEPCIONES DE CONFORMIDAD  
8.8.3.13 NMAC – ARRESTOS, CONVICCIONES Y REFERENCIAS SUBSTANCIADAS  
8.8.3.16 NMAC – SUSPENSION DE ELIGIBILIDAD, REINSTALACIONES Y REVOCACIONES

No se consultó información científica o técnica cuando se redactaron las propuestas leyes administrativas.

**Propósito de las propuestas leyes administrativas s:** El propósito de las leyes administrativas es enmendar los requisitos para clarificar que la detección de negligencia y abuso en cada estado donde el solicitante ha vivido durante los últimos cinco años, solo será realizada para solicitantes que aplican conforme a 8.16.2 NMAC y 8.17.2 NMAC. Adicionalmente, lenguaje será añadido para incorporar un proceso de dos pasos de autorización para solicitantes que aplican conforme a 8.16.2 NMAC y 8.17.2 NMAC. Un aviso de empleo provisional (o comprobación de antecedentes y huellas elegibles aprobada) será requerido antes de empezar empleo e incluirá un cronograma cuando el aviso será emitido. Estas enmiendas tienen que estar conformes con requerimientos federales. Se harán menores cambios adicionales para clarificar el lenguaje actual en el 8.8.3 NMAC.

Copias de las propuestas leyes administrativas pueden ser localizadas

en el sitio de la red de CYFD @ <https://www.newmexicokids.org/> o se pueden obtener en: 1120 Paseo De Peralta, Santa Fe, New México, 30 días antes de la Audiencia Pública.

**Aviso de Audiencia Pública de leyes administrativas:** La audiencia pública de leyes administrativas será el jueves, 29 de agosto, 2019 a las 10:00 a.m. en , 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502, en la sala Apodaca Hall, La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia de CYFD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado en asistir a la audiencia tendrá una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista s o argumentos, sobre las propuestas. Personas con discapacidades que necesiten cualquier forma de asistencia auxiliar para asistir o participar en la audiencia pública deben comunicarse con Debra Gonzales, [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibas por lo menos diez días antes de la fecha programada para la audiencia.

**Aviso de aceptación de comentario público por escrito:** Comentarios públicos por escritos, incluso presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados s a través de correo electrónico a: CYFD-ECS-PublicComment@state.nm.us, especificando en la línea de Asunto: "8.8.3 NMAC Public Comment," o por correo de primera clase a Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, o se pueden entregar en mano a Kimberly Brown. El período de comentarios termina a la conclusión de la audiencia pública del 29 de agosto de 2019.

**Proposed Rules/Reglas Propuestas****8.8.3.6****OBJECTIVE:**

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C. Abuse and neglect screens of databases in New Mexico are conducted by BCU staff ~~and include a screen of abuse and neglect information in databases in New Mexico and in each state where the applicant resided during the preceding five years~~ in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC will also undergo a screen of abuse and neglect information in each State where the applicant resided during the preceding five years.

**8.8.3.7****DEFINITIONS:**

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**V. "Notice Of**

**Provisional Employment"** means a written notice issued to a child care center or home applicant indicating the BCU reviewed the applicant's fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

**[W] W. "Relevant**

**Conviction"** means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term "relevant conviction" also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under Section 31 - 20 - 13 (1994) NMSA 1978, or Section 30 - 31 - 28 (1972) NMSA 1978, or a comparable provision of another state's law, is not

a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term "relevant conviction" does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective executive pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

**[W] X. "Unreasonable Risk"** means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.

**8.8.3.11 COMPLIANCE EXCEPTIONS:**

A. An applicant may not begin providing services prior to obtaining background check eligibility unless all of the following requirements are met:

(1) the CYFD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of disciplinary action;

(2) ~~the licensee or applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;~~ the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to employment;

(3) ~~the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to the commencement of supervised services; and~~ until receiving background eligibility, the applicant shall at all times be under direct

physical supervision. See Paragraph (4) of Subsection A of Section 8.8.3.11 NMAC for standards regarding applicants required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC:

~~(4) a licensee or applicant required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC must receive either a notice of provisional employment or background check eligibility prior to beginning employment. Applicants working after receipt of a notice of provisional employment shall at all times be under direct physical supervision until receiving background check eligibility. Upon completion of Paragraph (2) of Subsection A of Section 8.8.3.11 NMAC, a notice of provisional employment decision will be provided to the child care center or home within 10 days; and~~

~~(4) (5) no more than 45 days shall have passed since the date of the initial application unless the BCU documents good cause shown for an extension.~~

**8.8.3.13 ARRESTS, CONVICTIONS AND REFERRALS:**

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

(1) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;

(2) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;

(3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse;

(4) a substantiated referral, regardless of the date, for sexual abuse or for a substantiation of abuse or neglect relating to a failure to protect against sexual abuse;

(5) the applicant's child is in CYFD or another state's custody [~~at the time the application is processed by the BCU~~]; or

(6) a registration, or a requirement to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006.

**8.8.3.16 ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS:**

A. An applicant's background check eligibility may be suspended for the following:

(1) an arrest or criminal charge for any felony offense, any misdemeanor offense involving domestic violence, child abuse or any other misdemeanor offense of moral turpitude if a conviction as charged would result in a determination of unreasonable risk;

(2) a pending child protective services referral or any other CYFD investigation of abuse or neglect; [~~or~~]

(3) an outstanding warrant; or

(4) any other reason that creates an unreasonable risk determination pursuant to these regulations.

B. It is the duty of the administrator of a facility or the licensee and the background check eligibility holder, upon learning of any of the above, to notify the licensing authority immediately. Failure to immediately notify the

licensing authority may result in the revocation of background check eligibility.

C. A suspension of background check eligibility shall have the same effect as a determination of unreasonable risk until the matter is resolved and eligibility is affirmatively reinstated by the BCU.

D. Background check eligibility may be reinstated or revoked as follows:

(1) If the applicant can provide information relating to the disqualifying criminal charge that would show that a criminal conviction as charged would not lead to an unreasonable risk;

(2) If the matter causing the suspension is resolved within six months of the suspension, the applicant may provide documentation to the BCU showing how the matter was resolved and requesting reinstatement of background check eligibility. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.

(3) If the matter causing the suspension is resolved after six months of the suspension, the applicant may reapply for clearance for the same licensee by submitting an electronic fingerprint submission receipt and the required forms. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT  
EARLY CHILDHOOD SERVICES  
DIVISION**

**NOTICE OF RULEMAKING AND PUBLIC RULE HEARING**

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and

1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding CHILD CARE LICENSING - CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS as authorized by Section 9-2A-7 NMSA 1978:

- 8.16.2.7 NMAC - DEFINITIONS
- 8.16.2.19 NMAC - BACKGROUND CHECKS
- 8.16.2.21 NMAC - LICENSURE REQUIREMENTS FOR CENTERS
- 8.16.2.22 NMAC - ADMINISTRATIVE REQUIREMENTS FOR CENTERS
- 8.16.2.31 NMAC - LICENSURE REQUIREMENTS FOR HOMES
- 8.16.2.32 NMAC - ADMINISTRATIVE REQUIREMENTS FOR HOMES
- 8.16.2.40 NMAC - LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE
- 8.16.2.41 NMAC - ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE

No technical scientific information was consulted in drafting these proposed rules.

**Purpose of proposed rules:** The purpose of the rules is to amend the background check requirements to add language to incorporate a two-step clearance process for staff members. A notice of provisional employment or background check eligibility will be required prior to commencing employment and will include a timeline for issuance of the notice. These amendments are to comply with federal requirements. In addition, language will be included requiring policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present and requiring household members reaching the age of 18 to submit their background check within 30 days after their eighteenth birthday.

Copies of the proposed rules may be found at CYFD's website at <https://www.newmexicokids.org/> or may be obtained from 1120 Paseo De Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

**Notice of public rule hearing:** The public rule hearing will be held on Thursday, August 29, 2019 at 10:00 a.m. in Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debra Gonzales at [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least 10 calendar days before the scheduled hearing.

**Notice of acceptance of written public comment:** Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may also be submitted via email to CYFD - ECS - [PublicComment@state.nm.us](mailto:PublicComment@state.nm.us) with the subject line "8.16.2 NMAC Public Comment," or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502 - 5160. The comment period ends at the conclusion of the public hearing on August 29, 2019.

#### **AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA**

El Departamento de Niños, Jóvenes y Familias de Nuevo México por este medio da aviso como se requiere en la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que propone adoptar enmiendas a las siguientes leyes administrativas con respecto a LICENCIATURA DE CUIDADO DE NIÑOS - CENTROS DE CUIDADO DE NIÑOS, PROGRAMAS DE TIEMPO FUERA DE LA ESCUELA, CASAS FAMILIARES DE CUIDADO DE NIÑOS, Y OTROS PROGRAMAS EDUCATIVOS DE PRIMERA INFANCIA según lo autorizado por la sección 9-2A-7 NMSA 1978:

8.16.2.7 NMAC - DEFINICIONES

8.16.2.19 NMAC - COMPROBACIÓN DE ANTECEDENTES Y HUELLAS

8.16.2.21 NMAC - REQUISITOS DE LICENCIATURA PARA CENTROS DE CUIDADO DE NIÑOS

8.16.2.22 NMAC - REQUISITOS ADMINISTRATIVOS PARA CENTROS DE CUIDADO DE NIÑOS

8.16.2.31 NMAC - REQUISITOS DE LICENCIATURA PARA CASAS FAMILIARES DE CUIDADO DE NIÑOS

8.16.2.32 NMAC - REQUISITOS ADMINISTRATIVOS PARA CASAS FAMILIARES DE CUIDADO DE NIÑOS

8.16.2.40 NMAC - REQUISITOS DE LICENCIATURA PARA PROGRAMAS DE TIEMPO FUERA DE LA ESCUELA

8.16.2.41 NMAC - REQUISITOS ADMINISTRATIVOS PARA PROGRAMAS DE TIEMPO FUERA DE LA ESCUELA

No se consultó información científica o técnica cuando se redactaron las propuestas leyes administrativas.

#### **Propósito de las propuestas leyes administrativas:**

El propósito de las leyes administrativas es enmendar los requisitos para comprobación de antecedentes y huellas añadiendo lenguaje para incorporar un proceso de dos pasos

de autorización para proveedores. Un aviso de empleo provisional (o comprobación de antecedentes y huellas elegibles aprobadas) será requerido antes de empezar empleo e incluirá un cronograma cuando el aviso será emitido. Estas enmiendas tienen que estar conformes con los requerimientos federales. Adicionalmente, lenguaje será incluido requiriendo pólizas y procesos que aseguren que un delincuente sexual registrado no tenga acceso a una casa donde niños estén presentes y requiriendo que miembros del hogar a punto de cumplir los 18 años de edad tienen que proporcionar su comprobación de antecedentes y huellas dentro de 30 días de haber cumplido su decimoctavo cumpleaños.

Copias de las propuestas leyes administrativas pueden ser localizadas en el sitio de la red de CYFD @ <https://www.newmexicokids.org/> o se pueden obtener en: 1120 Paseo De Peralta, Santa Fe, New México, 30 días antes de la Audiencia Pública.

#### **Aviso de Audiencia Pública de leyes administrativas:**

La audiencia pública de leyes administrativas será el jueves, 29 de agosto, 2019 a las 10:00 a.m. en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502, en la sala Apodaca Hall. La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia de CYFD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado en asistir la audiencia tendrá una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista o argumentos, sobre las propuestas. Personas con discapacidades que necesiten cualquier forma de asistencia auxiliar para asistir o participar en la audiencia pública deben comunicarse con Debra Gonzales, [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes

que no sean recibas por lo menos diez días antes de la fecha programada para la audiencia.

**Aviso de aceptación de comentario público por escrito:** Comentarios públicos por escritos, incluso presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados a través de correo electrónico a: CYFD-ECS-PublicComment@state.nm.us, especificando en la línea de Asunto: “8.17.2 NMAC Public Comment,” o por correo de primera clase a Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, o se pueden entregar en mano a: Kimberly Brown. El periodo de comentarios termina a la conclusión de la audiencia pública del 29 de agosto de 2019.

### **Proposed Rules/Reglas Propuestas**

#### **8.16.2.7 DEFINITIONS:** \*\*\*

**F. “Attended”** means the physical presence of a staff member or educator supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Subsection [FFF] UUU, 8.16.2.7 NMAC).

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**RR. “Notice of provisional employment”** means a written notice issued to a child care center or home applicant indicating the BCU reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

[RR:] **SS. “Notifiable diseases”** means confirmed or suspected diseases/conditions

as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

[SS:] **TT. “Orientation”** means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

[TT:] **UU. “Out of school time program”** means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

[UU:] **VV. “Parent handbook”** is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

[VV:] **WW. “Pest”** means any living organism declared a pest pursuant to the Pesticide Control Act.

[WW:] **XX. “Pesticide”** means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

[XX:] **YY. “Philosophy statement”** describes how the program’s mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program’s perspective on early care and education and the nature of how children learn. The program’s philosophy is implemented through the curriculum.

[YY:] **ZZ. “Policy”** is a written directive that guides decision-making. Policies form the basis for authoritative action.

[ZZ:] **AAA. “Premises”** means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

[AAA:] **BBB. “Procedure”** is a series of steps to be followed, usually in a specific order, to implement policies.

[BBB:] **CCC. “Professional development”** is an on-going plan for continued professional development for each educator, including the director.

[CCC:] **DDD. “Program administrator”** means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child’s development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. This definition applies to out of school time programs only.

[DDD:] **EEE. “Punishment”** means the touching of a child’s body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

[EEE:] **FFF. “Ratio”** is the maximum number of children one educator can be responsible for.

[FFF:] **GGG. “Requirements”** means the criteria and regulations developed by children, youth and families department in 8.16.2 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

[GGG:] **HHH. “Restriction”** means to control enrollment, service type, capacity, activities, or hours of operation.

[HHH:] **III. “Revocation”** means the act of making a license null and void through its cancellation.



[~~HH~~:] ~~JJJ~~. “Sanction” means a measure imposed by the licensing authority for a violation(s) of these standards.

[~~JJJ~~:] ~~KKK~~. “Sanitize” means to reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Mix one and one half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

[~~KKK~~:] ~~LLL~~. “Serious injury” means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

[~~LLL~~:] ~~MMM~~. “School-age” means a child in care who is age five to 18 years.

[~~MMM~~:] ~~NNN~~. “Staff evaluation” means that each staff member is evaluated by the director, using criteria from the individual’s job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual’s professional development plan.

[~~NNN~~:] ~~OOO~~. “Staff member” means any person, including educators, who are employed by the licensee and who are present at any time when children are present.

[~~OOO~~:] ~~PPP~~. “Substitute” means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

[~~PPP~~:] ~~QQQ~~. “Suspension” means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

[~~QQQ~~:] ~~RRR~~. “Site director” means the person at the site having responsibility for program administration and supervision of an out of school time program. This definition applies to out of school time programs only.

[~~RRR~~:] ~~SSS~~. “Star level” means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

[~~SSS~~:] ~~TTT~~. “Substantiated complaint” means a complaint determined to be factual, based on an investigation of events.

[~~TTT~~:] ~~UUU~~. “Supervision” means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

[~~UUU~~:] ~~VVV~~. “Survey” means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

[~~VVV~~:] ~~WWW~~. “Toddler” means a child age 12 months to 24 months.

[~~WWW~~:] ~~XXX~~. “U/L” means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

[~~XXX~~:] ~~YYY~~. “Unattended” means an educator is not physically present with a child or children under care.

[~~YYY~~:] ~~ZZZ~~. “Unsubstantiated complaint” means a complaint not determined to be factual based on an investigation of events.

[~~ZZZ~~:] ~~AAAA~~. “Variance” means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

[~~AAAA~~:] ~~BBBB~~. “Volunteer” means any person who is not employed by the child care facility, spends six hours or less per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members or educator.

[~~BBBB~~:] ~~CCCC~~. “Waiver” means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority.

**8.16.2.19 BACKGROUND CHECKS:** Background checks will be conducted in accordance with the most current regulations related to background checks and employment history verification provisions as promulgated by the children, youth and families department pursuant to 8.8.3 NMAC. All licensed child care facilities must adhere to these provisions to maintain their licensing status. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member’s employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

**A.** the staff member was found eligible as a direct provider of care in a child care center, licensed child care, home licensed group home, or registered home within the past five years and has not been separated from employment for more than 180 days; and

**B.** submits an application for transfer and is found eligible pursuant to 8.8.3.11 NMAC.

**8.16.2.21 LICENSURE REQUIREMENTS FOR CENTERS:**

**A. LICENSING REQUIREMENTS:**

\*\*\*

(2)

**BACKGROUND CHECK:** The licensing authority will provide a copy of the most current version of the department’s background

check and employment history verification provisions, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers or any person who may have unsupervised physical access to children as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

**8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:**

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**C. POLICY AND PROCEDURES:** All facilities using these regulations must have written policies and procedures covering the following areas:

(1) actions to be taken in case of accidents or emergencies involving a child, parents or staff members;

(2) policies and procedures for admission and discharge of children;

(3) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;

(4) policies and procedures for expulsion of children. Policies and procedures shall include how the center will maintain a positive environment and will focus on preventing the expulsion

of children age birth to five. The center must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;

~~[(4)]~~ (5) policies and procedures for the handling of medications;

(5) (6) policies and procedures for the handling of complaints received from parents or any other person;

(6) (7) policies and procedures for actions to be taken in case a child is found missing from the center;

(7) (8) policies and procedures for the handling of children who are ill; and

(8) (9) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations (see waivers, Subsection D of 8.16.2.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

**D. FAMILY HANDBOOK:** All facilities using these regulations must have a parent handbook which includes the following:

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

(c) program information (location, license information, days and hours of operation, services offered);

(d) name of director and how he/she may be reached;

(e) meals, snacks and types of food

served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open door policy to the classroom;

(h) appropriate dress for children, including request for extra change of clothes;

(i) celebrating holidays, birthdays and parties; and

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) expulsion procedures;

(d) fee payment procedures, including penalties for tardiness;

(e) notification of absence;

(f) fee credits, if any (e.g. for vacations, absences, etc.);

(g) field trip policies;

(h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(i) emergency procedures, safety policies, and disaster preparedness plan;

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure; ~~and~~

(m) policies and procedures ensuring that a registered sex offender does not have access to the home where children are present; and

[(m)] (n)  
guidance policy.  
E. CHILDREN'S RECORDS: A center will maintain a complete record for each child, including drop-ins, completed before the child is admitted. Records will be kept at the center for 12 months after the child's last day of attendance. Records will contain at least:

- (1) PERSONAL INFORMATION:
- (a) name of the child; date of birth, gender, home address, mailing address and telephone number;
  - (b) names of parents or guardians, parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;
  - (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up. The director must check the persons authorized to pick up the child(ren) to include parents and guardians through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file:

F. PERSONNEL RECORDS:

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with the children. A center will keep the file for one year after the staff member's last day of employment. Records will contain at least the following:

- (a) name, address and telephone number;
- (b) position;
- (c) current and past duties and responsibilities;
- (d) dates of hire and termination;

(e) documentation of a background check and employment history verification; if background check is in process then documentation of the notice of provisional employment showing that it is in process, [~~such as a submission receipt, shall~~] must be placed in file. A background check must be conducted at least once every five years on all required individuals;

**8.16.2.31 LICENSURE REQUIREMENTS FOR HOMES:**

- A. LICENSING REQUIREMENTS; \*\*\*
- (3) BACKGROUND CHECK: In addition to the basic requirements at 8.16.2.19 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.8.3 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. A household member reaching the age of 18 must submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. [~~A request for a background check must be submitted prior~~] Prior to a staff member's employment [-], a staff member must receive a notice of provisional employment or obtain a

background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

**8.16.2.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:**

- \*\*\*
- C. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following: \*\*\*
- (2) POLICIES AND PROCEDURES:
- (a) enrollment procedures;
  - (b) disenrollment procedures;
  - (c) policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;
  - (d) fee payment procedures, including penalties for tardiness;
  - (e) notification of absence;
  - (f) fee credits, if any (e.g. for vacations, absences, etc.);
  - (g) field trip policies;
  - (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
  - (i) emergency procedures, safety policies, and disaster preparedness plan;
  - (j) snow days and school closure;
  - (k) confidentiality policy;

(l) child abuse/neglect reporting procedure; [and]

(m) policies and procedures ensuring that a registered sex offender does not have access to the home where children are present; and

[(m)] (n) guidance policy.

**D. CHILDREN’S RECORDS:** A home will maintain a complete record for each child, including drop-ins, completed before the child is admitted and kept at the home for 12 months after the child’s last day of attendance. Records will contain at least:

(1) PERSONAL INFORMATION:

(a) name of the child, date of birth, gender, home address, mailing address and telephone number;

(b) names of the parents or guardians, the parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up [;] The licensee must check the persons authorized to pick up the child(ren) to include parents and guardians through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file.

**E. PERSONNEL RECORDS:** A home will keep the following records on file and make them available to the licensing authority.

(1) Documentation of a background check and employment history verification for all staff members and all adults living in the home. If a background check is in process for a staff member, then documentation of the notice of provisional employment

showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals.

**8.16.2.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

**A. LICENSING REQUIREMENTS:**

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(3) **BACKGROUND CHECK:** The licensing authority will provide a copy of the most current version of the department’s background check and employment history verification provisions (8.8.3 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements of the most current version of the department’s background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. [~~A request for a background check must be submitted prior~~] Prior to a staff member’s employment [;] a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

**8.16.2.41 ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**

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**C. PARENT HANDBOOK:** All facilities using these regulations must have a parent handbook which includes the following.

(1) GENERAL INFORMATION:

- (a) mission statement;
- (b) philosophy statement;
- (c) program information (location, license information, days and hours of operation, services offered);
- (d) name of director and how he/she may be reached;
- (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
- (f) daily schedule;
- (g) a statement supportive of family involvement that includes an open door policy to the classroom;
- (h) appropriate dress for children, including request for extra change of clothes;
- (i) celebrating holidays, birthdays and parties; and
- (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) expulsion procedures;
- (d) fee payment procedures, including penalties for tardiness;
- (e) notification of absence;
- (f) fee credits, if any (e.g. for vacations, absences, etc.);
- (g) field trip policies;
- (h) health policies (program’s policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(i) emergency procedures and safety policies;

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure;

(m) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;

[(tm)] (n) guidance policy; and

[(tn)] (o) emergency procedures, safety policies, and disaster preparedness plan.

**D. CHILDREN’S RECORDS:** A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will be kept at the program, unless otherwise indicated in the list below, for 12 months after the child’s last day of attendance. Records will contain at least:

- (1) PERSONAL INFORMATION:
- (a) name of the child; date of birth, gender, home address, mailing address and telephone number;
- (b) names of the parents or guardians, the parents or guardian’s current places of employment, addresses, and pager, cellular and work telephone numbers;
- (c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up [;]. The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file.

**E. PERSONNEL RECORDS:**

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct contact with the children. A program will keep the file for one year after the staff member’s last day of employment. Unless otherwise indicated, a licensee may keep the items listed below in a central location. Records will contain at least the following:

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

(e) documentation of a background check and employment history verification. If a background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals;

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT  
EARLY CHILDHOOD SERVICES  
DIVISION**

**NOTICE OF RULEMAKING AND PUBLIC RULE HEARING**

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding NON-LICENSED CHILD CARE - REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY CHILD CARE HOMES as authorized by Section 9-2A-7 NMSA 1978:

- 8.17.2.7 NMAC - DEFINITIONS  
8.17.2.10 NMAC - CAREGIVER REQUIREMENTS

- 8.17.2.11 NMAC - BACKGROUND CHECKS  
8.17.2.24 NMAC - RECORD KEEPING REQUIREMENTS  
8.17.2.25 NMAC - CAREGIVER’S RESPONSIBILITIES

No technical scientific information was consulted in drafting these proposed rules.

**Purpose of proposed rules:** The purpose of the rules is to amend the background check requirements to add language to incorporate a two-step clearance process for caregivers. A notice of provisional employment or background check eligibility will be required prior to commencing employment and will include a timeline for issuance of the notice. These amendments are to comply with federal requirements. In addition, language will be included requiring policies and procedures ensuring that a registered sex offender does not have access to the home where children are present and requiring household members reaching the age of 18 to submit their background check within 30 days after their eighteenth birthday.

Copies of the proposed rules may be found at CYFD’s website at <https://www.newmexicokids.org/> or may be obtained from 1120 Paseo De Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

**Notice of public rule hearing:** The public rule hearing will be held on Thursday, August 29, 2019 at 10:00 a.m. in Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend

or participate in the public hearing are asked to contact Debra Gonzales at [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

**Notice of acceptance of written public comment:** Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may also be submitted via email to [CYFD-ECS-PublicComment@state.nm.us](mailto:CYFD-ECS-PublicComment@state.nm.us) with the subject line "8.17.2 NMAC Public Comment," or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160. The comment period ends at the conclusion of the public hearing on August 29, 2019.

#### **AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA**

El Departamento de Niños, Jóvenes y Familias de Nuevo México por este medio da aviso como se requiere bajo la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC propone adoptar enmiendas a las siguientes reglas leyes administrativas con respecto a CUIDADO DE NIÑOS SIN LICENCIA-REQUISITOS GOVERNANDO LA REGISTRACIÓN DE CASAS DE CUIDADO DE NIÑOS EN CASAS FAMILIARES SIN LICENCIA según autorizado por la sección 9-2A-7 NMSA 1978:

- 8.17.2.7 NMAC - DEFINICIONES
- 8.17.2.10 NMAC - REQUISITOS PARA PROVEEDORES
- 8.17.2.11 NMAC - COMPROBACIÓN DE ANTECEDENTES Y HUELLAS
- 8.17.2.24 NMAC - REQUISITOS PARA MANTENER ARCHIVOS
- 8.17.2.25 NMAC -

#### **RESPONSABILIDADES DE LOS PROVEEDORES**

No se consultó información científica o técnica cuando se redactaron las propuestas leyes administrativas.

#### **Propósito de las propuestas leyes administrativas:**

El propósito de las leyes administrativas es enmendar los requisitos para comprobación de antecedentes y huellas añadiendo lenguaje para incorporar un proceso de dos pasos de autorización para proveedores. Un aviso de empleo provisional (o comprobación de antecedentes y huellas elegibles - aprobada) será requerido antes de empezar empleo e incluirá un cronograma cuando el aviso será emitido. Estas enmiendas tienen que estar conformes con los requerimientos federales. Adicionalmente, lenguaje será incluido requiriendo pólizas y procesos que aseguren que un delincuente sexual registrado no tenga acceso a una casa donde niños estén presentes y requiriendo que miembros del hogar a punto de cumplir los 18 años de edad tienen que proporcionar su comprobación de antecedentes y huellas dentro de 30 días de haber cumplido su decimoctavo cumpleaños.

Copias de las propuestas leyes administrativas pueden ser localizadas en el sitio de la red de CYFD @ <https://www.newmexicokids.org/> o se pueden obtener en: 1120 Paseo De Peralta, Santa Fe, New México, 30 días antes de la Audiencia Pública.

#### **Aviso de Audiencia Pública de**

**leyes administrativas:** La audiencia pública de leyes administrativas será el jueves, 29 de agosto, 2019 a las 10:00 a.m. en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502, en la sala Apodaca Hall. La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia de CYFD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado en asistir la audiencia tendrá una oportunidad

razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista s o argumentos, sobre las propuestas. Personas con discapacidades que necesiten cualquier forma de asistencia auxiliar para asistir o participar en la audiencia pública deben comunicarse con Debra Gonzales, [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibas por lo menos diez días antes de la fecha programada para la audiencia.

#### **Aviso de aceptación de comentario**

**público por escrito:** Comentarios públicos por escritos, incluso presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados a través de correo electrónico a: [CYFD-ECS-PublicComment@state.nm.us](mailto:CYFD-ECS-PublicComment@state.nm.us), especificando en la línea de Asunto: "8.17.2 NMAC Public Comment," o por correo de primera clase a Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, o se pueden entregar en mano a: Kimberly Brown. El período de comentarios termina a la conclusión de la audiencia pública del 29 de Agosto de 2019.

#### **Proposed Rules/Reglas Propuestas**

#### **8.17.2.7 DEFINITIONS:**

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**P. "Notice of Provisional Employment"** means a written notice issued to a child care center or home applicant indicating the BCU reviewed the applicant's fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

**[P:] Q. “Notifiable diseases”** means confirmed or suspected diseases/conditions as identified by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

**[Q:] R. “Primary caregiver”** means a registered child care home caregiver 18 years of age or older who is personally providing care to children, less than 24 hours a day, in his/her own residence and has completed the registration process, paid the required fee and has no other employment during hours of care. The primary caregiver must reside in the home.

**[R:] S. “Registered authority”** means the child care services bureau - registration section of the early childhood services division of the New Mexico children, youth and families department.

**[S:] T. “Registered family child care home”** means the residence of an independent primary caregiver who registers the home under these regulations to participate in the child and adult care food program or in the state and federal child care assistance programs.

**[T:] U. “Registered family child care food-only home”** means the residence of an independent primary caregiver who registers the home under these regulation to participate in the child and adult care food program only and does not participate in the state and federal child care assistance program.

**[U:] V. “Resident child”** means any child who resides in the home, such as the primary caregiver’s own children by birth or adoption, foster children, grandchildren, or cohabitant’s children who are part of the residential unit.

**[V:] W. “Serious injury”** means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

**[W:] X. “Substitute caregiver”** means someone 18 years

of age or older who is authorized by the primary caregiver and the registered authority to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including background check clearance in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions.

**[X:] Y. “Substantiated”** means an incident or complaint determined to be factual, based on an investigation of events.

**[Y:] Z. “Supervision”** means the direct observation and guidance of children at all times and requires being physically present with them.

**[Z:] AA. “Survey”** means a representative of CYFD’s authority to enter a home, observes activity, examine the records and premises, interviews parents and records deficiencies.

**[AA:] BB. “Unattended”** means a caregiver is not physically present with a child or children under care.

**[BB:] CC. “Unsubstantiated”** means an incident or complaint not determined to be factual based on an investigation of events.

#### 8.17.2.10 CAREGIVER REQUIREMENTS:

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**C.** Primary and substitute caregivers must comply with background check requirements in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions. A request for a background check must be submitted prior to a substitute caregiver employment. A substitute caregiver must receive a notice of provisional employment prior to beginning employment or obtain a background check in accordance with 8.8.3 NMAC.

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#### 8.17.2.11 BACKGROUND CHECKS:

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**B.** The primary caregiver will be responsible for obtaining background checks on all adults residing in the home using the requirements outlined in the department’s most current version of the background checks and employment history verification provisions (8.8.3 NMAC). A household member ~~[over]~~ reaching the age of 18, ~~[who is currently approved but does not have an individual background check clearance, shall comply with the background check requirements no later than one year after these regulations are in effect.]~~ must submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

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#### 8.17.2.24 RECORD KEEPING REQUIREMENTS:

Caregivers must keep an information card for each child (including drop-in children) with:

- A.** the child’s full name;
- B.** the child’s birth date;
- C.** any known food or drug allergies or unusual physical condition;
- D.** the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;
- E.** the name and telephone number of the child’s physician;
- F.** authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;
- G.** written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent;
- H.** an immunization record showing current, age-

appropriate immunizations for each child or a written waiver for immunizations granted by the department of health. A grace period of a maximum of 30 days will be granted for children in foster care or homeless children and youth; ~~and~~

**I.** written permission from parent to transport children outside of the registered home [-] ; and

**J.** signed acknowledgement by the parent acknowledging that a check through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry will be conducted by the caregiver on all persons authorized to pick up the child(ren) to include parents and guardians.

**8.17.2.25 CAREGIVER'S RESPONSIBILITIES:**

\*\*\*

**E.** Policies and procedures ensuring that a registered sex offender does not have access to the home where children are present. The caregiver is responsible for conducting a check through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry on persons authorized to pick up the child(ren) to include parents and guardians, and keep this documentation in the child's file.

~~E.~~ **F.** Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well-being. Caregivers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver will also provide a variety of indoor and outdoor equipment to meet the children's developmental interests

and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play. Television, videotapes and video games should be limited to two hours a day and should be age-appropriate.

~~F.~~ **G.** Caregivers of infants will allow them to crawl or toddle. Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted. Caregivers will allow infants to eat and sleep on their own schedules.

~~G.~~ **H.** Caregivers will ensure age appropriate naps or rest periods as follows:

(1) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(2) Caregivers shall ensure that nothing covers the face or head of a child age 12 months or younger when the child is laid down to sleep and while the child is sleeping.

(3) Caregivers shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(4) No child(ren) shall be allowed to sleep behind closed doors.

~~H.~~ **I.** Swimming, wading and water:

(1) A caregiver must obtain written permission from a parent or guardian before a child enters a pool;

(2) If a home has a portable wading pool:

(a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a home will not use a portable wading pool placed on concrete or asphalt.

(3) If a home has a built in or above ground swimming pool, ditch, fish pond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and ensure adequate safety for the ages, abilities and type of water hazard in use.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (Superintendent), upon the Superintendent's own motion, proceeding pursuant to the Insurance Code, Section 59A-1 -1 et seq. NMSA 1978 ("Insurance Code") and 13.1.4 NMAC, proposes a new rule **13.6.3 NMAC, ADVERTISING ACCIDENT AND HEALTH INSURANCE, LIFE INSURANCE AND ANNUITIES** and the repeal of **13.10.4 NMAC, ADVERTISING ACCIDENT AND HEALTH INSURANCE.**

**PURPOSE OF THE PROPOSED NEW RULE:** The purpose of this new rule is to protect the public with respect to the advertisement of accident and health insurance, life insurance and annuities and repeal rule 13.10.4 NMAC.

**SUMMARY OF THE PROPOSED RULE:** The rule establishes minimum criteria to ensure the clear and truthful disclosure of the benefits, limitations and exclusions of policies



offered in this state and establish standards to prevent unfair, deceptive, and misleading advertising of these products and of those who sell them.

**STATUTORY AUTHORITY:** Legal authority for this rulemaking is found at Sections 59A-2-9, 59A-16-4 and 59A-16-5 NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/MiscPages/osilegal.aspx>) or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501.

OSI will hold a public hearing on the new rule 13.6.3 NMAC and the repeal of 13.10.4 NMAC on September 9, 2019 at 10:00 a.m. at the NM Office of Superintendent of Insurance, 4th Floor Conference Room, Old PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. The Superintendent designates Todd Baran to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on the day of the public hearing, or the last day of the public hearing if the public hearing extends for more than one day. Responses to written comments or oral comments will be accepted through 4:00 pm on September 16, 2019. Comments may be submitted via email to [Mariano.romero@state.nm.us](mailto:Mariano.romero@state.nm.us) or may be filed by sending original copies to:  
OSI Records and Docketing, NM Office of Superintendent of Insurance  
Attention: Mariano Romero, Room 331  
1120 Paseo de Peralta, P.O. Box 1689,  
Santa Fe, NM 87504-1689

**Docket No.: 19-00028-RULE-LH  
IN THE MATTER OF THE  
PROPOSED NEW RULE 13.6.3**

#### **NMAC AND THE REPEAL OF 13.10.4 NMAC**

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

**SPECIAL NEEDS:** Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Martinez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

DONE AND ORDERED this 30th  
day of July 2019  
/S/JOHN G. FRANCHINI

### **NEW MEXICO WATER QUALITY CONTROL COMMISSION**

#### **NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.4 NMAC – STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS – SAN ISIDRO ARROYO AND TRIBUTARIES**

The New Mexico Water Quality Control Commission (Commission) will hold a public hearing to start after the regularly scheduled Commission hearing which begins at 9:00 a.m.

on Tuesday, October 8, 2019, and continuing on subsequent days, as necessary, at the New Mexico State Capitol Building, 490 Old Santa Fe Trail, Room 307, Santa Fe, New Mexico 87501. The purpose of the hearing is to consider amendments to the Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC. Peabody Natural Resources Company (PNRC) is the proponent of the proposed amendments. The hearing location may change prior to the hearing date, and those interested in attending should check the Commission website before the hearing at: <https://www.env.nm.gov/water-quality-control-commission/wqcc/>.

The proposed amendments to 20.6.4 NMAC, submitted by PNRC and docketed as WQCC 19-03 (R), propose changes to the aquatic life use classification of the San Isidro Arroyo and its tributaries. PNRC justifies the changes based on the results of Level 1 Hydrology Protocol evaluations, supporting regional hydrologic studies, and mine-specific hydrologic information as provided in the Lee Ranch Mine's permit from the New Mexico Mining and Minerals Division.

The PNRC's petition and proposed amendments are available on the New Mexico Environment Department's website, at <https://www.env.nm.gov/wqcc-19-03-a/>. The petition and amendments may also be obtained electronically or reviewed in person by contacting Cody Barnes, Commission Administrator, 1190 S. St. Francis Drive, Santa Fe, New Mexico 87502, (505) 827-2428 or [cody.barnes@state.nm.us](mailto:cody.barnes@state.nm.us).

The hearing will be conducted in accordance with the New Mexico Water Quality Act, Section 74-6-6, NMSA 1978, and the Rulemaking Procedures for the Water Quality Control Commission, 20.1.6 NMAC.

Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later

than 20 days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

1. Identify the person for whom the witness(es) will testify;
2. Identify each technical witness the person intends to present, and state the qualifications of that witness, including a description of their educational and work background;
3. If the hearing will be conducted at multiple locations, indicate the location or locations at which the witness will be present;
4. Include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
5. Include the text of any recommended modifications to the proposed regulatory change; and
6. List and attach all exhibits anticipated to be offered by that person at the hearing.

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Written comment must be mailed or delivered to the commission administrator.

The deadline for filing notices of intent is September 18, 2019 at 5:00 p.m. in the Commission Administrator's office. All documents filed in this matter, including notices of intent, must be filed with a single-sided original and three copies. Any person may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing.

To present technical testimony rebutting the testimony of another party at the hearing, a person must file a notice of intent to present rebuttal testimony no later than 5:00 p.m. on September 18, 2019. The notice shall comply with the requirements set out above. In addition, if a party takes a position on proposed changes of other parties, the notice shall include the basis for that support or opposition.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Cody Barnes, WQCC Administrator at least 14 days prior to the hearing date at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2428 or email [cody.barnes@state.nm.us](mailto:cody.barnes@state.nm.us). (TDD or TTY) users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

NMED does not discriminate based on race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Yurdin, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, [nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us). You can also visit the Department's website to see how

to register a complaint at: <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above.

## COMISIÓN DE CONTROL DE CALIDAD DE AGUA DE NUEVO MÉXICO

### NOTIFICACIÓN DE AUDIENCIA PÚBLICA PARA CONSIDERAR LOS CAMBIOS PROPUESTOS A NMAC 20.6.4 - ESTÁNDARES INTERESTATAL Y DENTRO DEL ESTADO PARA AGUAS SUPERFICIALES - ARROYO SAN ISIDRO Y AFLUENTES

La Comisión de Control de Calidad del Agua de Nuevo México (Comisión) estará llevando a cabo una audiencia pública después de la audiencia programada de la Comisión a comenzar a las 9:00 a.m. el martes, 8 de octubre de 2019 y continuando los días subsiguientes, de ser necesario, en el Edificio del Capitolio del Estado de Nuevo México, 490 Old Santa Fe Trail, Sala 307, Santa Fe, Nuevo México, 87501. El propósito de la audiencia es considerar los cambios a los Estándares Interestatal y Dentro del Estado para Aguas Superficiales, NMAC 20.6.4. Peabody Natural Resources Company (PNRC) es quien propone los cambios. El lugar de la audiencia puede ser sujeto a cambio antes del día de la misma, y aquellos interesados en asistir, deben verificar el sitio web de la Comisión antes de la audiencia en: <https://www.env.nm.gov/water-quality-control-commission/wqcc/>.

Los cambios propuestos a NMAC 20.6.4, sometidos por PNRC y expedidos como WQCC 19-03 (R), proponen cambios en la clasificación de uso de vida acuática en el Arroyo San Isidro y sus afluentes. PNRC justifica los cambios basados en los resultados de las evaluaciones del Protocolo Hidrológico Nivel

1, apoyando estudios hidrológicos regionales, e información hidrológica específica a minas como ofrecidas en el permiso Lee Ranch Mine de la División de Minas y Minerales de Nuevo México.

La petición y cambios propuestos por PNRC están disponibles en el sitio web del Departamento de Medio Ambiente de Nuevo México, en <https://www.env.nm.gov/water-quality-control-commission/wqcc-19-03-a/>. La petición y cambios también pueden ser obtenidos electrónicamente o revisados en persona contactando a Cody Barnes, Administrador de la Comisión, 1190 S. St. Francis Drive, Santa Fe, New Mexico 87502, (505) 827-2428 o [cody.barnes@state.nm.us](mailto:cody.barnes@state.nm.us).

La audiencia será llevada a cabo de acuerdo con el Acta de Calidad de Agua de Nuevo México, NMSA 1978 §74-6-6, y los Procedimientos Reglamentarios para la Comisión de Control de Calidad de Agua, NMAC 20.1.6.

Cualquier persona, incluyendo el solicitante, quien tiene la intención de presentar el testimonio técnico en la audiencia debe, no más tarde de 20 días antes de la audiencia, archivar una notificación de intención para presentar el testimonio técnico. La notificación debe:

1. Identificar la persona por la cual el (los) testigo (s) testificará;
2. Identificar cada testigo técnico que la persona intenta presentar, y declarar las calificaciones de dicho testigo, incluyendo una descripción de sus antecedentes educativos y de trabajo;
3. Si la audiencia será conducida en varias localidades, indicar la localidad o localidades en las cuales el testigo estará presente;
4. Incluya una copia del testimonio directo de cada testigo técnico en forma narrativa, y declare la duración estimada del testimonio directo oral de los testigos;
5. Incluya el texto de cada modificación recomendada al

cambio regulatorio propuesto; y

6. Enumere y atache toda la evidencia anticipada a ser ofrecida por la persona en la audiencia.

Cualquier miembro del público general puede testificar en la audiencia. No se necesita notificación previa para presentar testimonio que no sea técnico en la audiencia. Cualquier miembro puede ofrecer evidencia que no sea técnica en conexión con su testimonio, siempre y cuando la evidencia no sea excesivamente repetitiva en el testimonio. Un miembro del público general que desee someter una declaración escrita para récord, en vez de ofrecer un testimonio oral en la audiencia, debe archivar la declaración escrita antes de la audiencia o someterla en la audiencia. Comentarios escritos tienen que ser enviados por correo o llevados al administrador de la comisión.

La fecha límite para archivar notificaciones de intento es el 18 de septiembre de 2019 a las 5:00 p.m. en la oficina del Administrador de la Comisión. Todos los documentos archivados en esta cuestión, incluyendo notificaciones de intención, tienen que ser archivados con un original en páginas sencillas y tres copias. Cualquier persona puede ofrecer comentarios públicos no técnicos en la audiencia o someter una declaración escrita no técnica en vez de un testimonio oral en o antes de la audiencia.

Para presentar testimonio técnico refutando el testimonio de otra parte en la audiencia, una persona tiene que archivar una notificación de intención para presentar el testimonio de refute no más tardar a las 5:00 p.m. del 18 de septiembre de 2019. La notificación debe cumplir con los requisitos explicados anteriormente. En adición, si una parte toma una posición en los cambios propuestos por otras partes, la notificación debe incluir las bases para dicho apoyo u oposición.

Si cualquier persona necesita asistencia, un intérprete o ayuda auxiliar para participar en este proceso, por favor contacte a Cody Barnes, Administrador WQCC, por lo menos 14 días antes de la audiencia al P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, teléfono (505) 827-2428 o al correo electrónico [cody.barnes@state.nm.us](mailto:cody.barnes@state.nm.us). Usuarios (TDD o TTY) por favor llamen al número vía New Mexico Relay Network, 1-800-659-1779 (voz); usuarios TTY: 1-800-659-8331).

NMED no discrimina basados en raza, color, nacionalidad, discapacidad, edad o sexo, en la administración de sus programas o actividades, como es requerido por las leyes y reglamentaciones aplicables. NMED es responsable por la coordinación de esfuerzos de cumplimiento y recibo de preguntas concernientes a requisitos antidiscriminatorios implementados por C.F.R. 40 Partes 5 y 7 incluyendo el Título VI del Acta de Derechos Civiles de 1964, según enmendado; Sección 504 del Acta de Rehabilitación de 1973; el Acta de Discriminación por Edad de 1975, Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas del Acta Federal del Control de la Contaminación de Agua de 1972. Si usted tiene alguna pregunta acerca de esta notificación o de los programas antidiscriminatorios de NMED, políticas o procedimientos, usted puede contactar a: Kristine Yurdin, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, [nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us). Usted también puede visitar el sitio web del Departamento para ver cómo puede registrar una queja en: <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> Si usted entiende que ha sido discriminado con respecto a un programa o actividad de NMED, usted puede contactar al Coordinador de Antidiscriminación identificado anteriormente.

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**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.

### HIGHER EDUCATION DEPARTMENT

#### TITLE 5 POST- SECONDARY EDUCATION CHAPTER 7 TUITION AND FINANCIAL AID PART 34 TEACHER PREPARATION AFFORDABILITY SCHOLARSHIP PROGRAM

**5.7.34.1 ISSUING  
AGENCY:** New Mexico Higher  
Education Department.  
[5.7.34.1 NMAC - N, 7/30/2019]

**5.7.34.2 SCOPE:**  
Provisions of 5.7.34 NMAC apply to  
all public post-secondary institutions  
or tribal colleges in the state of New  
Mexico.  
[5.7.34.2 NMAC - N, 7/30/2019]

**5.7.34.3 STATUTORY  
AUTHORITY:** Section 9-25-1 et  
seq. NMSA 1978 and Chapter 193,  
Laws of 2019.  
[5.7.34.3 NMAC - N, 7/30/2019]

**5.7.34.4 DURATION:**  
Permanent.  
[5.7.34.4 NMAC - N, 7/30/2019]

**5.7.34.5 EFFECTIVE  
DATE:** July 30, 2019, unless a later  
date is cited at the end of a section.  
[5.7.34.5 NMAC - N, 7/30/2019]

**5.7.34.6 OBJECTIVE:**  
The objective of 5.7.34 NMAC is to  
provide a guideline for implementing  
the Teacher Preparation Affordability  
Act (the Act). The purpose of the Act  
is to encourage eligible New Mexico  
students to attend and complete  
an accredited public education  
department approved teacher  
preparation program at a New Mexico  
public post-secondary educational

institution or a tribal college by  
providing a scholarship opportunity.  
The scholarship is intended to help  
defray the educational expenses  
charged by the public postsecondary  
institution or tribal college including  
tuition, fees, books and course  
supplies and living expenses.  
[5.7.34.6 NMAC - N, 7/30/2019]

**5.7.34.7 DEFINITIONS:**  
**A. “Academic year”**  
means any consecutive period of two  
semesters, three quarters or other  
comparable units commencing with  
the fall term each year.

**B. “Award recipient”**  
means a student awarded a  
scholarship.

**C. “Department”**  
means the New Mexico higher  
education department.

**D. “FAFSA”** means  
the free application for federal student  
aid.

**E. “Half-time”**  
means an enrolled student who is  
carrying a half-time academic work  
load as determined by the institution  
according to its own standards and  
practices.

**F. “Institution”**  
means a New Mexico public post-  
secondary educational institution or  
tribal college.

**G. “Public post-  
secondary educational institution”**  
means a research or comprehensive  
institution, as defined in Article  
XII, Section 11 of the New Mexico  
constitution, and branch community  
colleges or community college or  
technical and vocational institute as  
defined by Section 21-13, 14 and 16  
NMSA 1978.

**H. “Returning  
adult”** means a student enrolling in  
an institution at any time later than  
the first semester following high  
school graduation or the award of a

high-school equivalency credential  
recognized by the State of New  
Mexico.

**I. “Satisfactory  
academic progress”** means  
maintaining the required academic  
progress toward program completion  
as determined by the institution.

**J. “Scholarship”**  
means a teacher preparation  
affordability program award.

**K. “Tribal college”**  
means a tribally, federally or  
congressionally chartered post-  
secondary educational institution with  
a physical campus in New Mexico  
that is accredited by the higher  
learning commission.  
[5.7.34.7 NMAC - N, 7/30/2019]

#### 5.7.34.8 STUDENT ELIGIBILITY AND SELECTION OF AWARD RECIPIENTS:

**A.** A scholarship may  
be granted to a student who:  
**(1)** is a  
resident of New Mexico as defined in  
5.7.18.9 NMAC or is eligible for the  
nondiscrimination waiver as defined  
in Subsection K of 5.7.18.10 NMAC;

**(2)** is enrolled  
at least half-time at an eligible  
institution in a teacher preparation  
program that leads to an appropriate  
educational credential to be licensed  
as a teacher by the public education  
department including but not limited  
to an education major or alternative  
licensure certification program.  
The student’s enrollment must be  
later than 120 days following high  
school graduation or the award of a  
high school equivalency credential  
recognized by the State of New  
Mexico;

**(3)** has not  
earned appropriate educational  
credentials to be licensed as a teacher  
by the public education department;  
and

(4) has demonstrated financial need as determined by the institution.

**B.** Institutions shall make awards first to students who meet the provisions of Subsection A of 5.7.34.8 NMAC and who:

(1) are English language learners whose first or heritage language was not English;

(2) are historically underrepresented minorities in New Mexico's teaching profession; or

(3) have declared intent to teach in a high-need teacher position as defined by the public education department.

**C.** After scholarships have been awarded to eligible students pursuant to Subsection B of 5.7.34.8 NMAC, institutions shall make awards to students who meet the provisions of Subsection A of 5.7.34.8 NMAC  
[5.7.34.8 NMAC - N, 7/30/2019]

**5.7.34.9 AMOUNT OF SCHOLARSHIP AND DURATION:**

**A.** Institutions shall make awards to qualifying eligible students based on financial need. The following provisions shall also apply to the scholarship:

(1) each scholarship award is for a period of one semester;

(2) the scholarship may apply to educational expenses including tuition, fees, books and course supplies and living expenses; and

(3) awards shall not exceed six thousand dollars (\$6,000) per academic year.

**B.** A student may not receive more than five academic years of the scholarship. A scholarship may be renewed as long as the student continues to meet the conditions of eligibility in Subsection A of 5.7.34.8 NMAC and maintains satisfactory academic progress or until the student graduates from an eligible institution.  
[5.7.34.9 NMAC - N, 7/30/2019]

**5.7.34.10 ADMINISTRATION OF THE PROGRAM:**

**A.** Institutions shall:

(1) determine initial and continuing student eligibility for the scholarship based on the provisions in Section 8 and Section 9 of 5.7.34 NMAC;

(2) distribute awards to qualifying eligible students; and

(3) provide information to the department on an annual basis to be used by the department for calculation of the allocation to the institution. Required information shall include:

(a) income reported on the FAFSA;

(b) the number of students enrolled in a public education department approved teacher preparation program at the institution; and

(c) the percentage of the teacher preparation program students classified as returning adults who are otherwise ineligible for state financial aid.

**B.** The department shall allocate money to institutions based on a student need formula calculated according to:

(1) income reported on the FAFSA;

(2) the number of students enrolled in a public education department approved teacher preparation program at the public post-secondary institution or tribal college; and

(3) the percentage of the institution's teacher preparation program students classified as returning adults who are otherwise ineligible for state financial aid.  
[5.7.34.10 NMAC - N, 7/30/2019]

**5.7.34.11 TERMINATION OF SCHOLARSHIP:** A scholarship is terminated upon occurrence of one or more of the following by the award recipient:

**A.** withdrawal from the institution or from the teacher preparation program;

**B.** failure to maintain at least half-time enrollment;

**C.** failure to achieve satisfactory academic progress; or

**D.** substantial noncompliance with the Teacher Preparation Affordability Act or the provisions of 5.7.34 NMAC.  
[5.7.34.11 NMAC - 7/30/2019]

**HISTORY OF 5.7.34 NMAC: [RESERVED]**

**HIGHER EDUCATION DEPARTMENT**

**This is an amendment to 5.7.5 NMAC, Sections 2, 6, 7, 9, 10, 11, 12 and 14, effective 7/30/2019.**

**5.7.5.2 SCOPE:** Provisions for 5.7.5 NMAC apply to certain [education professionals] teachers that are selected to participate in the loan repayment program described in this rule.  
[5.7.5.2 NMAC - N, 10/31/2013; A, 7/30/2019]

**5.7.5.6 OBJECTIVE:** The objective and purpose of 5.7.5 NMAC is to increase the number of teachers in [designated] public schools and the number of teachers in [high-risk] high-need [teacher] positions in public schools through an educational loan repayment program. The program provides for repayment of the principal and reasonable interest accrued on loans obtained from the federal government for teacher education purposes.  
[5.7.5.6 NMAC - N, 10/31/2013; A, 7/30/2019]

**5.7.5.7 DEFINITIONS:**

**A. "Department"** means the New Mexico higher education department.

~~**B. "Designated high-risk teacher positions"**~~ means teacher positions in specific public schools that:

~~(1) have been designated by the public education department as schools with a high percentage of students who are~~

not meeting acceptable academic proficiency levels; and  
~~(2) are located in geographic areas with a high rate of poverty;~~

~~€~~ **B. “Loan”** means a grant of funds to defray the educational expenses incidental to a teacher education, under a contract between the federal government and a teacher, requiring repayment of principal and interest.  
 [5.7.5.7 NMAC - N, 10/31/2013; A, 7/30/2019]

**5.7.5.9 TEACHER ELIGIBILITY:**

~~A. [Applicants shall be] To be considered for the program, an applicant must:~~

~~(1) be a licensed New Mexico [teachers and shall be bona fide citizens; and] teacher;~~

~~(2) [shall be bona fide citizens and residents] be a bona fide citizen and resident of the United States and New Mexico; and~~

~~(3) have taught at least three school-years in New Mexico.~~

~~B. [Applicants shall declare their intent to practice as teachers in designated high-risk teacher positions in the state]. To be considered a high-priority applicant for a loan repayment award the applicant shall be a teacher in a designated high-need position in the state. High-need positions include positions that are:~~

~~(1) for teachers who are endorsed and teach bilingual education;~~

~~(2) for teachers who are endorsed and teach early childhood education or special education;~~

~~(3) for teachers who are endorsed and teach science, technology, engineering, mathematics or career technical education courses; or~~

~~(4) in a public school that is low performing or serves a high percentage of economically disadvantaged students.~~

~~C. Teachers that are not in a designated high-need teacher position may also be considered for loan repayment awards.  
 [5.7.5.9 NMAC - N, 10/31/2013; A, 7/30/2019]~~

**5.7.5.10 LOAN REPAYMENT AWARD CRITERIA; CONTRACT TERMS; PAYMENT:**

~~A. Loan repayment award criteria shall provide that:~~

~~(1) for high-priority applicants, award amounts shall be dependent upon a specific public school’s need for the designated [high-risk] high-need teacher position, as determined by the public education department, the teacher’s total teacher education indebtedness and available balances in the teacher loan repayment fund;~~

~~(2) award amounts for other teachers shall be based on the need for a teacher position that can be filled by the applicant, as determined by the public education department, the teacher’s total teacher education indebtedness and available balances in the teacher loan repayment fund;~~

~~(2) (3) preference in making awards shall be to teachers who are historically underrepresented minorities in New Mexico’s teaching profession or teachers who have graduated from a New Mexico public postsecondary educational institution;~~

~~(3) awards shall be made to eligible teachers who fill a designated high-risk teacher position;~~

~~(4) award amounts shall not exceed six thousand dollars (\$6,000) per year and may be modified based upon funding availability or other special circumstances; and~~

~~(5) the total amount of awards made to any one teacher shall not exceed the total teacher education indebtedness [of] remaining for that teacher.~~

~~B. The following teacher education debts are not eligible for repayment pursuant to the Teacher Loan Repayment Act:~~

~~(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;~~

~~(2) scholarships that have a service component or obligation;~~

~~(3) loans from a commercial lender;~~

~~(4) personal loans from friends or relatives; and~~

~~(5) loans that exceed individual standard school expense levels.~~

~~C. Every loan repayment award shall be evidenced by a contract between the teacher and the department acting on behalf of the state. The contract shall provide for the annual payment by the state of a stated sum to the teacher’s federal government lender and shall state the obligations of the teacher under the program, including a minimum two-school year period of service in a designated [high-risk] high-need teacher position, quarterly employment reporting requirements and other obligations established by the department.~~

~~D. [Teachers who serve a complete school year in a designated high-risk teacher position shall receive credit for one year for the purpose of calculating any loan repayment award amounts. The minimum loan repayment award amount to be paid for each school year completed shall be established by the department.] Execution of the contracts shall occur prior to the start of a school year and the two school year period of service starts at the execution of the contract.~~

~~Each contract shall be for an initial two school year period. Following completion of the contract a teacher may reapply for consideration of an additional contract. Teachers may receive a maximum of three additional two-year contracts.~~

~~Contracts between a teacher and the department shall not provide for more than a total of eight years of repayment.~~



E. ~~[The contract between a teacher and the department shall provide that, if the teacher does not comply with the terms of the contract, the teacher shall reimburse the department for all loan payments made on the teacher's behalf, plus reasonable interest at a rate to be determined by the department, unless the department finds acceptable extenuating circumstances for why the teacher cannot serve or comply with the terms of the contract.]~~ The department shall make an annual payment pursuant to the contract only after the teacher provides verification of satisfactory completion of a full year of teaching as certified by the public education department. If a teacher does not complete the first full year of teaching, the teacher shall forfeit any right to that year's payment under the contract.

F. Loan repayment awards shall be in the form of payments from the teacher loan repayment fund directly to the federal government lender of a teacher who has received the award and shall be considered a payment on behalf of the teacher pursuant to the contract between the department and the teacher. A loan repayment award shall not obligate the state or the department to the teacher's federal government lender for any other payment and shall not be considered to create any privity of contract between the state or the department and the lender.

~~[G. — The department, after consulting with the public education department, shall adopt rules to implement the provisions of the Teacher Loan Repayment Act. The rules:~~

~~(1) shall provide a procedure for determining the amount of a loan that will be repaid for each year of service in a designated high-risk teacher position; and~~

~~(2) may provide for the disbursement of loan repayment awards to a teacher's federal government lender in annual or other periodic installments.]~~  
[5.7.5.10 NMAC - N, 10/31/2013; A, 7/30/2019]

#### 5.7.5.11 CONTRACTS

##### ~~AND ENFORCEMENT]:~~

~~[A.] The general form of a contract required pursuant to the Teacher Loan Repayment Act shall be prepared and approved by the attorney general, and each contract shall be signed by the teacher and the designated representative of the department on behalf of the state.~~

~~[B. — The department is vested with full and complete authority and power to sue in its own name for any balance due the state from a teacher under any such contract.]~~

[5.7.5.11 NMAC - N, 10/31/2013; A, 7/30/2019]

#### 5.7.5.12 TEACHER LOAN REPAYMENT FUND CREATED AND METHOD OF PAYMENT:

A. The "teacher loan repayment fund" is created in the state treasury. All money appropriated for the teacher loan repayment program shall be credited to the fund ~~[-and any repayment of awards and interest received by the department shall be credited to the fund].~~ Income from the fund shall be credited to the fund, and balances in the fund shall not revert to any other fund. Money in the fund is ~~[appropriated]~~ subject to appropriation by the legislature to the department for making loan repayment awards pursuant to the Teacher Loan Repayment Act.

B. All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the department and upon a warrant issued by the secretary of finance and administration.

[5.7.5.12 NMAC - N, 10/31/2013; A, 7/30/2019]

#### 5.7.5.14 REPORTS:

Prior to each regular session of the legislature, the department shall make annual reports to the governor and the legislature of the department's activities pertaining to the Teacher Loan Repayment Act; the loan repayment awards granted; the names and addresses of teachers who received loan repayment awards; the

names and locations of the positions filled by those teachers; ~~[and] the name of each teacher who received a loan repayment award who is not serving in a designated [high-risk] high-need teacher position [-the reason the teacher is not serving in a designated high-risk teacher position.];~~ the amount owed on ~~[the] each~~ teacher's loan and the amount paid on ~~[the] each~~ teacher's loan by ~~[any] loan repayment awards; and the number of teachers who did not complete a full year of teaching.~~  
[5.7.5.14 NMAC - N, 10/31/2013; A, 7/30/2019]

## HIGHER EDUCATION DEPARTMENT

**This is an amendment to 5.7.19 NMAC, Sections 3, 6, 7, 8 and 9 effective 7/30/2019.**

**5.7.19.3 STATUTORY AUTHORITY:** ~~[Chapter 96, Laws of 1994] Sections 21-21D-1 through 21-21D-5, NMSA 1978.~~

[7/15/1998; 5.7.19.3 NMAC - Rn, 5 NMAC 7.19.3, 7/31/2005; A, 7/30/2019]

#### 5.7.19.6 OBJECTIVE:

The objective and purpose of 5.7.19 NMAC is to provide a guideline for implementing the Senior Citizens Reduced Tuition Act ~~[of 1984]~~. The purpose of the act is to provide educational opportunities for senior citizens in New Mexico. Each public post-secondary degree-granting institution in New Mexico must grant a reduction in tuition to senior citizens upon request by the student. The charge will be \$5 per credit hour for up to 10 hours per semester.

[7/15/1998; 5.7.19.6 NMAC - Rn, 5 NMAC 7.19.6, 7/31/2005; A, 7/30/2019]

#### 5.7.19.7 DEFINITIONS:

A. "Act" means the Senior ~~[Citizen]~~ Citizens Reduced Tuition Act ~~[of 1984]~~.

~~[B. — "Department" means the New Mexico higher education department.]~~

~~[E.]~~ **B. “Credit course”** means a course that can be applied toward the completion of a degree.

**C. “Department”** means the New Mexico higher education department.

**D. “Eligible institution”** means any public post-secondary degree-granting educational institution in New Mexico.

**E. “Full-time equivalent credit”** means credit in courses which are included in the department’s formula for funding purposes.

**F. “Non-credit courses”** means courses which cannot be applied toward completion of a degree.

**G. “Senior citizen”** means a person who has reached the sixty-fifth birthday by the third Friday of classes (by the census date).

**H. “Space available”** means that the maximum number of students in a class has not been reached by the end of the first day of registration, therefore providing room for enrollees.

[7/15/1998; 5.7.19.7 NMAC - Rn & A, 5 NMAC 7.19.7, 7/31/2005; A, 7/30/2019]

**5.7.19.8 ELIGIBILITY REQUIREMENTS:** In order to be eligible for the reduction in tuition which is stipulated in the act, students shall:

**A.** request the reduction in tuition;

**B.** demonstrate evidence that they have met the age required;

**C.** ~~[be resident in]~~ be a resident of New Mexico according to existing criteria for residency for tuition purposes set by the department in 5.7.18 NMAC;

**D.** ~~[enroll]~~ be enrolled [for six credit hours or less] at an eligible institution for credit or noncredit courses offered either on or off campus [during the semester of enrollment];

**E.** meet all course ~~[requisites]~~ prerequisites;

**F.** pay for any course

specific fees, including extraordinary course fees in continuing education programs; and

~~[G.]~~ enroll at an eligible institution for credit or noncredit courses offered either on or off campus; and;

~~[H.]~~ G. enroll [if] in a course in which there is space available.

[7/15/1998; 5.7.19.8 NMAC - Rn & A, 5 NMAC 7.19.8, 7/31/2005; A, 7/30/2019]

**5.7.19.9 ADMINISTRATION OF PROGRAM:**

**A.** Institutions must allow students to register under provisions of this act if there is space available.

**B.** If a minimum number of students is required by the institution to offer a class, students registered under this act may not be counted toward the minimum. ~~[For noncredit courses, a maximum of two students will be allowed to register for each class under provisions of the act.]~~

**C.** Students enrolling under provisions of this act are eligible for all grading options for the same courses, including audit, as permitted by the institution.

**D.** Students are required to comply with all rules and regulations of the institution related to registration, withdrawal from courses, transaction deadlines, academic performance and decorum.

**E.** Students enrolled under this act are entitled to all rights and privileges afforded all students including receipt of an I.D. card, use of library, and access to other campus facilities in accordance with institutional regulations affecting all students.

**F.** No full-time equivalent credit may be given to the institutions by the department for any courses taken by students under the provision of this act.

**G.** Institutions must exclude student credit hours registered under this act from enrollment reports to the department.

[7/15/1998; 5.7.19.9 NMAC - Rn & A, 5 NMAC 7.19.9, 7/31/2005; A, 7/30/2019]

**HIGHER EDUCATION DEPARTMENT**

**This is an amendment to 5.7.20 NMAC, Sections 2, 6, 7, 8, 9, 10 and 11 effective 7/30/2019.**

**5.7.20.2 SCOPE:** Provisions of 5.7.20 NMAC apply to all state public post-secondary institutions and tribal colleges in the state of New Mexico.

[5.7.20.2 NMAC - Rp, 5.7.20.2 NMAC, 08/15/2014; A, 7/30/2019]

**5.7.20.6 OBJECTIVE:**  
**A.** The objective of 5.7.20 NMAC is to provide a level of financial support to qualified New Mexico students who are enrolled full-time at an eligible New Mexico public ~~[college or university]~~ post-secondary educational institution or tribal college. This level of financial support is intended to help defray the cost of tuition at the public post-secondary educational institution or tribal college where the student is enrolled.

**B.** A further purpose of 5.7.20 NMAC is to encourage New Mexico high school students who pursue a post-secondary education in New Mexico to complete a first four-year degree within a maximum of eight semesters or two-year degree within a maximum of four semesters (the number of semesters is so determined as the initial award is not made until the second semester of college enrollment).

**C.** As it applies to students with disabilities who may require special accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution that serves students with disabilities, shall review both the definition of “full-time” and the maximum number of consecutive semesters of eligibility and adjust either or both as deemed reasonable and appropriate, based on

the student's disability needs. In no case shall "full-time" mean fewer than six credit hours per program semester and in no case shall eligibility extend beyond 14 consecutive program semesters at a four-year institution and seven consecutive program semesters at a two-year institution. If a New Mexico resident had to leave the state to receive an education pursuant to the federal Individuals with Disabilities Education Act the student shall be eligible for the scholarship if they graduated from an accredited high school in another state and otherwise met the qualifications for a tuition scholarship pursuant to the definition of a qualified student in Subsection N of 5.7.20.7 NMAC. [5.7.20.6 NMAC - Rp, 5.7.20.6 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 7/30/2019]

#### 5.7.20.7 DEFINITIONS:

##### A. "Academic year"

means any consecutive period of two semesters (or three semesters for accelerated programs), three quarters or other comparable units commencing with the fall term each year.

**B. "Accelerated program"** means one in which a summer semester is a program requirement and not a student choice; a cohort that requires sequence of courses taken in summer semester.

**C. "Community college"** means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978, respectively.

**D. "Comprehensive institution"** means eastern New Mexico university, New Mexico Highlands university, northern New Mexico college or western New Mexico university.

**E. "Consortium"** means a written agreement between a home institution and one or more host institutions for consideration of combined enrollment for eligibility:

(1) home institution is the institution where the student is enrolled in a degree or certificate seeking program and is receiving lottery scholarship funds;

(2) host institution is the secondary institution where the student is taking part of their program requirements.

**F. "Department"** means the New Mexico higher education department (NMHED).

**G. "Full-time"** means 15 or more credit hours completed each program semester of the regular academic year at a research institution [or], comprehensive institution or tribal college; or 12 or more credit hours completed for each program semester at community colleges; or through a consortium agreement between the home and host institutions. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student's home institution. Qualified students in their graduating semester are only required to take the number of credit hours required to graduate.

**H. "GPA"** means grade point average.

**I. "Legislative lottery scholarship"** means a scholarship awarded from proceeds of the New Mexico lottery tuition fund, to defray all or part of the cost of tuition.

**J. "Non-enrollment"** means a student is not enrolled in a public post-secondary educational institution.

**K. "Probation"** means a period of time that a student fails to meet continuing eligibility for exceptional mitigating circumstances as determined by the lead financial aid officer at the institution; as described in Subsection [E] D of 5.7.20.8 NMAC.

**L. "Program semesters"** means those semesters for which a qualified student may receive a tuition scholarship and excludes the first semester of full-time attendance at a public post-secondary educational institution or tribal college.

**M. "Public post-secondary educational institution"**

means [a research or comprehensive institution, as defined in Article XII, Section 11 of the New Mexico constitution, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14 and 16 NMSA 1978] a four-year state educational institution or a community college.

**N. "Qualified student"** means a full-time student who completed high school at a public or accredited private New Mexico high school, graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential recognized by the State of New Mexico while maintaining residency in New Mexico and who either:

(1) within 16 months of graduation or receipt of a high school equivalency credential recognized by the State of New Mexico, was accepted for entrance to and subsequently enrolled full-time at a public post-secondary educational institution or tribal college without having previously enrolled at a non-qualifying post-secondary institution; or

(2) within four months of graduation or receipt of a high school equivalency credential recognized by the State of New Mexico, began service in the United States armed forces and within 16 months of completion of honorable service or medical discharge from the service, subsequently enrolled full-time at a public post-secondary educational institution or tribal college without having previously enrolled at a non-qualifying post-secondary institution; and

(3) successfully completed the qualifying semester at a public post-secondary educational institution or tribal college with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full time enrollment.

**[N] O. "Research institution"** means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

~~[Ø. “Qualified student” means a full-time student who completed high school at a public or accredited private New Mexico high school, graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico and who either:~~

~~————— (1) ——— within 16 months of graduation or receipt of a high school equivalency credential, was accepted for entrance to and attended a public post-secondary educational institution without having previously enrolled at a non-qualifying postsecondary institution; or~~

~~————— (2) ——— within four months of graduation or receipt of a high school equivalency credential, began service in the United States armed forces and within 16 months of completion of honorable service or medical discharge from the service, attended a public post-secondary educational institution without having previously enrolled at a non-qualifying postsecondary institution; and~~

~~————— (3) ——— successfully completed the first semester at a public post-secondary educational institution with a grade-point average of 2.5 or higher on a 4.0 scale during the first semester of full-time enrollment.]~~

**P. “State educational institution”** means an institution of higher education enumerated in Article 12, Section 11 of the Constitution of New Mexico.

**[P] Q. “Summer semester”** means a semester equal to fall and spring semester in duration and intensity that is required as part of an accelerated program.

**R. “Tribal college”** means a tribally, federally or congressionally chartered post-secondary educational institution with a physical campus in New Mexico that is accredited by the higher learning commission.

**[Ø] S. “Tuition scholarship”** means the scholarship that provides tuition assistance per

semester for qualified students. [5.7.20.7 NMAC - Rp, 5.7.20.7 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 10/31/2017; A, 7/24/2018; A, 7/30/2019]

**5.7.20.8 STUDENT ELIGIBILITY:**

**A.** A scholarship may be awarded to a student in their second semester who has met first semester eligibility requirements as follows:

(1) has established and maintained New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC. All residency requirements must be met upon completion of high school, graduation, or receipt of a high school equivalency credential recognized by the State of New Mexico;

(2) has been determined to be a qualified student pursuant to Subsection [Ø] N of 5.7.20.7 NMAC;

(3) has met the requirements in Subsection G of 5.7.20.7 NMAC;

(4) has met requirements in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC or students with exceptional mitigating circumstances as determined by the institution’s lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the legislative lottery scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution’s lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution’s lead financial aid officer shall exercise professional judgment to determine whether the exceptional

mitigating circumstance is beyond the student’s control and precludes the student from meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC;

(b) if, in the professional judgment of the institution’s lead financial aid officer, the student’s exceptional mitigating circumstance is recognized as a valid reason for the student’s inability to meet the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC the student’s initial eligibility for the legislative lottery scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraph (4) of Subsection A of 5.7.20.8 NMAC; and

(5) has not been awarded a New Mexico scholars’ scholarship or other state scholarships which are designated for one hundred percent tuition [~~;~~ and

~~————— (6) ——— students with disabilities shall obtain a referral from the student services division of the post-secondary educational institution where the student is enrolled that oversees students with special needs’ requests to reduce the credit hours to be considered full-time for scholarship eligibility; referrals and any sufficient documentation shall be received within 30 days of the start of the student’s first semester;~~

~~————— (7) ——— students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for lottery scholarship eligibility].~~

**B.** Other provisions regarding initial eligibility.

(1) Students with disabilities shall obtain a referral from the student services division of the post-secondary educational institution where the student is enrolled that oversees students with special needs’ requests to reduce the credit hours to be considered full-time for scholarship eligibility; referrals and any sufficient documentation shall be received within 30 days of the start of the student’s first semester.

(2) Students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for lottery scholarship eligibility.

(3) During the 16 months after graduation or receipt of a high school equivalency credential recognized by the State of New Mexico a student may attend a public post-secondary educational institution or tribal college prior to their qualifying semester less than full time without affecting future program eligibility. Once a student is enrolled and attends a public post-secondary educational institution or tribal college full-time during the 16 months after graduation or receipt of high school equivalency credential recognized by the State of New Mexico, the student shall be considered to have commenced the qualifying semester and must meet the qualifying semester eligibility requirements within Subsection N of 5.7.20.7 NMAC.

~~[B.]~~ **C.** Continuing eligibility. Upon satisfaction of the qualifying semester eligibility requirements, the scholarship will be awarded to the student beginning with their second semester of enrollment. A student's continuing eligibility shall be determined on a semester basis.

**(1)** A legislative lottery scholarship award may be re-awarded to a student who:

**(a)** maintains a minimum of a 2.5 cumulative GPA; a student has the right to request use of the student's cumulative GPA earned at all New Mexico public post-secondary educational institutions and tribal colleges; and

**(b)** maintains full time enrollment as provided in Subsection G of 5.7.20.7 NMAC; when a qualified student transfers after completion of the first semester from a two year institution to a four year institution for enrollment during the second or subsequent program semester, a student will have met eligibility requirements, but said student must enroll in 15 credit hours upon transfer to maintain eligibility;

**(i)** receipt of a transfer transcript for sufficient documentation for eligibility;

**(ii)** student transfers shall defer to the receiving institution to determine eligibility.

**(2)** Students with disabilities may be re-awarded the legislative scholarship under the following conditions:

**(a)** a referral is obtained for each semester in which a reduction in credit hours is requested;

**(b)** maintains a minimum of a 2.5 cumulative GPA; and

**(c)** in no case shall eligibility extend beyond 14 consecutive semesters at a four year institution and seven consecutive semesters at a two year institution.

**(3)** An eligible student that transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation.

~~[C.]~~ **D.** Probation. Students who have been determined eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

**(1)** the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

**(2)** the lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraph (4) of Subsection A of 5.7.20.8 NMAC; and

~~[3]~~ the student shall maintain enrollment at the public post-secondary educational institution where eligibility was lost, if applicable;

~~[(4)]~~ **(3)** a student may receive scholarship funding while on probationary status.

however under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC [~~less the regular semester(s) of probation~~]. [5.7.20.8 NMAC -Rp, 5.7.20.8 NMAC, 08/15/2014; A/E, 8/15/2014; A, 9/30/2014; A, 11/15/2016; A, 10/31/2017; A, 7/30/2019]

#### **5.7.20.9 DURATION OF SCHOLARSHIP:**

~~[A.]~~ Upon qualification, the student's initial scholarship shall begin with the second semester of enrollment at a post-secondary educational institution. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a semester basis until the award recipient has received three program semesters of awards at a community college or seven semesters at a research and comprehensive institution of scholarship awards, or until the student graduates with a bachelor's degree from an eligible institution, whichever is sooner.

**B.** An award recipient may use the award at an eligible two-year post-secondary educational institution until the student receives three program semesters of scholarship awards or an associate's degree and can continue to use the award at an eligible New Mexico four-year post-secondary educational institution if the student transfers to a four-year post-secondary educational institution without a break in attendance or the semester following receipt of the associate's degree. In no case shall a student receive more than seven program semesters of the award with the exception of students with disabilities.

**C.** A student may transfer from a four-year post-secondary educational institution or to a two-year post-secondary educational institution, but in no case shall a student receive more than three

program semesters of awards at the two-year institution (including those awarded at the prior post-secondary educational institution) or until the student graduates with an associate's degree, whichever is sooner.]

A. Upon qualification, the student's initial scholarship shall begin with the second semester of enrollment at a public post-secondary educational institution or tribal college. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a semester basis until the award recipient has received three program semesters of awards at a community college or seven program semesters of awards at a research institution, comprehensive institution, or tribal college, or until the student graduates with a bachelor's degree from an eligible institution, whichever is sooner.

B. An award recipient may use the award at an eligible two-year public post-secondary educational institution until the student receives three program semesters of scholarship awards or an associate's degree and can continue to use the award at an eligible New Mexico four-year public post-secondary educational institution or tribal college if the student transfers to a four-year public post-secondary educational institution or tribal college without a break in attendance or the semester following receipt of the associate's degree. In no case shall a student receive more than seven program semesters of the award with the exception of students with disabilities.

C. A student may transfer from a four-year public post-secondary educational institution or tribal college to a two-year public post-secondary educational institution, but in no case shall a student receive more than three program semesters of awards at the two-year institution (including those awarded at the prior public post-secondary educational institution or tribal college) or until the student graduates with an associate's degree, whichever is sooner.

**D.** A student who has been previously eligible may request a leave of absence for cooperative education, military obligations, participation in a study abroad program through the home institution, or other exceptional mitigating circumstances.

**E.** The student's institutional lead financial aid officer may approve a leave of absence for a period of up to one year if in the lead financial aid officer's professional judgment the student has provided sufficient documentation to justify the leave of absence. Subsequent requests for an additional leave of absence by a student may be considered by the institution's lead financial aid officer in increments not to exceed one year.

**F.** The lead financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.

**G.** A student completing a department approved public service program may reduce their course load for the semester of their service or training and maintain eligibility for the scholarship. These students will not be eligible for scholarship benefits for the semester in which they are enrolled part time and will need to maintain all other eligibility criteria in subsequent semesters. The part-time semester will not count against their total number of semesters in which the student may receive the scholarship.

**H.** If a student becomes ineligible for a different state scholarship that is designated for one hundred percent tuition, but satisfies the first semester eligibility requirements and thereafter is eligible for the legislative lottery scholarship, the student may begin receiving the legislative lottery scholarship for the remaining number of semesters of enrollment, not to exceed those prescribed in Subsections A and B of 5.7.20.9 NMAC.

[5.7.20.9 NMAC - Rp, 5.7.20.9 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 10/31/2017; A, 7/30/2019]

#### **5.7.20.10 AMOUNT OF SCHOLARSHIP:**

**A.** To the extent that funds are made available from the fund, the board of regents or governing bodies of public [postsecondary] post-secondary educational institutions and tribal colleges shall award tuition scholarship in department approved amounts to qualified students.

**B.** The method the department will use for calculating the tuition scholarship is as follows:

(1) estimate the total amount available in the lottery tuition fund, based on past lottery fund transfers, current year balances, and additional funds made available through legislation;

(2) estimate the number of lottery scholarship recipients for each institution, based on department endorsed institutional projections;

(3) calculate the tuition scholarship for each sector (research, comprehensive, and community college) and tribal college in accordance with [2018 Bill-Text NM S.B. 140] Section 21-21N-4 NMSA 1978;

(4) calculate the total amount needed to pay full tuition to all estimated recipients;

(5) compute an award for each scholarship recipient distributed in amounts as follows:

(a) one thousand five hundred dollars (\$1,500) per scholarship per program semester for a student enrolled at a research institution;

(b) one thousand twenty dollars (\$1,020) per scholarship per program semester for a student enrolled at a comprehensive institution or tribal college; and

(c) three hundred eighty dollars (\$380) per scholarship per program semester for a student enrolled at a community college;

(6) If the total amount available pursuant to Paragraph (3) of Subsection B of 5.7.20.10 NMAC is less than the amount calculated in Paragraph (5) of Subsection B of 5.7.20.10 NMAC, the department shall decrease the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.20.10 NMAC. If the total amount available pursuant to Paragraph (3) of Subsection B of 5.7.20.10 NMAC is more than the amount calculated in Paragraph (5) of Subsection B of 5.7.20.10 NMAC, the department shall increase the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.20.10 NMAC.

(7) notify institutions.

C. In no case shall a student receive scholarship awards exceeding the total amount of tuition charged.

D. Qualified students in their graduating semester shall receive a tuition scholarship proportional to the number of credit hours required to graduate. [5.7.20.10 NMAC - Rp, 5.7.20.10 NMAC, 08/15/2014; A, 11/15/2016; A, 10/31/2017; A, 7/24/2018; A, 7/30/2019]

#### 5.7.20.11 ADMINISTRATION OF THE LEGISLATIVE LOTTERY SCHOLARSHIP:

A. Eligible public postsecondary educational institutions and tribal colleges shall:

(1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the legislative lottery scholarship at previous institutions;

(2) designate their institution's lead financial aid officer to be responsible for determining initial and continuing student eligibility for the legislative lottery scholarship under the terms of these rules and regulations;

(3) maintain a listing of each participating student to include, but not be limited to:

(a) social security number as appropriate;

(b) cumulative GPA and completed enrollment hours in prior semesters;

(c) proof of initial and continuing enrollment;

(d) award semester; and

(e) other data fields deemed important by the department;

(4) draw-down files should be submitted to the department for eligible students as defined in 5.7.20.10 NMAC per semester; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;

(5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative GPA requirement or successfully maintain full time enrollment as defined in Subsection G of 5.7.20.7 NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their appropriate institution as follows: comprehensive, research institution in their second through eighth program semester including qualified students in their fifth through eighth program semesters who transferred from a community college; projected enrollment at each community college at each community college in their second through fourth program semesters;

(7) publish the probation policy as defined in Subsection [C] D of 5.7.20.8 NMAC;

(8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program;

(9) ensure that all available state scholarships including merit based three percent scholarship and New Mexico scholars are awarded before granting legislative lottery scholarships; the intent of this provision is that tuition costs shall be paid first for those students eligible for merit-based aid packages funded by three percent scholarships; in those instances when tuition is not fully covered by the merit-based aid package, said student is eligible for the tuition cost differential to be funded by the legislative lottery scholarship program; nothing in this section requires a public postsecondary educational institution to award a scholarship inconsistent with the criteria established or such scholarship; refer to Subsection G of 5.7.20.9 NMAC for additional provisions;

B. The department shall:

(1) determine the scholarship award pursuant to the provisions of 5.7.20.10 NMAC; all eligible institutions will be notified prior to June 1 annually;

(2) conduct audits to ascertain compliance with rules and regulations, if, during the audit process, evidence indicates that a student should not have received a legislative lottery scholarship, the department will provide guidance to the institutions for appropriate action;

(3) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) tuition scholarship program participation data aggregated for each public postsecondary education institution and tribal college to show:

- (i) the number of qualified students who received tuition scholarships and in the prior 12 month period;
  - (ii) the total number of qualified students enrolled in the prior 12-month period;
  - (iii) the amount of tuition scholarships funded by semester and the amount of tuition costs that were not offset by the tuition scholarship by semester; and
  - (iv) the number of qualified students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.
- [5.7.20.11 NMAC - Rp, 5.7.20.11 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 10/31/2017; A, 7/24/2018; A, 7/30/2019]

**HIGHER EDUCATION DEPARTMENT**

This is an amendment to 5.7.23 NMAC, Sections 7, 8, 9 and 10 effective 7/30/2019.

**5.7.23.7 DEFINITIONS:**

- ~~[A.]~~ **“Department”** means the New Mexico higher education department.
- ~~B.~~ **“Grant”** means the college affordability grant.
- ~~[C.]~~ **A. “Academic year”** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.
- ~~[D.]~~ **B. “Award recipient”** means a student awarded a college affordability grant.
- ~~C.~~ **“Department”** means the New Mexico higher education department.
- ~~[E.]~~ **D. “Eligible institution”** means any New Mexico public post-secondary institution or accredited tribal college.
- ~~E.~~ **“FAFSA”** means the free application for federal student aid.
- ~~F.~~ **“Grant”** means the college affordability grant.

~~G.~~ **“Half-time”** means an enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

~~H.~~ **“Returning adult”** means a student enrolling in a public post-secondary educational institution at any time later than the first semester following high school graduation or the award of a high-school equivalency credential recognized by the State of New Mexico.

~~[F.]~~ **I. “Satisfactory academic progress”** means maintaining the required academic progress toward degree completion as determined by the institution.

~~[G.]~~ **“Half-time”** means an enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

~~[H.]~~ **J. “Undergraduate student”** means a student who is enrolled in a degree-seeking program and has not earned his or her first baccalaureate degree.

~~[I.]~~ **“Returning adult”** means a student enrolling in a public post-secondary educational institution at any time later than the first semester following high school graduation or the award of a general educational development certificate.

~~J.~~ **“FAFSA”** means the free application for federal student aid.  
[5.7.23.7 NMAC - N, 12/31/2007; A, 5/30/2008; A, 7/30/2019]

**5.7.23.8 STUDENT ELIGIBILITY:**

- A.** First year eligibility. College affordability grants may be granted to an individual who:
  - (1) is a resident of New Mexico as defined in 5.7.18.9 NMAC or is eligible for the nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC;
  - (2) is enrolled at least half time as an undergraduate student at a New Mexico public college or university or tribal college;

(3) has demonstrated financial need as determined by the eligible college or university; and

(4) has completed a high school diploma or [general educational development (GED) diploma] high-school equivalency credential recognized by the State of New Mexico.

**B.** Students demonstrating a financial need shall:

- (1) complete the FAFSA;
- (2) have unmet need after all other financial aid has been awarded; and
- (3) may not be receiving any other state grants or scholarships.

**C.** Continuing eligibility. Grants may be renewed to an individual who:

- (1) maintains satisfactory academic progress;
- (2) remains enrolled for at least half- time status; and
- (3) continues to demonstrate financial need as determined by the college or university.

[5.7.23.8 NMAC - N, 12/31/2007; A, 5/30/2008; A, 7/30/2019]

**5.7.23.9 AMOUNT OF GRANT:**

**A.** Each grant award is for a period of one year and shall not exceed [~~\$1,000~~] one thousand five hundred dollars (\$1,500) per semester. The grant may be renewed on an annual basis or until the student graduates with a bachelor’s degree from an eligible institution.

**B.** Summer grants may be provided, if the amount thereof would not cause the two semester cumulative limit of [~~\$2,000~~] three thousand dollars (\$3,000) to be exceeded.

**C.** Transferability from institution to institution will be subject to available funding.

**D.** A leave of absence may be approved by the institution if extenuating circumstances exist for a period not to exceed one year.



E. Part-time awards will be pro-rated.

(1) Grants offered to students enrolled three-quarters time may not exceed [~~\$750~~] one thousand one hundred and twenty five dollars (\$1,125) per semester.

(2) Grants offered to students enrolled half-time may not exceed [~~\$500~~] seven hundred and fifty dollars (\$750) per semester. [5.7.23.9 NMAC - N, 12/31/200; A, 5/30/2008; A, 7/30/2019]

**5.7.23.10 ADMINISTRATION OF THE COLLEGE AFFORDABILITY GRANT:**

A. Eligible public colleges and universities shall:

(1) develop a method to notify students of their possible eligibility;

(2) designate an officer responsible for administering the program; the officer designated by the institution shall be responsible for determining initial and continuing student eligibility for the college affordability grant under the terms of these rules and regulations;

(3) provide an annual report to the department to include the number of grants, amount of grants awarded, number of grants renewed, and ethnicity and gender of students receiving the grant;

(4) enter into consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to greater facilitate the enrollment of students and to facilitate the student's participation in this program.

B. The department shall:

(1) allocate money to eligible colleges and universities based on a student need formula calculated according to income reported on the FAFSA and on the percentage of the institution's students classified as returning adults who are other wise ineligible for state financial aid;

(2) invest, through the state investment council, the appropriated funds, while transferring fifty percent of the

interest or at least [~~\$2,000,000~~] three million dollars (\$3,000,000) to the college affordability scholarship fund to provide for new awards;

(3) convene an annual meeting with the financial aid directors of eligible institutions to review the program; and

(4) conduct audits to ascertain compliance with rules and regulations.

C. At least a random audit of each participating institution's records shall take place on at least an annual basis by members of the department staff. If, during the audit process, evidence indicates that a student should not have received a scholarship, the institution will be held harmless for a semester payment, if the student's file is appropriately documented. The institution must notify the student of termination of their award, subject to continuing eligibility requirements.

[5.7.23.10 NMAC - N, 12/31/2007; A, 5/30/2008; A, 7/30/2019]

**HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION**

**This is an amendment to 8.200.410 NMAC, Section 18, effective 8/1/2019.**

**8.200.410.18 AUTOMATIC ENROLLMENT INTO MEDICARE PART B COVERAGE:**

A. Beginning August 1, 2019, HSD automatically enrolls into medicare part B individuals:

(1) who are active on a full medicaid or medicare savings program category of eligibility with the exception of the following categories:

(a) other adults (COE 100);

(b) newborn (COE 031);

(c) children, youth and families department medicaid categories (COEs 017, 037, 046, 047, 066, and 086);

(d) family planning (COE 029);

(e) pregnancy services (COE 301);

(f) refugee (COE 049 and 059);

(g) qualified disabled working individuals (COE 050);

(h) breast and cervical cancer (COE 052); and

(2) who are enrolled in medicare part A and eligible for and not enrolled in medicare part B.

B. HSD informs applicants and recipients in writing who may be eligible for automatic enrollment into medicare part B. HSD will automatically enroll eligible individuals into medicare part B regardless of whether general or open enrollment of medicare part B is allowed under federal law at the time an individual is approved for medicaid.

[8.200.410.18 NMAC - N, 8/1/2019]

**HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION**

**This is an amendment to 8.200.510 NMAC, Sections 11-15, effective 7/30/2019.**

**8.200.510.11 COMMUNITY SPOUSE RESOURCE**

**ALLOWANCE (CSRA):** The CSRA standard varies based on when the applicant or recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal MAP application. If institutionalization began:

A. Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

B. On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

**C.** On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

**D.** On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

**E.** On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

**F.** On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

**G.** On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

**H.** On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

**I.** On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

**J.** On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

**K.** On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

**L.** On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

**M.** On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

**N.** On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

**O.** On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

**P.** On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

**Q.** On or after January 1, 2005, the state minimum is \$31,290

and the federal maximum CSRA is \$95,100.

**R.** On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

**S.** On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

**T.** On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

**U.** On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

**V.** On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

**W.** On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

**X.** On or after January 1, 2012, the state minimum is \$31,290 and the federal maximum CSRA is \$113,640.

**Y.** On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.

**Z.** On or after January 1, 2014, the state minimum is \$31,290 and the federal maximum CSRA is \$117,240.

**AA.** On or after January 1, 2015, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

**BB.** On or after January 1, 2016, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

**CC.** On or after January 1, 2017, the state minimum is \$31,290 and the federal maximum CSRA is \$120,900.

**DD.** On or after January 1, 2018, the state minimum is \$31,290 and the federal maximum CSRA is \$123,600.

**EE.** On or after January 1, 2019, the state minimum is \$31,290 and the federal maximum CSRA is \$126,420.

[8.200.510.11 NMAC - Rp, 8.200.510.11 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019]

**8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):**

Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<b>DEDUCTION</b>	<b>AMOUNT</b>
<b>A.</b> Personal needs allowance for institutionalized spouse:	
<b>(1)</b> July 1, 2018	\$72
<b>(2)</b> July 1, 2017	\$70
<b>B.</b> Minimum monthly maintenance needs allowance (MMMNA):	
<b>(1)</b> July 1, 2018	\$2,058
<b>(2)</b> July 1, 2017	\$2,030
<b>C.</b> The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:	
<b>(1)</b> If allowable shelter expenses of the community spouse exceeds the minimum allowance then deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.	
July 1, 2018	<b>(a)</b> \$617
July 1, 2017	<b>(b)</b> \$609
<b>(2)</b> Excess shelter allowance may not exceed the maximum:	
July 1, 2018	<b>(a)</b> \$1,032
	<b>(b)</b>

Jan. 1, 2018	\$1,060
	<del>(c)</del>
July 1, 2017	\$993]
	<del>(a)</del>
Jan. 1, 2019	\$1,103
	<del>(b)</del>
July 1, 2018	\$1,032
	<del>(c)</del>
Jan. 1, 2018	\$1,060
	<del>(d)</del>
July 1, 2017	\$993

**D.** Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

**E.** Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).

**F.** Non-covered medical expenses.

**G.** The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed [~~\$3,090~~] **\$3,161**.

[8.200.510.12 NMAC - Rp, 8.200.510.12 NMAC, 7/1/2015; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019]

**8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS:** Costs of care are based on the date of application registration.

DATE	AVERAGE COST PER MONTH
<b>A.</b> July 1, 1988 - Dec. 31, 1989	\$1,726 per month
<b>B.</b> Jan. 1, 1990 - Dec. 31, 1991	\$2,004 per month
<b>C.</b> Jan. 1, 1992 - Dec. 31, 1992	\$2,217 per month
<b>D.</b> Effective July 1, 1993, for application register on or after Jan. 1, 1993	\$2,377 per month
<b>E.</b> Jan. 1, 1994 - Dec. 31, 1994	\$2,513 per month
<b>F.</b> Jan. 1, 1995 - Dec. 31, 1995	\$2,592 per month
<b>G.</b> Jan. 1, 1996 - Dec. 31, 1996	\$2,738 per month

<b>H.</b> Jan. 1, 1997 - Dec. 31, 1997	month	\$2,889 per
<b>I.</b> Jan. 1, 1998 - Dec. 31, 1998	month	\$3,119 per
<b>J.</b> Jan. 1, 1999 - Dec. 31, 1999	month	\$3,429 per
<b>K.</b> Jan. 1, 2000 - Dec. 31, 2000	month	\$3,494 per
<b>L.</b> Jan. 1, 2001 - Dec. 31, 2001	month	\$3,550 per
<b>M.</b> Jan. 1, 2002 - Dec. 31, 2002	month	\$3,643 per
<b>N.</b> Jan. 1, 2003 - Dec. 31, 2003	month	\$4,188 per
<b>O.</b> Jan. 1, 2004 - Dec. 31, 2004	month	\$3,899 per
<b>P.</b> Jan. 1, 2005 - Dec. 31, 2005	month	\$4,277 per
<b>Q.</b> Jan. 1, 2006 - Dec. 31, 2006	month	\$4,541 per
<b>R.</b> Jan. 1, 2007 - Dec. 31, 2007	month	\$4,551 per
<b>S.</b> Jan. 1, 2008 - Dec. 31, 2008	month	\$4,821 per
<b>T.</b> Jan. 1, 2009 - Dec. 31, 2009	month	\$5,037 per
<b>U.</b> Jan. 1, 2010 - Dec. 31, 2010	month	\$5,269 per
<b>V.</b> Jan. 1, 2011 - Dec. 31, 2011	month	\$5,774 per
<b>W.</b> Jan. 1, 2012 - Dec. 31, 2012	month	\$6,015 per
<b>X.</b> Jan. 1, 2013 - Dec. 31, 2013	month	\$6,291 per
<b>Y.</b> Jan. 1, 2014 - Dec. 31, 2014	month	\$6,229 per
<b>Z.</b> Jan. 1, 2015 - Dec. 31, 2015	month	\$6,659 per
<b>AA.</b> Jan. 1, 2016 - Dec.		

31, 2016	\$7,786 per
<b>BB.</b> Jan. 1, 2017 - Dec. 31, 2017	\$7,485 per
<b>CC.</b> Jan. 1, 2018 - Dec. 31, 2018	\$7,025 per
<b>DD.</b> Jan. 1, 2019	\$7,285 per

month  
[8.200.510.13 NMAC - Rp, 8.200.510.13 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019]

**8.200.510.14 RESOURCE AMOUNTS FOR SUPPLEMENTAL SECURITY INCOME (SSI) RELATED MEDICARE SAVINGS PROGRAMS (QMB, SLIMB/QI1 AND QD):** The following resource standards are inclusive of the \$1,500 per person burial exclusion.

<b>A.</b> Individual:	
<del>[(+) Jan. 1, 2018]</del>	<del>Jan. 1, 2019</del>
<del>[\$9,060]</del>	<b>\$9,230</b>
<del>[(2) Jan. 1, 2017]</del>	<del>2017</del>
	<b>\$8,890]</b>

<b>B.</b> Couple:	
<del>[(+) Jan. 1, 2018]</del>	<del>Jan. 1, 2019</del>
<del>[\$14,340]</del>	<b>\$14,600</b>
<del>[(2) Jan. 1, 2017]</del>	<del>2017</del>
	<b>\$14,090]</b>

[8.200.510.14 NMAC - Rp, 8.200.510.14 NMAC, 7/1/2015; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019]

**8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:**

<b>A.</b> Jan. 2019	
<del>[\$585,000]</del>	<del>[A:]</del>
<b>\$572,000</b>	<b>B.</b> Jan. 2018
<del>[\$560,000]</del>	<del>[B:]</del>
<b>\$560,000</b>	<b>C.</b> Oct. 2017
<del>[\$840,000]</del>	<del>[C:]</del>
<b>\$840,000</b>	<b>D.</b> Jan. 2017
<del>[\$828,000]</del>	<del>[D:]</del>
<b>\$828,000</b>	<b>E.</b> Jan. 2016

~~[E:] E.~~ Jan. 2015  
\$828,000  
~~[F:] G.~~ Jan. 2014  
\$814,000  
~~[G:] H.~~ Jan. 2013  
\$802,000  
~~[H:] I.~~ Jan. 2012  
\$786,000  
~~[I:] J.~~ Jan. 2011  
\$758,000  
~~[J:] K.~~ Jan. 2010  
\$750,000  
[8.200.510.15 NMAC - Rp,  
8.200.510.15 NMAC, 7/1/2015; A/E,  
1/1/2016; A/E, 3/1/2017; A, 3/1/18;  
A/E, 8/30/2018; A/E, 4/11/2019; A,  
7/30/2019]

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**This is an amendment to 8.200.520  
NMAC, Sections 11-13, 15, 16 and  
20, effective 7/30/2019.**

**8.200.520.11 FEDERAL  
POVERTY INCOME  
GUIDELINES:**

**A.** One hundred percent federal poverty limits (FPL):

group month	Size of budget FPL per
	1 [\$1,012]
\$1,041	2 [\$1,372]
\$1,410	3 [\$1,732]
\$1,778	4 [\$2,092]
\$2,146	5 [\$2,452]
\$2,515	6 [\$2,812]
\$2,883	7 [\$3,172]
\$3,251	

8  
[\$3,532]  
\$3,620  
Add [\$360]  
\$369 for each additional person in the budget group.  
\*Use only these two standards for the qualified medicare beneficiary (QMB) program.  
**B.** One hundred twenty percent FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient	Amount
Individual	At least [\$1,012] \$1,041 per month but no more than [\$1,214] \$1,249 per month.
Couple	At least [\$1,372] \$1,410 per month but no more than [\$1,646] \$1,691 per month.
For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.	
C. One hundred thirty-three percent FPL:	
group month	Size of budget FPL per
	1 [\$1,346]
\$1,385	2 [\$1,825]
\$1,875	3 [\$2,304]
\$2,365	4 [\$2,782]
\$2,854	5 [\$3,261]
\$3,344	6 [\$3,740]
\$3,834	7 [\$4,219]
\$4,324	

8  
[\$4,698]  
\$4,814  
Add [\$479] \$490  
for each additional person in the budget group.  
**D.** One hundred thirty-five percent FPL: This income level is used only in the determination of the maximum income limit for a qualified individual 1 (QI1) applicant or eligible recipient. For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:

Applicant or eligible recipient	Amount
Individual	At least [\$1,214] \$1,249 per month but no more than [\$1,366] \$1,406 per month.
Couple	At least [\$1,646] \$1,691 per month but no more than [\$1,852] \$1,903 per month.
<b>E.</b> One hundred eighty-five percent FPL:	
group month	Size of budget FPL per
	1 [\$1,872]
\$1,926	2 [\$2,538]
\$2,607	3 [\$3,204]
\$3,289	4 [\$3,870]
\$3,970	5 [\$4,536]
\$4,652	6 [\$5,202]
\$5,333	7 [\$5,868]
\$6,015	8 [\$6,534]
\$6,696	
	Add [\$666] \$681
	for each additional person in the budget group.

<p><b>F.</b> Two hundred percent FPL:</p> <p>group month</p> <p><u>\$2,082</u></p> <p><u>\$2,819</u></p> <p><u>\$3,555</u></p> <p><u>\$4,292</u></p> <p><u>\$5,029</u></p> <p><u>\$5,765</u></p> <p><u>\$6,502</u></p> <p><u>\$7,239</u></p> <p>Add [<del>\$720</del>] <u>\$737</u></p> <p>for each additional person in the budget group.</p> <p><b>G.</b> Two hundred thirty-five percent FPL:</p> <p>group month</p> <p><u>\$2,446</u></p> <p><u>\$3,312</u></p> <p><u>\$4,178</u></p> <p><u>\$5,043</u></p> <p><u>\$5,909</u></p> <p><u>\$6,774</u></p> <p><u>\$7,640</u></p>	<p>Size of budget FPL per</p> <p>1 [<del>\$2,024</del>]</p> <p>2 [<del>\$2,744</del>]</p> <p>3 [<del>\$3,464</del>]</p> <p>4 [<del>\$4,184</del>]</p> <p>5 [<del>\$4,904</del>]</p> <p>6 [<del>\$5,624</del>]</p> <p>7 [<del>\$6,344</del>]</p> <p>8 [<del>\$7,064</del>]</p> <p>Add [<del>\$720</del>] <u>\$737</u></p> <p>Size of budget FPL per</p> <p>1 [<del>\$2,378</del>]</p> <p>2 [<del>\$3,224</del>]</p> <p>3 [<del>\$4,070</del>]</p> <p>4 [<del>\$4,916</del>]</p> <p>5 [<del>\$5,762</del>]</p> <p>6 [<del>\$6,608</del>]</p> <p>7 [<del>\$7,454</del>]</p>
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<p><u>\$8,506</u></p> <p>for each additional person in the budget group.</p> <p><u>\$2,603</u></p> <p><u>\$3,523</u></p> <p><u>\$4,444</u></p> <p><u>\$5,365</u></p> <p><u>\$6,286</u></p> <p><u>\$7,207</u></p> <p><u>\$8,128</u></p> <p><u>\$9,048</u></p> <p>for each additional person in the budget group.</p> <p>[8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 8/28/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019]</p> <p><b>8.200.520.12 COST OF LIVING ADJUSTMENT (COLA) DISREGARD COMPUTATION:</b></p> <p>The countable social security benefit without the COLA is calculated using the COLA increase table as follows:</p> <p><b>A.</b> divide the current gross social security benefit by the COLA increase in the most current year; the result is the social security benefit before the COLA increase;</p> <p><b>B.</b> divide the result from Subsection A above by the</p>	<p>8 [<del>\$8,300</del>]</p> <p>Add [<del>\$846</del>] <u>\$866</u></p> <p>Two hundred fifty percent FPL:</p> <p>Size of budget FPL per</p> <p>1 [<del>\$2,530</del>]</p> <p>2 [<del>\$3,430</del>]</p> <p>3 [<del>\$4,330</del>]</p> <p>4 [<del>\$5,230</del>]</p> <p>5 [<del>\$6,130</del>]</p> <p>6 [<del>\$7,030</del>]</p> <p>7 [<del>\$7,930</del>]</p> <p>8 [<del>\$8,830</del>]</p> <p>Add [<del>\$900</del>] <u>\$920</u></p>
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COLA increase from the previous period or year; the result is the social security benefit before the increase for that period or year; and

**C.** repeat Subsection B above for each year, through the year that the applicant or eligible recipient received both social security benefits and supplemental security income (SSI); the final result is the countable social security benefit.

**Continued Next Page**

COLA Increase and disregard table			
	Period and year	COLA increase	= benefit before
<u>1</u>	<u>2019 Jan - Dec</u>	<u>2.8</u>	<u>Jan 19</u>
[1] <u>2</u>	2018 Jan - Dec	2.0	Jan 18
[2] <u>3</u>	2017 Jan - Dec	0.3	Jan 17
[3] <u>4</u>	2016 Jan - Dec	0	Jan 16
[4] <u>5</u>	2015 Jan - Dec	1.017	Jan 15
[5] <u>6</u>	2014 Jan - Dec	1.015	Jan 14
[6] <u>7</u>	2013 Jan - Dec	1.017	Jan 13
[7] <u>8</u>	2012 Jan - Dec	1.037	Jan 12
[8] <u>9</u>	2011 Jan - Dec	0	Jan 11
[9] <u>10</u>	2010 Jan - Dec	1	Jan 10
[10] <u>11</u>	2009 Jan - Dec	1	Jan 09
[11] <u>12</u>	2008 Jan - Dec	1.058	Jan 08
[12] <u>13</u>	2007 Jan - Dec	1.023	Jan 07
[13] <u>14</u>	2006 Jan - Dec	1.033	Jan 06
[14] <u>15</u>	2005 Jan - Dec	1.041	Jan 05
[15] <u>16</u>	2004 Jan - Dec	1.027	Jan 04
[16] <u>17</u>	2003 Jan - Dec	1.021	Jan 03
[17] <u>18</u>	2002 Jan - Dec	1.014	Jan 02
[18] <u>19</u>	2001 Jan - Dec	1.026	Jan 01
[19] <u>20</u>	2000 Jan - Dec	1.035	Jan 00
[20] <u>21</u>	1999 Jan - Dec	1.025	Jan 99
[21] <u>22</u>	1998 Jan - Dec	1.013	Jan 98
[22] <u>23</u>	1997 Jan - Dec	1.021	Jan 97
[23] <u>24</u>	1996 Jan - Dec	1.029	Jan 96
[24] <u>25</u>	1995 Jan - Dec	1.026	Jan 95
[25] <u>26</u>	1994 Jan - Dec	1.028	Jan 94
[26] <u>27</u>	1993 Jan - Dec	1.026	Jan 93
[27] <u>28</u>	1992 Jan - Dec	1.03	Jan 92
[28] <u>29</u>	1991 Jan - Dec	1.037	Jan 91
[29] <u>30</u>	1990 Jan - Dec	1.054	Jan 90
[30] <u>31</u>	1989 Jan - Dec	1.047	Jan 89
[31] <u>32</u>	1988 Jan - Dec	1.04	Jan 88
[32] <u>33</u>	1987 Jan - Dec	1.042	Jan 87

[33] 34	1986 Jan - Dec	1.013	Jan 86
[34] 35	1985 Jan - Dec	1.031	Jan 85
[35] 36	1984 Jan - Dec	1.035	Jan 84
[36] 37	1982 Jul - 1983 Dec	1.035	Jul 82
[37] 38	1981 Jul - 1982 Jun	1.074	Jul 81
[38] 39	1980 Jul - 1981 Jun	1.112	Jul 80
[39] 40	1979 Jul - 1980 Jun	1.143	Jul 79
[40] 41	1978 Jul - 1979 Jun	1.099	Jul 78
[41] 42	1977 Jul - 1978 Jun	1.065	Jul 77
[42] 43	1977 Apr - 1977 Jun	1.059	Apr 77

[8.200.520.12 NMAC - Rp, 8.200.520.12 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019]

#### 8.200.520.13 FEDERAL BENEFIT RATES (FBR) AND VALUE OF ONE-THIRD REDUCTION (VTR):

Year	Individual FBR	Institution FBR	Individual VTR	Couple FBR	Institution FBR	Couple VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/10 to 1/11	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/11 to 1/12	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/12 to 1/13	\$698	\$30	\$232.66	\$1,048	\$60	\$349.33
1/13 to 1/14	\$710	\$30	\$237	\$1,066	\$60	\$355
1/14 to 1/15	\$721	\$30	\$240	\$1082	\$60	\$361
1/15 to 12/15	\$733	\$30	\$244	\$1,100	\$60	\$367
1/16 to 12/16	\$733	\$30	\$244	\$1,100	\$60	\$367
1/17 to 12/17	\$735	\$30	\$245	\$1,103	\$60	\$368
1/18 to 12/18	\$750	\$30	\$250	\$1,125	\$60	\$375
1/19 to 12/19	\$771	\$30	\$257	\$1,157	\$60	\$386

- A. Ineligible child deeming allocation is [~~\$350.00~~] \$386.
- B. Part B premium is [~~\$134.00~~] \$135.50 per month.
- C. VTR (value of one third reduction) is used when an individual or a couple lives in the household of another and receives food and shelter from the household or when the individual or the couple is living on his or her own household but receiving support and maintenance from others.
- D. The SSI resource standard is \$2000 for an individual and \$3000 for a couple.

[8.200.520.13 NMAC - Rp,  
8.200.520.13 NMAC, 8/28/2015;  
A/E, 1/1/2016; A/E, 3/1/2017;  
A/E, 5/17/2018; A, 9/11/2018; A/E,  
4/11/2019; A, 7/30/2019]

**8.200.520.15 SUPPLEMENTAL SECURITY INCOME (SSI) LIVING ARRANGEMENTS:**

**A.** Individual living in his or her own household who own or rent:

Payment amount:  
[~~\$750~~] \$771 Individual  
[~~\$1,125~~] \$1,157 Couple

**B.** Individual receiving support and maintenance payments: For an individual or couple living in his or her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount:  
[~~\$750~~] \$771 - [~~\$250~~] \$257 = [~~\$500~~] \$514 Individual

[~~\$1,125~~] \$1,157 - [~~\$375~~] \$386 = [~~\$750~~] \$771 Couple

**C.** Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his or her pro-rata share of household expenses, subtract the VTR.

Payment amount:  
[~~\$750~~] \$771 - [~~\$250~~] \$257 = [~~\$500~~] \$514 Individual

[~~\$1,125~~] \$1,157 - [~~\$375~~] \$386 = [~~\$750~~] \$771 Couple

**D.** Child living in home with his or her parent:

Payment amount:  
[~~\$750~~] \$771

**E.** Individual in institution:  
Payment amount:  
\$30.00

[8.200.520.15 NMAC - Rp,  
8.200.520.15 NMAC, 8/28/2015;  
A/E, 3/1/2017; A/E, 5/17/2018;  
A, 9/11/2018; A/E, 4/11/2019; A,  
7/30/2019]

**8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER SERVICES (HCBS)**

**CATEGORIES:** Effective January 1, [~~2017~~] 2019, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$2,250~~] \$2,313.

[8.200.520.16 NMAC - Rp,  
8.200.520.16 NMAC, 8/28/2015;  
A/E, 3/1/2017; A/E, 5/17/2018;  
A, 9/11/2018; A/E, 4/11/2019; A,  
7/30/2019]

**8.200.520.20 COVERED QUARTER INCOME STANDARD:**

Date	Calendar
	Quarter Amount
<u>Jan. 2019 - Dec. 2019</u>	<u>\$1,360 per calendar</u>

quarter  
Jan. 2018 - Dec. 2018  
\$1,320 per calendar

quarter  
Jan. 2017 - Dec. 2017  
\$1,300 per calendar

quarter  
Jan. 2016 - Dec. 2016  
\$1,260 per calendar

quarter  
Jan. 2015 - Dec. 2015  
\$1,220 per calendar

quarter  
Jan. 2014 - Dec. 2014  
\$1,200 per calendar

quarter  
Jan. 2013 - Dec. 2013  
\$1,160 per calendar

quarter  
Jan. 2012 - Dec. 2012  
\$1,130 per calendar

quarter  
Jan. 2011 - Dec. 2011  
\$1,120 per calendar

quarter  
Jan. 2010 - Dec. 2010  
\$1,120 per calendar

quarter  
Jan. 2009 - Dec. 2009  
\$1,090 per calendar

quarter  
Jan. 2008 - Dec. 2008  
\$1,050 per calendar

quarter  
Jan. 2007 - Dec. 2007  
\$1,000 per calendar

quarter  
Jan. 2006 - Dec. 2006  
\$970 per calendar

quarter  
Jan. 2005 - Dec. 2005  
\$920 per calendar

quarter  
Jan. 2004 - Dec. 2004  
\$900 per calendar

quarter  
Jan. 2003 - Dec. 2003  
\$890 per calendar

quarter  
Jan. 2002 - Dec. 2002  
\$870 per calendar

quarter  
[8.200.520.20 NMAC - Rp,  
8.200.520.20 NMAC, 8/28/2015;  
A/E, 1/1/2016; A/E, 03/01/2017;  
A/E, 5/17/2018; A, 9/11/2018; A/E,  
4/11/2019; A, 7/30/2019]

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**HUMAN SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.291.430 NMAC, Section 10, effective 7/30/2019.

**8.291.430.10 FEDERAL POVERTY LEVEL (FPL):** This part contains the monthly federal poverty level table for use in determining monthly income standards for MAP categories of eligibility outlined in 8.291.400.10 NMAC:

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	[\$1,012] \$1,041	[\$1,346] \$1,385	[\$1,397] \$1,437	[\$1,923] \$1,978	[\$2,428] \$2,498	[\$2,530] \$2,603	[\$3,035] \$3,123
2	[\$1,372] \$1,410	[\$1,825] \$1,875	[\$1,893] \$1,945	[\$2,607] \$2,678	[\$3,292] \$3,382	[\$3,430] \$3,523	[\$4,115] \$4,228
3	[\$1,732] \$1,778	[\$2,304] \$2,365	[\$2,390] \$2,453	[\$3,291] \$3,378	[\$4,156] \$4,266	[\$4,330] \$4,444	[\$5,195] \$5,333
4	[\$2,092] \$2,146	[\$2,782] \$2,854	[\$2,887] \$2,962	[\$3,975] \$4,078	[\$5,020] \$5,150	[\$5,230] \$5,365	[\$6,275] \$6,438
5	[\$2,452] \$2,515	[\$3,261] \$3,344	[\$3,384] \$3,470	[\$4,659] \$4,777	[\$5,884] \$6,034	[\$6,130] \$6,286	[\$7,355] \$7,543
6	[\$2,812] \$2,883	[\$3,740] \$3,834	[\$3,881] \$3,978	[\$5,343] \$5,477	[\$6,748] \$6,918	[\$7,030] \$7,207	[\$8,435] \$8,648
7	[\$3,172] \$3,251	[\$4,219] \$4,324	[\$4,377] \$4,487	[\$6,027] \$6,177	[\$7,612] \$7,802	[\$7,930] \$8,128	[\$9,515] \$9,753
8	[\$3,532] \$3,620	[\$4,698] \$4,814	[\$4,874] \$4,995	[\$6,711] \$6,877	[\$8,476] \$8,686	[\$8,830] \$9,048	[\$10,595] \$10,858
+1	[\$360] \$369	[\$479] \$490	[\$497] \$508	[\$684] \$700	[\$864] \$884	[\$900] \$920	[\$1,080] \$1,105

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 11/16/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019]

<p><b>REGULATION AND LICENSING DEPARTMENT CHIROPRACTIC PRACTITIONERS</b></p>	<p>Temporary Licensure (filed 1/31/2006) and replace it with 16.4.2 NMAC, Temporary Licensure, adopted 7/10/2019 and effective 8/10/2019.</p>	<p>NMAC, Chiropractic Practitioners - Licensure Without Examination filed 12/15/2004 and replace it with 16.4.4 NMAC, Chiropractic Practitioners - Licensure Without Examination, adopted 7/10/2019 and effective 8/10/2019.</p>
<p>The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.1 NMAC, Chiropractic Practitioners - General Provisions filed 7/20/2012. The Board has decided to repeal 16.4.1 NMAC, Chiropractic Practitioners - General Provisions filed 7/20/2012 and replace it with 16.4.1 NMAC, Chiropractic Practitioners - General Provisions, adopted 7/10/2019 and effective 8/10/2019.</p>	<p>The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.3 NMAC, Requirements for Licensure filed 12/15/2004. The Board has decided to repeal 16.4.3 NMAC, Requirements for Licensure filed 12/15/2004 and replace it with 16.4.3 NMAC, Requirements for Licensure, adopted 7/10/2019 and effective 8/10/2019.</p>	<p>The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.5 NMAC, Criteria For Determination Of Equivalency To Council Of Chiropractic Education C.C.E. filed 7/20/2012. The Board has decided to repeal 16.4.5 NMAC, Criteria For Determination Of Equivalency To Council Of Chiropractic Education C.C.E. filed 7/20/2012 and replace it with 16.4.5 NMAC, Criteria For Determination Of Equivalency To Council Of Chiropractic Education C.C.E., adopted 7/10/2019 and effective 8/10/2019.</p>
<p>The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.2 NMAC, Temporary Licensure (filed 1/31/2006). The Board has decided to repeal 16.4.2 NMAC,</p>	<p>The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.4 NMAC, Chiropractic Practitioners - Licensure Without Examination filed 12/15/2004. The Board has decided to repeal 16.4.4</p>	

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.6 NMAC, Chiropractic Practitioners - Examinations filed 6/17/2008. The Board has decided to repeal 16.4.6 NMAC, Chiropractic Practitioners - filed 6/17/2008 and replace it with 16.4.6 NMAC, Chiropractic Practitioners - Examinations, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.7 NMAC, Chiropractic Practitioners - Impaired Practitioner Programs filed 12/15/2004. The Board has decided to repeal 16.4.7 NMAC, Chiropractic Practitioners - Impaired Practitioner Programs filed 12/15/2004 and replace it with 16.4.7 NMAC, Chiropractic Practitioners - Impaired Practitioner Programs, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.8 NMAC, Chiropractic Practitioners - Disciplinary Proceedings filed 1/31/2006. The Board has decided to repeal 16.4.8 NMAC, Chiropractic Practitioners - Disciplinary Proceedings filed 1/31/2006 and replace it with 16.4.8 NMAC, Chiropractic Practitioners - Disciplinary Proceedings filed 1/31/2006, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.9 NMAC, Chiropractic Practitioners - License Renewal Procedures filed 1/31/2006. The Board has decided to repeal 16.4.9 NMAC, Chiropractic Practitioners - License Renewal Procedures filed 1/31/2006 and replace it with 16.4.9 NMAC, Chiropractic Practitioners - License Renewal Procedures, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.10 NMAC, Continuing Education (filed 10/17/1997). The Board has decided to repeal 16.4.10 NMAC, Continuing Education (filed 10/17/1997) and replace it with 16.4.10 NMAC, Continuing Education, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.11 NMAC, Chiropractic Practitioners - Forfeiture Of License, filed 1/2/2015. The Board has decided to repeal 16.4.11 NMAC, Chiropractic Practitioners - Forfeiture Of License, filed 1/2/2015 and replace it with 16.4.11 NMAC, Chiropractic Practitioners - Forfeiture Of License, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.12 NMAC, Classification Of Chiropractic Licensure filed 1/31/2006. The Board has decided to repeal 16.4.12 NMAC, Classification Of Chiropractic Licensure filed 1/31/2006 and replace it with 16.4.12 NMAC, Classification Of Chiropractic Licensure, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.13 NMAC, Reinstatement Of Chiropractic Licensure filed 1/31/2006. The Board has decided to repeal 16.4.13 NMAC, Reinstatement Of Chiropractic Licensure filed 1/31/2006 and replace it with 16.4.13 NMAC, Reinstatement Of Chiropractic Licensure, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.14 NMAC, Management Of Medical Records filed 7/9/2008. The Board has decided to repeal 16.4.14

NMAC, Management Of Medical Records filed 7/9/2008 and replace it with 16.4.14 NMAC, Management Of Medical Records, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16 NMAC 4.16 Parental Responsibility Act Compliance filed 10/17/1997. The Board has decided to repeal 16 NMAC 4.16 Parental Responsibility Act Compliance filed 10/17/1997 and replace it with 16.4.16 NMAC Parental Responsibility Act Compliance, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16 NMAC 4.17, Supervision of Interns filed 12/15/2004. The Board has decided to repeal 16 NMAC 4.17, Supervision of Interns filed 12/15/2004 and replace it with 16.4.17 NMAC, Supervision of Interns, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.18 NMAC, Practice Procedures filed 12/15/2004. The Board has decided to repeal 16.4.18 NMAC, Practice Procedures filed 12/15/2004 and replace it with 16.4.18 NMAC, Practice Procedures, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16 NMAC 4.19, Chiropractic Assistants filed 10/17/1997. The Board has decided to repeal 16 NMAC 4.19, Chiropractic Assistants filed 10/17/1997 and replace it with 16.4.19 NMAC, Chiropractic Assistants, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing, 16.4.20 NMAC, Advertising filed

7/20/2012. The Board has decided to repeal 16.4.20 NMAC, Advertising filed 7/20/2012 and replace it with 16.4.20 NMAC, Advertising, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing 16.4.22 NMAC, Fees filed 7/20/2012. The Board has decided to repeal 16.4.22 NMAC, Fees filed 7/20/2012 and replace it with 16.4.22 NMAC, Fees, adopted 7/10/2019 and effective 8/10/2019.

The Regulation and Licensing Department - Chiropractic Board reviewed at its 6/21/2019 hearing 16.4.23 NMAC, Licensure for Military Service Members, Spouses and Veterans filed 1/2/2015. The Board has decided to repeal 16.4.23 NMAC, Licensure for Military Service Members, Spouses and Veterans filed 1/2/2015 and replace it with 16.4.23 NMAC, Licensure for Military Service Members, Spouses and Veterans, adopted 7/10/2019 and effective 8/10/2019.

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## REGULATION AND LICENSING DEPARTMENT CHIROPRACTIC PRACTITIONERS

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 4 CHIROPRACTIC PRACTITIONERS PART 1 GENERAL PROVISIONS

#### 16.4.1.1 ISSUING

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.  
[16.4.1.1 NMAC - Rp, 16.4.1.1 NMAC 8/10/2019]

**16.4.1.2 SCOPE:** All licensed chiropractic physicians.  
[16.4.1.2 NMAC - Rp, 16.4.1.2 NMAC 8/10/2019]

#### 16.4.1.3 STATUTORY

**AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-2, 61-4-4, 61-4-6, 61-4-12 and 61-4-13 NMSA 1978.  
[16.4.1.3 NMAC - Rp, 16.4.1.3 NMAC 8/10/2019]

#### 16.4.1.4 DURATION:

Permanent.  
[16.4.1.4 NMAC - Rp, 16.4.1.4 NMAC 8/10/2019]

#### 16.4.1.5 EFFECTIVE

**DATE:** August 10, 2019, unless a later date is cited at the end of a section.  
[16.4.1.5 NMAC - Rp, 16.4.1.5 NMAC 8/10/2019]

#### 16.4.1.6 OBJECTIVE:

To establish definitions, practicing without a license, annual registration displayed, duplicate license, change of address, advertising requirements and administrative fees. In doing so, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the board member to attend the meeting in person, and participation by such means shall constitute presence in person at the meeting. When a board member participates in a meeting by conference telephone or other similar communications equipment, each board member participating by telephone must be able to be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any board member who speaks during the meeting.  
[16.4.1.6 NMAC - Rp, 16.4.1.6 NMAC 8/10/2019]

#### 16.4.1.7 DEFINITIONS:

**A. "Advertising"**  
means any communication whatsoever, disseminated by any

means whatsoever, to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services.

**B. "Application for licensure"** applicants applying for licensure in New Mexico whether by examination or without examination must submit an application for licensure that will be provided by the board and available of the board site.

**C. "Application for licensure without examination"** applicants applying for licensure without examination are those who have held a chiropractic license in another jurisdiction.

**D. "Background findings"** the board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is a danger to patients or is guilty of violating any of the provisions of the Chiropractic Physicians Practice Act, the Uniform Licensing Act, Impaired Health Care Providers Act. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board shall formally accept the approval of the application at the next scheduled meeting.

**E. "Board"** means the New Mexico chiropractic board.

**F. "Chiropractic"**  
means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment

of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the prescription and administration of all natural agents in all forms to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or use of controlled or dangerous drugs, except as permitted by statute and corresponding regulation.

**G. “Chiropractic adjustment”** means the application of a precisely controlled force applied by hand or by mechanical device to a specific focal point on the anatomy for the purpose of creating a desired angular movement in the skeletal joint structures in order to eliminate or decrease interference with neural transmission or to correct or attempt to correct a vertebral subluxation using, as appropriate, short lever, high velocity, low amplitude line of correction force to achieve the desired angular movement or neuromuscular reflex response.

**H. “Chiropractic assistant”** means a person who practices under the on-premises supervision of a licensed chiropractic physician.

**I. “Chiropractic physician”** includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act.

**J. “Complaint/review committee”** an ad hoc committee established by the board to review all complaints and applicants with background findings. Complaint/review committee shall consist of one professional board member, one chiropractor with an active license for five years in New Mexico in good standing, the board’s executive director, board’s compliance

liaison, and board’s investigator. Recommendations regarding the complaints and licensure of the applicants will be given to the board at its next scheduled meeting.

**K. “Electronic signatures”** will be acceptable for applications submitted pursuant to Sections 14-16-1 through 14-16-19 NMSA 1978.

**L. “Impairment fee”** means: that in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an impairment fee to be set aside for the purpose of the impaired practitioners program.

**M. “Licensure by examination”** applicants applying for licensure by examination in New Mexico are those candidates for licensure that have never held a chiropractic license in any other jurisdiction.

**N. “Mobilization”** means a non-thrusting manual therapy involving movement of a joint within its physiological range of motion. Mobilization is a passive movement within the physiological joint space administered by a clinician for the purpose of increasing normalizing overall joint range of motion.

**O. “NBCE”** national board of chiropractic examiners.

**P. “PACE”** providers of approved continuing education.

**Q. “Pre-paid treatment plans”** include any agreement between a licensee and patient or prospective patient that includes payment or collection of money for treatment planned, anticipated or held in reserve to occur or potentially occur more than 14 days following the payment or collection of those monies.

**R. “Spinal manipulation or articular manipulation”** means the application of a direct thrust or leverage to move a joint of the spine or extremity articulation to the parapsycho-logic end range movement but without exceeding the limits of anatomical integrity.

**S. “Vertebral subluxation”** means a complex of

functional, structural or pathological articular changes, or combination thereof, that compromise articular junction, neural integrity and may adversely influence organ system function or general health and well-being.

[16.4.1.7 NMAC - Rp, 16.4.1.7 NMAC 8/10/2019]

**16.4.1.8 PRACTICING WITHOUT A LICENSE:** The practice of chiropractic without a license will constitute grounds to refuse an applicant the right to sit the examination or to be granted a license, and may be prosecuted as a misdemeanor as a first offense fourth degree felony for a second offense. [16.4.1.8 NMAC - Rp, 16.4.1.8 NMAC 8/10/2019]

**16.4.1.9 ANNUAL REGISTRATION DISPLAYED:** A copy of the license and certificate of annual registration shall at all times be displayed conspicuously in the office of the practitioner to whom it has been issued. [16.4.1.9 NMAC - Rp, 16.4.1.9 NMAC 8/10/2019]

**16.4.1.10 DUPLICATE LICENSE:** A duplicate license may be granted by the board to any practitioner upon proof of loss of the original license or an affidavit of need and payment of a fee as set forth in Subsection A of 16.4.1.13 NMAC. [16.4.1.10 NMAC - Rp, 16.4.1.10 NMAC 8/10/2019]

**16.4.1.11 CHANGE OF ADDRESS:** Any licensed chiropractor that changes their office or residence address must notify the board in writing within 15 days. [16.4.1.11 NMAC - Rp, 16.4.1.11 NMAC 8/10/2019]

**16.4.1.12 [RESERVED]**  
[16.4.1.12 NMAC - Rp, 16.4.1.12 NMAC 8/10/2019]

**16.4.1.13 [RESERVED]**  
[16.4.1.13 NMAC - Rp, 16.4.1.13 NMAC 8/10/2019]

**16.4.1.14 INSPECTION**

**OF PUBLIC RECORDS:** The board operates in compliance with the Inspection of Public Records Act Sections 14-2-1 through 14-2-12 NMSA 1978. The board administrator is the custodial of the board's records.

[16.4.1.14 NMAC - Rp, 16.4.1.14 NMAC 8/10/2019]

**16.4.1.15 MALPRACTICE**

**INSURANCE:** Chiropractic physicians shall maintain continuous malpractice insurance coverage in amounts equal to or greater than the amounts defined in the Medical Malpractice Act Paragraph (1) of Subsection A of 41-5-5 NMSA 1978. [16.4.1.15 NMAC - Rp, 16.4.1.15 NMAC 8/10/2019]

**16.4.1.16 PRE-PAID****TREATMENT PLANS:**

Chiropractic physicians accepting pre-payment for services planned but not yet delivered must:

**A.** Establish an escrow account to hold all pre-payment funds.

**(1)** Funds may be removed from the escrow account following the delivery of services in such amounts equal to the chiropractors usual and customary charges for like services with any discounted percentage contained in the pre-paid agreement for the contracted treatment plan.

**(2)** Funds received in advance of the day services are delivered must be deposited into the escrow account in a timely manner.

**B.** The patient's file must contain the proposed treatment plan including enumeration of all aspects of evaluation, management and treatment planned to therapeutically benefit the patient relative to the condition determined to be present and necessitating treatment.

**(1)** The patient's financial file must contain documents outlining any necessary procedures for refunding unused payment amounts in the event that

either the patient or the doctor discharge the others services or therapeutic association.

**(2)** The treatment plan in such cases were prepayment is contracted must contain beginning and ending dates and a proposed breakdown of the proposed treatment frequency, types of modalities and procedures included in the contracted treatment and methods of evaluating the patients progress or serial outcome assessment plan and method of recording or assessing patient satisfaction.

**C.** A contract for services and consent of treatment document must be maintained in the patient's file that specifies the condition for which the treatment plan is formulated, prognosis and alternate treatment options.

**D.** The chiropractic physician is responsible for providing all treatment appropriate and necessary to address and manage the condition including unforeseen exacerbations or aggravations, within the chiropractic physicians licensure, that may occur during the course of time for which the contract is active. This does not include alternative services procured by the patient or treatment by providers other than the treating chiropractor or those under the chiropractors direct supervision.

**E.** If nutritional products or other hard goods including braces, supports or patient aids are to be used during the proposed treatment plan the patient documents must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service and fee.

[16.4.1.16 NMAC - Rp, 16.4.1.16 NMAC 8/10/2019]

**HISTORY OF 16.4.1 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: BCE 69-1, Board Rules and Regulations, filed 9/30/1969. BCE 69-1, Rule 10, Relating to Unethical Advertising, filed 1/31/1972.

BCE 80-2, Relating to Unethical Advertising, filed 8/19/1980.

Rule 2-87, Practicing Without a License, filed 1/28/1987.

Rule 3-87, Annual Registration Displayed, filed 1/28/1987.

Rule 10-87, Advertisements, filed 1/28/1987.

Rule 4-87, Duplicate License, filed 1/28/1987.

Rule 6-87, Change of Address, filed 1/28/1987.

Rule 10-93 Advertising, filed 2/3/1993.

Rule 10-93 Advertising, filed 10/1/1993.

Rule 19-95, Administrative Fees, filed 2/20/1995.

Rule 19-95, Administrative Fees, filed 3/31/1995.

**History of Repealed Material:**

16.4.1 NMAC, Chiropractic Practitioners - General Provisions filed 7/20/2012, Repealed effective 8/10/2019.

**Other History:**

Rule 19-95, Administrative Fees (filed 3/31/1995) renumbered, reformatted, and amended to 16 NMAC 4.1, Chiropractic Practitioners, General Provisions, effective 11/16/1997. 16 NMAC 4.1, Chiropractic Practitioners, General Provisions (filed 10/17/1997) renumbered, reformatted, amended and replaced by 16.4.1 NMAC, Chiropractic Practitioners, General Provisions, effective 1/15/2005.

16.4.1 NMAC, Chiropractic Practitioners - General Provisions filed 7/20/2012 was replaced by 16.4.1 NMAC, Chiropractic Practitioners - General Provisions effective 8/10/2019.

**REGULATION AND  
LICENSING DEPARTMENT  
CHIROPRACTIC  
PRACTITIONERS**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 4 CHIROPRACTIC  
PRACTITIONERS  
PART 2 TEMPORARY  
LICENSURE**

**16.4.2.1 ISSUING**

**AGENCY:** New Mexico  
Chiropractic Board, PO Box 25101  
Santa Fe, New Mexico 87504.  
[16.4.2.1 NMAC - Rp, 16.4.2.1  
NMAC, 8/10/2019]

**16.4.2.2 SCOPE:** All  
applicants.

[16.4.2.2 NMAC - Rp, 16.4.2.2  
NMAC, 8/10/2019]

**16.4.2.3 STATUTORY**

**AUTHORITY:** These rules of  
practice and procedure govern the  
practice of chiropractic in New  
Mexico and are promulgated pursuant  
to and in accordance with the  
Chiropractic Physician Practice Act,  
Section 61-4-8 NMSA 1978.

[16.4.2.3 NMAC - Rp, 16.4.2.3  
NMAC, 8/10/2019]

**16.4.2.4 DURATION:**  
Permanent.

[16.4.2.4 NMAC - Rp, 16.4.2.4  
NMAC, 8/10/2019]

**16.4.2.5 EFFECTIVE**

**DATE:** August 10, 2019 unless  
a later date is cited at the end of a  
section.

[16.4.2.5 NMAC - Rp, 16.4.2.5  
NMAC, 8/10/2019]

**16.4.2.6 OBJECTIVE:** To  
provide requirements for the granting  
of a temporary license.

[16.4.2.6 NMAC - Rp, 16.4.2.6  
NMAC, 8/10/2019]

**16.4.2.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).

[16.4.2.7 NMAC - Rp, 16.4.2.7  
NMAC, 8/10/2019]

**16.4.2.8 [RESERVED]**

[16.4.2.8 NMAC - Rp, 16.4.2.8  
NMAC, 8/10/2019]

**16.4.2.9 PROVISIONS  
FOR EMERGENCY LICENSURE:**

**A.** Chiropractic  
physicians, currently licensed,  
actively practicing and in good  
standing and otherwise meeting  
the requirements for New Mexico  
licensure in a state in which a federal  
disaster has been declared, may be  
licensed in New Mexico during the  
four months or remainder of the  
current licensing year, whichever  
is greater, following the declared  
disaster at no cost upon satisfying the  
following requirements:

(1) receipt by  
the board of a completed application  
which has been signed and notarized  
and which is accompanied by proof  
of identity, which may include a  
copy of a driver's license, passport or  
other photo identification issued by a  
governmental entity;

(2) completion  
of all actions described in 16.4.4.8  
NMAC.

**B.** The board  
may waive any or all of the  
aforementioned requirements for  
licensure except those contained in  
Subsection A of 16.4.4.8 NMAC.

**C.** The board may  
waive the specific forms required  
under 16.4.4.8 NMAC if the applicant  
is unable to obtain documentation  
from the federal declared disaster  
areas.

**D.** Nothing in this  
section shall constitute a waiver of the  
requirements for licensure contained  
in 16.4.4.8 NMAC.

**E.** Licensed issued  
under Provisions for Emergency  
Licensure shall expire on July 1 or the  
date 160 days following the issuance  
of emergency licensure whichever is  
greater, unless the board approves a  
renewal application. Application for  
renewal shall be made on or before  
the expiration of the emergency  
license to avoid late renewal fees, by  
completion of any and all remaining  
procedures described in 16.4.4.8  
NMAC.

[16.4.2.9 NMAC - Rp, 16.4.2.9  
NMAC, 8/10/2019]

**16.4.2.10 EMERGENCY  
LICENSE TERMINATION:**

**A.** The emergency  
license shall terminate upon the  
following circumstances:

(1) the  
issuance of a permanent license under  
16.4.4 NMAC;

(2) proof  
that the emergency license holder  
has engaged in fraud, deceit, or  
misrepresentation in procuring or  
attempting to procure a license under  
this section;

(3) expiration  
as defined in Subsection E of 16.4.2.9  
NMAC;

(4) the results  
of the background check indicate  
negative findings.

**B.** Termination of an  
emergency license shall not preclude  
application for permanent licensure.  
[16.4.2.10 NMAC - Rp, 16.4.2.10  
NMAC, 8/10/2019]

**HISTORY OF 16.4.2 NMAC:**

**Pre-NMAC History:** The material  
in this part was derived from that  
previously filed with the State  
Records Center and Archives under:  
BCE 69-1, Board Rules and  
Regulations, filed 9/30/1969.  
Rule 1-87, Temporary Licensure, filed  
1/28/1987.  
Rule 1-95, Temporary Licensure, filed  
2/20/1995.

**History of Repealed Material:**

16.4.2 NMAC, Temporary Licensure  
filed 1/31/2006, Repealed effective  
8/10/2019.

**Other History:**

Rule 1-95, Temporary Licensure  
(filed 2/20/1995) was reformatted,  
renumbered, amended and replaced  
by 16 NMAC 4.2 NMAC, Temporary  
Licensure, effective 11/16/1997.  
16 NMAC 4.2 NMAC, Temporary  
Licensure (filed 10/17/1997) was  
reformatted, renumbered, amended  
and replaced by 16.4.2 NMAC,  
Temporary Licensure, effective  
3/15/2006.

16.4.2 NMAC, Temporary Licensure filed 1/31/2006 was replaced by 16.4.2 NMAC, Temporary Licensure effective 8/10/2019.

**REGULATION AND  
LICENSING DEPARTMENT  
CHIROPRACTIC  
PRACTITIONERS**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 4 CHIROPRACTIC  
PRACTITIONERS  
PART 3 REQUIREMENTS  
FOR LICENSURE**

**16.4.3.1 ISSUING**

**AGENCY:** New Mexico  
Chiropractic Board, PO Box 25101,  
Santa Fe, New Mexico 87504.  
[16.4.3.1 NMAC - Rp, 16.4.3.1  
NMAC, 8/10/2019]

**16.4.3.2 SCOPE:**

Chiropractors for licensure who must take a licensing examination for the state of New Mexico.  
[16.4.3.2 NMAC - Rp, 16.4.3.2  
NMAC, 8/10/2019]

**16.4.3.3 STATUTORY**

**AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections Subsection G of 61-4-3 and 61-4-4 NMSA 1978.  
[16.4.3.1 NMAC - Rp, 16.4.3.1  
NMAC, 8/10/2019]

**16.4.3.4 DURATION:**

Permanent.  
[16.4.3.1 NMAC - Rp, 16.4.3.1  
NMAC, 8/10/2019]

**16.4.3.5 EFFECTIVE**

**DATE:** August 10, 2019 unless a later date is cited at the end of a section.  
[16.4.3.1 NMAC - Rp, 16.4.3.1  
NMAC, 8/10/2019]

**16.4.3.6 OBJECTIVE:** To outline the documents necessary for candidates who must complete the application process for examination.  
[16.4.3.1 NMAC - Rp, 16.4.3.1  
NMAC, 8/10/2019]

**16.4.3.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).  
[16.4.3.1 NMAC - Rp, 16.4.3.1  
NMAC, 8/10/2019]

**16.4.3.8 APPLICATION  
FOR LICENSURE:**

**A.** The board shall recognize successful completion of all parts of the examination conducted by the national board of chiropractic examiners. If the applicant has not completed all IV parts and physiotherapy of the national board of examiner then the New Mexico chiropractic board shall examine each applicant in the act of chiropractic adjusting, procedures and methods as shall reveal the applicant's qualifications. The board may waive the requirements for the board administered examination and request proof of satisfactory completion of any missing exam conducted by the national board of chiropractic examiners at the time of the applicant's graduation from chiropractic college. The applicant must also complete the state jurisprudence exam with a score of at least seventy five percent. No application for licensure under the Chiropractic Physician Practice Act, Sections 61-4-1 through 61-4-17 NMSA 1978, shall be deemed complete until the board's administrator certifies that the application contains all of the following:

- (1) a completed application form;
- (2) a nonrefundable application fee of \$350.00 payable by cashier's check or money order;
- (3) letter size, copy of original chiropractic diploma;
- (4) 2" x 2" photograph attached to the application;

(5)

transcript from the national board of chiropractic examiners (parts I, II, III, IV and physiotherapy exam), demonstration a passing score;

(6) all

transcripts must be sent directly from each agency to the New Mexico board;

(7) verification

of licensure and good standing in any state where the applicant holds a current or inactive license must be sent directly from a state licensing agency to the New Mexico board;

(8) the

applicant has had no disciplinary action imposed, or criminal convictions, applicant agrees to a national practitioners databank, a federation of chiropractic licensing boards background check, and will sign a criminal record releases.

**B.** All applications deemed completed by the board's administer shall be forwarded to the board's licensing committee with all the supporting information related to the applications. After review of the applications and supporting information the committee shall submit their recommendations to the board for consideration.

**C.** No applicant shall be reviewed for approval until the application is complete.

**D.** If an applicant does not meet the minimal requirements as set forth above, applicant may, at the discretion of the board, be required to take and pass part I, II, III, IV, physiotherapy exam, other NBCE specialty examination or the special purpose examination (SPEC) of the national boards, or any combination thereof.

**E.** The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources.  
[16.4.3.1 NMAC - Rp, 16.4.3.1  
NMAC, 8/10/2019]

**HISTORY OF 16.4.3 NMAC:**

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

Records Center and Archives under:  
 Rule 7-87, Application for Licensure,  
 filed 1/28/1987.  
 Rule 7-89, Application for Licensure,  
 filed 4/26/1989.  
 Rule 7-91, Application for Licensure,  
 filed 8/6/1991.  
 Rule 7-93, Application for Licensure,  
 filed 1/13/1993.

**History of Repealed Material:**  
 16.4.3 NMAC - Requirements for  
 Licensure filed 12/15/2004, Repealed  
 effective 8/10/2019.

**Other History:**  
 Rule 7-93, Application for Licensure  
 (filed 1/13/1993) renumbered,  
 reformatted, and amended to  
 16 NMAC 4.3, Chiropractic  
 Practitioners, Requirements for  
 Licensure by Examination, effective  
 11/16/1997.  
 16 NMAC 4.3, Requirements for  
 Licensure by Examination (filed  
 10/17/1997) renumbered, reformatted,  
 amended and replaced by 16.4.3  
 NMAC, Requirements for Licensure  
 by Examination, effective 1/15/2005.  
 16.4.3 NMAC - Requirements  
 for Licensure filed 12/15/2004  
 was replaced by 16.4.3 NMAC -  
 Requirements for Licensure effective  
 8/10/2019.

**REGULATION AND  
 LICENSING DEPARTMENT  
 CHIROPRACTIC  
 PRACTITIONERS**

**TITLE 16 OCCUPATIONAL  
 AND PROFESSIONAL  
 LICENSING  
 CHAPTER 4 CHIROPRACTIC  
 PRACTITIONERS  
 PART 4 LICENSURE  
 WITHOUT EXAMINATION**

**16.4.4.1 ISSUING**  
**AGENCY:** New Mexico  
 Chiropractic Board, PO Box 25101,  
 Santa Fe, New Mexico 87504.  
 [16.4.4.1 NMAC - Rp, 16.4.4.1  
 NMAC 8/10/2019]

**16.4.4.2 SCOPE:**  
 Applicants for licensure as a

chiropractic physician without  
 examination.  
 [16.4.4.2 NMAC - Rp, 16.4.4.2  
 NMAC 8/10/2019]

**16.4.4.3 STATUTORY  
 AUTHORITY:** These rules of  
 practice and procedure govern the  
 practice of chiropractic in New  
 Mexico and are promulgated pursuant  
 to and in accordance with the  
 Chiropractic Physician Practice Act,  
 Section 61-4-8 NMSA 1978.  
 [16.4.4.3 NMAC - Rp, 16.4.4.3  
 NMAC 8/10/2019]

**16.4.4.4 DURATION:**  
 Permanent.  
 [16.4.4.4 NMAC - Rp, 16.4.4.4  
 NMAC 8/10/2019]

**16.4.4.5 EFFECTIVE  
 DATE:** August 10, 2019, unless  
 a later date is cited at the end of a  
 section.  
 [16.4.4.5 NMAC - Rp, 16.4.4.5  
 NMAC 8/10/2019]

**16.4.4.6 OBJECTIVE:** To  
 establish requirements for licensure  
 without examination.  
 [16.4.4.6 NMAC - Rp, 16.4.4.6  
 NMAC 8/10/2019]

**16.4.4.7 DEFINITIONS:**  
 (Refer to 16.4.1 NMAC).  
 [16.4.4.7 NMAC - Rp, 16.4.4.7  
 NMAC 8/10/2019]

**16.4.4.8 LICENSURE:**  
**A.** In accordance  
 with Section 61-4-8 NMSA 1978,  
 of the New Mexico Chiropractic  
 Physician Practice Act, the board  
 may, at its discretion, issue licenses to  
 practice chiropractic in New Mexico  
 to doctors who provide evidence  
 of meeting the following minimal  
 requirements:

**(1)** is of good  
 moral character and has maintained an  
 active practice for at least seven of the  
 last ten years prior to the filing of the  
 application as a doctor of chiropractic  
 in another state, territory, country or  
 foreign jurisdiction whose licensure  
 requirements are equal to or exceed  
 those of New Mexico; and

**(a)**  
 has a doctor of chiropractic diploma  
 from a council on chiropractic  
 education accredited or board  
 accepted equivalent chiropractic  
 college;

**(b)**  
 for those who have served in the  
 military services of the United States  
 for two years or more within one year  
 prior to application, two of the seven  
 out of 10 years of active practice  
 required can be substituted for and;

**(c)**  
 is an applicant showing evidence  
 of having passed all examinations  
 conducted by the NBCE that were in  
 effect at the time of graduation from  
 chiropractic college;

**(2)** has had  
 no disciplinary action imposed, nor  
 criminal convictions entered against  
 any chiropractic license the applicant  
 held or holds; applicant agrees to a  
 national practitioners databank and  
 a federation of chiropractic licensing  
 boards background check;

**(3)** can attest  
 that the applicant has never been  
 found guilty of any action which, had  
 it been committed in New Mexico,  
 would be grounds for disciplinary  
 action against the license;

**(4)** provides  
 national board transcripts that have  
 been sent directly from each agency  
 to the board.

**B.** Applicant  
 must complete application for  
 licensure without examination,  
 pay nonrefundable application fee  
 of \$350.00, pay a licensing fee of  
 \$350.00 once applicant is accepted  
 for licensure, and should meet all  
 other applicable requirements of New  
 Mexico statutes pertaining to the  
 practice of chiropractic and all other  
 applicable provisions of the board's  
 rules. The applicant will be required  
 to complete the jurisprudence exam  
 with a score of at least 75 percent.

**C.** If an applicant does  
 not meet the minimal requirements  
 of 61-4-8.B NMSA 1978, applicant  
 may at the discretion of the board, be  
 required to take and pass part I, II,  
 III or IV, or physiologic therapeutics  
 or the special purpose examination



(SPEC) of the national boards or request to be placed on the agenda at the next scheduled board meeting.

**D.** Upon receipt of a completed application, including all required documentation as set forth in Subsection A of 16.4.3.8 NMAC and fees, as stated in Subsection B of 16.4.4.8 NMAC the board administrator or the delegate of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.

**E.** The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. [16.4.4.8 NMAC - Rp, 16.4.4.8 NMAC 8/10/2019]

**HISTORY OF 16.4.4 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 17-95, Licensure By Endorsement, filed 2/20/1995.

**History of Repealed Material:**

16.4.4 NMAC, Licensure Without Examination filed 12/15/2004, Repealed effective 8/10/2019.

**Other History:**

Rule 17-95, Licensure By Endorsement (filed 2/20/1995) was renumbered, reformatted and replaced by 16 NMAC 4.4, Licensure By Endorsement, effective 11/16/1997. 16 NMAC 4.4, Licensure By Endorsement (filed 10/17/1997) was renumbered, reformatted, amended and replaced by 16.4.4 NMAC, Licensure By Endorsement, effective 1/15/2005. 16.4.4 NMAC, Licensure Without Examination filed 12/15/2004 was replaced by 16.4.4 NMAC, Licensure Without Examination, effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 4 CHIROPRACTIC PRACTITIONERS  
PART 5 CRITERIA FOR DETERMINATION OF EQUIVALENCY TO COUNCIL OF CHIROPRACTIC EDUCATION C.C.E.**

**16.4.5.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504. [16.4.5.1 NMAC - Rp, 16.4.5.1 NMAC 8/10/2019]

**16.4.5.2 SCOPE:** All chiropractic physicians.

[16.4.5.2 NMAC - Rp, 16.4.5.2 NMAC 8/10/2019]

**16.4.5.3 STATUTORY**

**AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-5 NMSA 1978.

[16.4.5.3 NMAC - Rp, 16.4.5.3 NMAC 8/10/2019]

**16.4.5.4 DURATION:**

Permanent. [16.4.5.4 NMAC - Rp, 16.4.5.4 NMAC 8/10/2019]

**16.4.5.5 EFFECTIVE**

**DATE:** August 10, 2019 unless a later date is cited at the end of a section.

[16.4.5.5 NMAC - Rp, 16.4.5.5 NMAC 8/10/2019]

**16.4.5.6 OBJECTIVE:**

To establish C.C.E. equivalency standards for chiropractic colleges. [16.4.5.6 NMAC - Rp, 16.4.5.6 NMAC 8/10/2019]

**16.4.5.7 DEFINITIONS:**

Refer to 16.4.1.7 NMAC. [16.4.5.7 NMAC - Rp, 16.4.5.7 NMAC 8/10/2019]

**16.4.5.8 CRITERIA FOR DETERMINATION OF EQUIVALENCY TO C.C.E.:**

Any chiropractic college that is not accredited by the council of chiropractic education (C.C.E.) must have:

**A.** recognition of the program by the Canadian, European or Australasian councils on chiropractic education; and

**B.** any other chiropractic accrediting bodies that the board may determine to be equivalent to the C.C.E. - USA; and

**C.** clinical competencies equal to or greater than those of C.C.E.

[16.4.5.8 NMAC - Rp, 16.4.5.8 NMAC 8/10/2019]

**HISTORY OF 16.4.5 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 14-93, Criteria For Determination Of Equivalency To C.C.E., filed 1/13/1993.

**History of Repealed Material:**

16.4.5 NMAC, Criteria For Determination Of Equivalency To Council Of Chiropractic Education C.C.E., filed 7/20/2012, Repealed effective 8/10/2019.

**Other History:**

16.4.5 NMAC, Criteria For Determination Of Equivalency To Council Of Chiropractic Education C.C.E. filed 7/20/2012 was replaced by 16.4.5 NMAC, Criteria For Determination Of Equivalency To Council Of Chiropractic Education C.C.E., effective 8/10/2019.

**REGULATION AND  
LICENSING DEPARTMENT  
CHIROPRACTIC  
PRACTITIONERS**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 4 CHIROPRACTIC  
PRACTITIONERS  
PART 6 EXAMINATIONS**

**16.4.6.1 ISSUING**

**AGENCY:** New Mexico  
Chiropractic Board, PO Box 25101,  
Santa Fe, New Mexico 87504.  
[16.4.6.1 NMAC - Rp, 16.4.6.1  
NMAC 8/10/2019]

**16.4.6.2 SCOPE:**

Chiropractic applicants who apply for  
licensure by examination.  
[16.4.6.2 NMAC - Rp, 16.4.6.2  
NMAC 8/10/2019]

**16.4.6.3 STATUTORY**

**AUTHORITY:** These rules of  
practice and procedure govern the  
practice of chiropractic in New  
Mexico and are promulgated pursuant  
to and in accordance with the  
Chiropractic Physician Practice Act,  
Section 61-4-6.B NMSA 1978.  
[16.4.6.3 NMAC - Rp, 16.4.6.3  
NMAC 8/10/2019]

**16.4.6.4 DURATION:**

Permanent.  
[16.4.6.4 NMAC - Rp, 16.4.6.4  
NMAC 8/10/2019]

**16.4.6.5 EFFECTIVE**

**DATE:** August 10, 2019, unless  
a later date is cited at the end of a  
section.  
[16.4.6.5 NMAC - Rp, 16.4.6.5  
NMAC 8/10/2019]

**16.4.6.6 OBJECTIVE:** To

establish procedures that applicants  
for examination must follow.  
[16.4.6.6 NMAC - Rp, 16.4.6.6  
NMAC 8/10/2019]

**16.4.6.7 DEFINITIONS:**

Refer to 16.4.1.7 NMAC.  
[16.4.6.7 NMAC - Rp, 16.4.6.7  
NMAC 8/10/2019]

**16.4.6.8 EXAMINATIONS:**

The Chiropractic Physician Practice  
Act provides that the board shall  
examine candidates for licensure  
in the act of chiropractic adjusting,  
producers and methods as shall  
reveal the applicant's qualifications;  
provided that the board may  
waive the requirements for the  
board administered examination  
upon satisfactory completion of  
the examination conducted by  
the national board of chiropractic  
examiners. The board will accept  
successful completion of all parts  
of the examination conducted by  
the national board of chiropractic  
examiners.

**A.** National boards:  
an applicant for licensure by  
examination must have passed the  
national board exams I, II, III, and  
IV and physiotherapy conducted by  
the national board of chiropractic  
examiners with a passing score  
required by the national board of  
chiropractic examiners.

**B.** Jurisprudence  
exam: all licensure applicants  
must successfully pass the board's  
jurisprudence exam.

**(1)**

The applicant will receive the  
jurisprudence examination with  
instructions from the board office  
after the board receives both the  
application and the application fees.

**(2)**

To complete the jurisprudence  
examination, the applicant will use  
the statutes and rules and regulations  
of the board.

**(3)** The

applicant must pass the jurisprudence  
exam with a minimum score of 75%.

**(4)** Applicants

may retake the examination as many  
times necessary to achieve a passing  
grade.

**(5)** The

jurisprudence examination may be  
developed for on-line access and  
available through the board web site.  
[16.4.6.8 NMAC - Rp, 16.4.6.8  
NMAC 8/10/2019]

**HISTORY OF 16.4.6 NMAC:**

**Pre-NMAC History:** The material

in this part was derived from that  
previously filed with the State  
Records Center and Archives under:  
Rule 8-87, Examinations, filed  
1/28/1987.

**History of Repealed Material:**

16.4.6 NMAC, Examinations filed  
6/17/2008, Repealed effective  
8/10/2019.

**Other History:**

Rule 8-87, Examinations, (filed  
1/28/1987) renumbered, reformatted,  
and amended to 16 NMAC  
4.6, Chiropractic Practitioners,  
Examinations, effective 11/16/1997.  
16 NMAC 4.6, Chiropractic  
Practitioners, Examinations, (filed  
10/17/1997) renumbered, reformatted,  
amended and replaced by 16.4.6  
NMAC, Chiropractic Practitioners,  
Examinations, effective 07/17/2008.  
16.4.6 NMAC, Examinations filed  
6/17/2008 was replaced by 16.4.6  
NMAC, Examinations effective  
8/10/2019.

**REGULATION AND  
LICENSING DEPARTMENT  
CHIROPRACTIC  
PRACTITIONERS**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 4 CHIROPRACTIC  
PRACTITIONERS  
PART 7 IMPAIRED  
PRACTITIONER PROGRAMS**

**16.4.7.1 ISSUING**

**AGENCY:** New Mexico  
Chiropractic Board, PO Box 25101,  
Santa Fe, New Mexico 87504.  
[16.4.7.1 NMAC - Rp, 16.4.7.1  
NMAC 8/10/2019]

**16.4.7.2 SCOPE:** All

licensed chiropractic physicians.  
[16.4.7.2 NMAC - Rp, 16.4.7.2  
NMAC 8/10/2019]

**16.4.7.3 STATUTORY**

**AUTHORITY:** These rules of  
practice and procedure govern the  
practice of chiropractic in New

Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, (Sections 61-4-1 through 17 NMSA 1978).

[16.4.7.3 NMAC - Rp, 16.4.7.3 NMAC 8/10/2019]

**16.4.7.4 DURATION:**

Permanent.

[16.4.7.4 NMAC - Rp, 16.4.7.4 NMAC 8/10/2019]

**16.4.7.5 EFFECTIVE**

**DATE:** August 10, 2019, unless a later date is cited at the end of a section.

[16.4.7.5 NMAC - Rp, 16.4.7.5 NMAC 8/10/2019]

**16.4.7.6 OBJECTIVE:** To

clarify the procedures identified in the Impaired Health Care Provider Act.

[16.4.7.6 NMAC - Rp, 16.4.7.6 NMAC 8/10/2019]

**16.4.7.7 DEFINITIONS:**

**A.** Impaired physicians programs is defined as programs that protect the public and educate the chiropractic physicians.

**B.** Programs may monitor, educate and intercede in the prevention and treatment of chiropractic physicians impaired or at risk of impairment.

**C.** All impairment fees received shall be designated for these programs.

[16.4.7.7 NMAC - Rp, 16.4.7.7 NMAC 8/10/2019]

**16.4.7.8 COMPLAINTS:**

Anyone may file a complaint with the board if they have reasonable cause to believe a chiropractor is impaired by:

**A.** mental illness;

**B.** physical illness,

including but not limited to deterioration through the aging process or loss of motor skills;

**C.** habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act; or

**D.** habitual or excessive use or abuse of alcohol.

[16.4.7.8 NMAC - Rp, 16.4.7.8 NMAC 8/10/2019]

**16.4.7.9 PROCESS:**

Complaints received in the board office that allege impaired practice will be processed in the following manner, unless there are exceptional circumstances which require the board to consider the complaint without referral to the complaint committee because of a potential threat to the health or safety of the licensee or patients.

**A.** The complaint committee of the board shall review the complaint to determine if the board has jurisdiction over the matter and if the complaint may have merit.

**B.** The complaint committee may conduct a preliminary investigation to determine if the allegations in the complaint are supported by facts.

**C.** Upon completion of the review and or investigation, the complaint committee shall submit its recommendations to the board.

**D.** The board shall determine if an examination to ascertain impaired practice is required.

[16.4.7.9 NMAC - Rp, 16.4.7.9 NMAC 8/10/2019]

**16.4.7.10 DISCIPLINARY**

**ACTION:** No action or investigation or proceedings under the Impaired Health Care Provider Act (61-7-1 through 12 NMSA 1978) precludes the board from investigating or acting simultaneously, in its sole discretion, under the Chiropractic Physician Practice Act (61-4-1 through 17 NMSA 1978).

[16.4.7.10 NMAC - Rp, 16.4.7.10 NMAC 8/10/2019]

**History of 16.4.7 NMAC:** 16.4.7 NMAC, Impaired Practitioner Programs filed 12/15/2004, Repealed effective 8/10/2019.

**Other History:** 16.4.7 NMAC, Impaired Practitioner Programs filed 12/15/2004 was replaced by 16.4.7 NMAC, Impaired Practitioner Programs effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC  
PRACTITIONERS**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING**

**CHAPTER 4 CHIROPRACTIC  
PRACTITIONERS**

**PART 8 DISCIPLINARY  
PROCEEDINGS**

**16.4.8.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.8.1 NMAC - Rp, 16.4.8.1 NMAC 8/10/2019]

**16.4.8.2 SCOPE:** The

provisions of 16.4.8 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a chiropractor licensed by the board.

[16.4.8.2 NMAC - Rp, 16.4.8.2 NMAC 8/10/2019]

**16.4.8.3 STATUTORY**

**AUTHORITY:** 16.4.8 NMAC is promulgated pursuant to the Chiropractic Physician Practice Act, NMSA 1978, Section 61-4-10.

[16.4.8.3 NMAC - Rp, 16.4.8.3 NMAC 8/10/2019]

**16.4.8.4 DURATION:**

Permanent.

[16.4.8.4 NMAC - Rp, 16.4.8.4 NMAC 8/10/2019]

**16.4.8.5 EFFECTIVE**

**DATE:** August 10, 2019, unless a later date is cited at the end of a section.

[16.4.8.5 NMAC - Rp, 16.4.8.5 NMAC 8/10/2019]

**16.4.8.6 OBJECTIVE:** To

establish the procedures for filing complaints against licensees and applicants, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee

which are considered incompetent or unprofessional practice.

[16.4.8.6 NMAC - Rp, 16.4.8.6 NMAC 8/10/2019]

**16.4.8.7 DEFINITIONS:**  
[RESERVED]

**16.4.8.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and complaint/review committee. Any hearing held pursuant to the complaint shall conform to the provisions of the Uniform Licensing Act, the Chiropractic Physician Practice Act, and the Impaired Practitioners Act. [16.4.8.8 NMAC - Rp, 16.4.8.8 NMAC 8/10/2019]

**16.4.8.9 ACTIONS:**

**A.** The board may penalize, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the Chiropractic Physician Practice Act, the Uniform Licensing Act, the Impaired Healthcare Care Providers Act, these Rules, or discipline imposed by other governing bodies.

**B.** The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the act or rules.

**C.** The board may at its discretion hire investigators to investigate complaints made to the board regarding chiropractic physicians.

**D.** Licensees shall bear all costs of disciplinary proceedings unless exonerated.

[16.4.8.9 NMAC - Rp, 16.4.8.9 NMAC 8/10/2019]

**16.4.8.10 GUIDELINES:**

The board shall use the following as guidelines for disciplinary action.

**A. “Gross incompetence”** or “gross negligence” means, but shall not be limited to, a significant departure from the

prevailing standard of care in treating patients.

**B. “Unprofessional conduct”** means, but is not limited to because of enumeration:

**(1)** performing, or holding oneself out as able to perform, professional services beyond the scope of one’s license and field or fields of competence as established by education, experience, training, or any combination thereof. This includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the chiropractic profession;

**(2)** representing to a patient that a manifestly incurable condition or sickness, disease or injury can be cured;

**(3)** willfully or negligently divulging a professional confidence;

**(4)** failure to release to a patient copies of that patient’s records and x-rays;

**(5)** failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by consultation with individuals having special skills, knowledge, and experience;

**(6)** failure of a chiropractor to comply with and following advertising guidelines as set in 16.4.1.12 NMAC;

**(7)** failure to use appropriate infection control techniques and sterilization procedures;

**(8)** deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another chiropractor licensed or applying for licensure by the board;

**(9)** accept rebates, or split fees or commissions from any source associated with the service rendered to a patient;

**(10)** intentionally engaging in sexual contact with a patient other than his spouse during the doctor-patient relationship;

**(11)** the use of a false, fraudulent or deceptive statement in any document connected with the practice of chiropractic;

**(12)** fraud, deceit or misrepresentation in any renewal or reinstatement application;

**(13)** violation of any order of the board, including any probation order;

**(14)** failure to adequately supervise, as provided by board regulation, a chiropractic assistant or technician who renders care as a chiropractic assistant under 16.4.19 NMAC of these rules;

**(15)** cheating on an examination for licensure;

**(16)** is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice chiropractic;

**(17)** is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act (Chapter 61, Article 4 NMSA 1978) or rules and regulations promulgated by the board and filed in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978);

**(18)** has been declared mentally incompetent by regularly constituted authorities or is manifestly incapacitated to practice chiropractic;

**(19)** has incurred a prior suspension or revocation in another state where the suspension or revocation of a license to practice chiropractic was based upon acts by the licensee similar to acts described in this section and by board rules;

**(20)** failure to report to the board within 90 days any adverse action taken after due process has been afforded to the licensee by:

**(a)** another licensing jurisdiction;

**(b)** any health care entity, not involving disputes over fees;

**(c)** any governmental agency, not involving disputes overseas;

(d) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(21) failure to furnish the board, its investigators or representatives with information requested by the board;

(22) abandonment of patients;

(23) providing a false, materially incomplete, factually unsupported opinion or opinions which are not congruent with current teachings and standards of care as taught in CCE accredited chiropractic colleges in a peer review, records review, independent medical examination, or chiropractic examination.

[16.4.8.10 NMAC - Rp, 16.4.8.10 NMAC 8/10/2019]

**16.4.8.11 COMPLAINT/REVIEW COMMITTEE:** The complaint/review committee of the board is authorized to:

A. carry out the instructions of the board in the investigation and processing of complaints against licensees.

B. disciplinary actions taken by the board shall be reported as required to the following entities:

(1) national practitioner databank-healthcare integrity and protection databank "NPDB-HIPD";

(2) federation of chiropractic licensing boards "FCLB";

(3) or their successors.

[16.4.8.11 NMAC - Rp, 16.4.8.11 NMAC 8/10/2019]

**History of 16.4.8 NMAC:** 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006, Repealed effective 8/10/2019.

**Other History:** 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006 was replaced by 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006 effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 4 CHIROPRACTIC PRACTITIONERS  
PART 9 LICENSE RENEWAL PROCEDURES**

**16.4.9.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.  
[16.4.9.1 NMAC - Rp, 16.4.9.1 NMAC 8/10/2019]

**16.4.9.2 SCOPE:** All licensed chiropractic physicians.

[16.4.9.2 NMAC - Rp, 16.4.9.2 NMAC 8/10/2019]

**16.4.9.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-13 and Section 61-4-14 NMSA 1978.

[16.4.9.3 NMAC - Rp, 16.4.9.3 NMAC 8/10/2019]

**16.4.9.4 DURATION:**

Permanent.

[16.4.9.4 NMAC - Rp, 16.4.9.4 NMAC 8/10/2019]

**16.4.9.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.9.5 NMAC - Rp, 16.4.9.5 NMAC 8/10/2019]

**16.4.9.6 OBJECTIVE:**

To establish procedures for the annual renewal of licenses.

[16.4.9.6 NMAC - Rp, 16.4.9.6 NMAC 8/10/2019]

**16.4.9.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC.)

[16.4.9.7 NMAC - Rp, 16.4.9.7 NMAC 8/10/2019]

**16.4.9.8 LICENSE RENEWAL PROCEDURES:**

A. In accordance with Section 61-4-13 and Section 61-4-14 NMSA 1978, of the New Mexico Chiropractic Physician Practice Act, the board establishes the following procedures for license renewal.

(1) Renewal notice. On or before June 1st of each year, the chiropractic board shall mail to the last address on file with the board a renewal notice to each person licensed to practice chiropractic in New Mexico.

(2) Renewal. The license shall expire at midnight on June 30th of each year. The board may renew the license upon receipt from the licensee, the nonrefundable license renewal fee, along with a properly filled out original form with signature, and copies of continuing education certificate plus any applicable nonrefundable penalty fees.

(3) Renewal deadline. Each licensee shall submit the nonrefundable license renewal fee and properly completed application to the board postmarked on or before July 1 of the year for which the nonrefundable license renewal fee is requested.

(4) Penalty fees. A licensee shall submit to the board, in addition to the nonrefundable license renewal fee, a nonrefundable penalty fee as set forth in Paragraph (3) of Subsection A of 16.4.1.13 NMAC.

(5) Impairment fee. In addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed \$60.00 per renewal period.

(6) The board during each renewal cycle will complete a random audit of continuing education hours. The board may select by accepted regulation and licensing department random computer process, up to ten percent of the renewing applicants.

Individuals selected must submit proof of all continuing education for that cycle. The records indicated in 16.4.10.8 NMAC are acceptable forms of documentation of continuing education records. Continuing education records must be maintained for three years following the renewal cycle in which they are earned and they may be obtained by the board at any time.

**B.** Notice. By July 31st of each year, the board shall send, by certified mail, to the address on file with the board, a forfeiture notice to each licensee who has not made the application for license renewal. The notice shall state that:

- (1) the licensee has failed to make application for renewal;
- (2) the amount of renewal and late fees;
- (3) the information required about continuing education hours which must be submitted to renew the license;
- (4) the licensee may voluntarily retire the license or the licensee may apply for a permissive temporary cancellation, by notifying the board in writing;
- (5) any person whose license has been placed on inactive status over one year but less than two may apply to reactivate licensure status at any time. Documentation required must include:
  - (a) reactivation application;
  - (b) reactivation application fee of \$200;
  - (c) evidence of meeting all continuing education requirements (for the current year);
- (6) failure to respond to the notice by the date specified, which date must be at least 31 days after the forfeiture notice is sent by the board, either by submitting the renewal application and applicable fees, or the information required about continuing education hours, or by notifying the board that the licensee has voluntarily retired the license, or has applied for permissive temporary cancelation, shall result in

forfeiture of the license to practice chiropractic in New Mexico upon order of the board;

(7) the board may select by accepted regulation and licensing department random computer processes, up to ten percent of the renewal applicants which may be submitted for background findings review.  
[16.4.9.8 NMAC - Rp, 16.4.9.8 NMAC 8/10/2019]

**HISTORY OF 16.4.9 NMAC:**  
**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 18-95, License Renewal Procedures, filed 2/20/1995.

**History of Repealed Material:**  
 16.4.9 NMAC, License Renewal Procedures filed 10/17/1997, Repealed effective 8/10/2019.

**Other History:**  
 Rule 18-95, License Renewal Procedures (filed 2/20/1995) was renumbered, reformatted and replaced by 16 NMAC 4.9, License Renewal Procedures, effective 11/16/1997. 16 NMAC 4.9, License Renewal Procedures (filed 10/17/1997) was renumbered, reformatted, amended and replaced by 16.4.9 NMAC, License Renewal Procedures, effective 1/15/2005. 16.4.9 NMAC, License Renewal Procedures filed 10/17/1997 was replaced by 16.4.9 NMAC, License Renewal Procedures effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 4 CHIROPRACTIC PRACTITIONERS**  
**PART 10 CONTINUING EDUCATION**

**16.4.10.1 ISSUING AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.  
 [16.4.10.1 NMAC - Rp, 16.4.10.2 NMAC 8/10/2019]

**16.4.10.2 SCOPE:** All licensed chiropractic physicians.  
 [16.4.10.2 NMAC - Rp, 16.4.10.2 NMAC 8/10/2019]

**16.4.10.3 STATUTORY AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsections F and G of Section 61-4-3 NMSA 1978.  
 [16.4.10.3 NMAC - Rp, 16.4.10.3 NMAC 8/10/2019]

**16.4.10.4 DURATION:** Permanent.  
 [16.4.10.4 NMAC - Rp, 16.4.10.4 NMAC 8/10/2019]

**16.4.10.5 EFFECTIVE DATE:** August 10, 2019, unless a later date is cited at the end of a section.  
 [16.4.10.5 NMAC - Rp, 16.4.10.5 NMAC 8/10/2019]

**16.4.10.6 OBJECTIVE:** To establish continuing education requirements for chiropractic physicians to renew their licenses in the state of New Mexico.  
 [16.4.10.6 NMAC - Rp, 16.4.10.6 NMAC 8/10/2019]

**16.4.10.7 DEFINITIONS:** (Refer to 16.4.1 NMAC).  
 [16.4.10.7 NMAC - Rp, 16.4.10.7 NMAC 8/10/2019]

**16.4.10.8 CONTINUING EDUCATION:**  
**A.** In accordance with Section 61-4-3 NMSA 1978, New Mexico Chiropractic Physician Practice Act, chiropractic physicians licensed in New Mexico are required to complete a minimum of 16 hours of board approved continuing

education annually by the time of license renewal. Credit hours may be earned at any time during the annual reporting period, July 1 through June 30, immediately preceding annual renewal. Credit hours are calculated as a "contact hour" i.e. a 60 minute hour.

**B.** Each chiropractor renewing a license shall attest that they have obtained the required hours of continuing education on the renewal form. The board will select by random regulation and licensing department (RLD) computer processes, no less than ten percent of renewal applications for audit to verify completion of acceptable continuing education. Audit requests will be included with the renewal notice and those selected chiropractors will be asked to submit proof of compliance with the continuing education requirements. The board may audit continuing education records at any time. Continuing education (CE) records must be maintained for three years following the renewal cycle in which they are earned.

**C.** The board will approve continuing education programs which in its determination, advance the professional skills, risk management understanding and knowledge of the licensee that is directly related to the practice of chiropractic art, science or philosophy. Practice building and self-motivational courses, and courses that are determined not to have significant or a direct relationship to the safe and effective practice of chiropractics; or such portions of those programs or courses, may not be approved. There will be no charge to a licensee for individual request for approval.

**D.** The board may determine that, in its opinion, a particular course or area of professional education is of such importance or addresses an area of special need as it pertains to public protection that all licensees shall be required to take the course of study as a part of or in addition to the CE requirements:

(1) the declaration of a mandatory course must be made by a majority vote of the board at a regular scheduled meeting;

(2) the course title, approved instructors (if appropriate), locations of course delivery or methods of securing approved print or electronic presentations of the course must be communicated to all licensed New Mexico chiropractors on or before September 1st of the year that the course is made mandatory;

(3) the mandatory nature of courses so designated shall expire on June 30th of the current licensing year or the determination must be renewed by a majority vote of the board at a regular scheduled meeting and the extension of the mandatory nature communicated to all active licensees on or before September 1st.

**E.** Seminars and continuing education programs that meet board criteria as stated in Subsection C of 16.4.10.8 NMAC, will be approved after a properly submitted application has been received and payment of the assessed fee as set forth in Paragraph (4) of Subsection A of 16.4.1.13 NMAC.

This includes the following:

(1) officiating during national board examinations shall be credited to the professional members of the board as approved hours of continuing education;

(2) those courses that have secured accreditation through the Federation of Chiropractic Licensing Boards "FCLB" and carry the providers of approved continuing education "PACE" designation;

(3) webinar, teleseminar, compact disc (CD), videotaped or audiotaped courses produced or endorsed by approved entities may be accepted for continuing education credit:

(a) the completion of such education shall be supported through record keeping with a letter, memo or on a form approved by the board, that

includes the dates, times, vendors' or presenters' name/s, and total hours claimed for each course;

(b) the licensee's retained records must include the following statement, "I swear or affirm that I viewed or listened to these continuing education courses in their entirety on the dates and times specified in this document";

(c) a maximum of eight hours may be obtained through these distance learning methods unless specific individual approval by the board is obtained.

(4) Based on the agreement set forth between the board and PACE, PACE approved courses shall be required to submit to the board an application with the appropriate assessed fee, but shall not be required to submit to the board the items listed in Paragraphs (1) through (6) of Subsection F of 16.4.10.8 NMAC.

**F.** All entities, sponsoring institutions, or organizations requesting approval of seminars or continuing education programs must be submitted to the board office in writing by the licensee or sponsoring entity must include:

(1) course title, objective and format;

(2) sponsoring entity;

(3) total class hours;

(4) method for certification of attendance; or documentation of completion of program;

(5) instructors credentials; and

(6) courses that in the boards opinion enhance the professional practice procedures, risk management, clinical skills or the doctor's ability to understand and operate within managed care guidelines and regulations will be considered for approval.

**G.** The board may waive or extend the time for completion of the annual continuing education requirement if the licensee has reached the age of 70 years or if

the licensee files with the board the statement of a licensed physician certifying the physical inability of the licensee to attend a seminar.

**H.** Licensees serving in the United States military practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The board must be notified prior to license expiration that the licensee will be outside the United States, including the period of the absence.

(2) Upon return to the United States, the licensee shall complete the continuing education required for the years of practice within the United States during the renewal cycle, or apply for an emergency deferral.

(3) All renewal fees shall be waived while the licensee is practicing or residing outside the country serving in the military or under armed services contract.

(4) The board may waive any and all deadlines by special request of licensee in active military service or under armed services or federal contract requiring absence from the jurisdiction.

**I.** Any excess continuing education hours that are above the minimum educational requirement in any applicable compliance period may not be "carried over" in order to meet the minimum educational requirements in any succeeding compliance period. A licensee shall only count continuing education hours completed for the present renewal period.

**J.** Any licensee licensed between March 1 and June 30, of a renewal year is not required to submit continuing education credits for license renewal for that renewal period. If the licensee has been licensed for longer than four months before their first renewal period, the licensee is required to meet all continuing education requirements as set forth in 16.4.10.8 NMAC and if a licensee holds an advanced chiropractic certificate, the licensee

is required to meet the continuing education requirements in 16.4.15.10 NMAC.

**K.** All licensees shall comply with the requirements of this regulation on or before July 1st of each year.

**L.** This rule supersedes all prior continuing education rules.

**M.** Seminars or continuing education programs meeting the board's criteria as stated in Subsection C of 16.4.15.10 NMAC for advanced practice continuing education shall be approved upon receipt of a properly executed application and payment of the fees required in 16.4.22.8 NMAC:

**N.** All seminars or educational programs that are provided for both doctors of chiropractic and advanced practice chiropractors continuing education shall be submitted to the board for approval at least 90 days in advance of the start of the program whenever possible and shall meet the requirements set forth in Paragraph (1) through (6) of Subsection F of 16.4.10.8 NMAC.

[16.4.10.8 NMAC - Rp, 16.4.10.8 NMAC 8/10/2019]

**HISTORY OF 16.4.10 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: BCE 69-1, Board Rules and Regulations, Amendment No. 2, Adding Rules 11.00, 11.01, 11.02, 11.03 and 12.00, filed 12/12/1973. Rule 11-86, Continuing Education, filed 9/23/1986. Rule 11-95, Continuing Education, filed 2/20/1995.

**History of Repealed Material:**

16.4.10 NMAC, Continuing Education filed 7/20/2012, Repealed effective 8/10/2019.

**Other History:**

Rule 11-95, Continuing Education (filed 2/20/1995) was renumbered, reformatted and replaced by 16 NMAC 4.10, Continuing Education, effective 11/16/1997.

16 NMAC 4.10, Continuing Education (filed 10/17/1997) was renumbered, reformatted, amended and replaced by 16.4.10 NMAC, Continuing Education, effective 1/15/2005.

16.4.10 NMAC, Continuing Education filed 7/20/2012 was replaced by 16.4.10 NMAC, Continuing Education effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC  
PRACTITIONERS**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 4 CHIROPRACTIC  
PRACTITIONERS  
PART 11 FORFEITURE OF  
LICENSE**

**16.4.11.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.  
[16.4.11.1 NMAC - Rp, 16.4.11.1 NMAC 8/10/2019]

**16.4.11.2 SCOPE:** All

licensed chiropractic physicians.  
[16.4.11.2 NMAC - Rp, 16.4.11.2 NMAC 8/10/2019]

**16.4.11.3 STATUTORY**

**AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-14 NMSA 1978.  
[16.4.11.3 NMAC - Rp, 16.4.11.3 NMAC 8/10/2019]

**16.4.11.4 DURATION:**

Permanent.  
[16.4.11.4 NMAC - Rp, 16.4.11.4 NMAC 8/10/2019]

**16.4.11.5 EFFECTIVE**

**DATE:** August 10, 2019, unless a later date is cited at the end of a section.



[16.4.11.5 NMAC - Rp, 16.4.11.5 NMAC 8/10/2019]

**16.4.11.6 OBJECTIVE:** To establish forfeiture procedures.

[16.4.11.6 NMAC - Rp, 16.4.11.6 NMAC 8/10/2019]

**16.4.11.7 DEFINITIONS:** Refer to 16.4.1 NMAC.

[16.4.11.7 NMAC - Rp, 16.4.11.7 NMAC 8/10/2019]

**16.4.11.8 DATE OF**

**FORFEITURE:** The board will send a notice of forfeiture by July 31st of each year as set forth in Subsection B of 16.4.9.8 NMAC. If the application for renewal, including required information about continuing education and the annual and late fees, or request for inactive status is not received by September 1st of each year, the license shall be canceled and the licensee shall forfeit the right to practice chiropractic in the state of New Mexico. By the order of the board, the forfeiture shall not be considered a disciplinary action against the licensee.

[16.4.11.8 NMAC - Rp, 16.4.11.8 NMAC 8/10/2019]

**HISTORY OF 16.4.11 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 18-95, License Renewal Procedures, filed 2/20/95.

**History of Repealed Material:**

16 NMAC 4.11, Chiropractic Practitioners - Forfeiture Of License, filed 10/17/1997, repealed 1/30/2015. 16.4.11 NMAC, Chiropractic Practitioners - Forfeiture Of License, filed 1/2/2015, repealed 8/10/2019.

**Other History:** 16.4.11 NMAC, Chiropractic Practitioners - Forfeiture Of License, filed 1/2/2015, was replaced by 16.4.11 NMAC, Chiropractic Practitioners - Forfeiture Of License, effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 4 CHIROPRACTIC PRACTITIONERS  
PART 12 CLASSIFICATION OF CHIROPRACTIC LICENSURE**

**16.4.12.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.12.1 NMAC - Rp 16.4.12.1 NMAC 8/10/2019]

**16.4.12.2 SCOPE:** All chiropractic physicians.

[16.4.12.2 NMAC - Rp 16.4.12.2 NMAC 8/10/2019]

**16.4.12.3 STATUTORY**

**AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-13 and 61-4-14 NMSA 1978.

[16.4.12.3 NMAC - Rp 16.4.12.3 NMAC 8/10/2019]

**16.4.12.4 DURATION:**

Permanent.

[16.4.12.4 NMAC - Rp 16.4.12.4 NMAC 8/10/2019]

**16.4.12.5 EFFECTIVE**

**DATE:** August 10, 2019, unless a later date is cited at the end of a section.

[16.4.12.5 NMAC - Rp 16.4.12.5 NMAC 8/10/2019]

**16.4.12.6 OBJECTIVE:** To designate licensure status.

[16.4.12.6 NMAC - Rp 16.4.12.6 NMAC 8/10/2019]

**16.4.12.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).

[16.4.12.7 NMAC - Rp 16.4.12.7 NMAC 8/10/2019]

**16.4.12.8 LICENSURE**

**STATUS:**

**A.** There shall be two licensure statuses.

**(1)** Active. An active license entitles a chiropractic physician to engage in the practice of chiropractic by providing professional services to patients within the state of New Mexico. This status may be maintained by following the license renewal procedures as set forth in Subsection A of 16.4.9.8 NMAC and by payment of the required fee as set forth in Subparagraph (a) of Paragraph (2) of Subsection A of 16.4.1.13 NMAC.

**(2)** Inactive.

An inactive license may be held by a chiropractic physician not engaging in the active practice of chiropractic in New Mexico. This status may be maintained by payment of the required fee as set forth in Subparagraph (b) of Paragraph (2) of Subsection A of 16.4.1.13 NMAC. Continuing education is not required while on inactive status. Inactive status will not be granted for a period of less than one year. The board may consider a petition by the licensee for early reinstatement due to undue hardship or special circumstances.

**B.** Change in licensure status - A change from one status to another shall require a written request to the board.

**C.** A change from inactive status to active status shall require a written license renewal application sent by the board, fulfillment of the continuing education requirements for the year in which the applicant petitions for a change in status and payment of reinstatement of license fees, active renewal fees, impairment fees, and any late fees required by the board. Applicant must include in the application, evidence that applicant meets the current requirements for licensure. If the applicant has been on inactive license status and not been in active practice in another jurisdiction for two or more years and desires to return to active status, a competency test may be required in addition to any

other materials deemed reasonably necessary to assure the public safety. [16.4.12.8 NMAC - Rp 16.4.12.8 NMAC 8/10/2019]

**HISTORY OF 16.4.12 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: BCE 69-1, Board Rules And Regulations, filed 9/30/1969. Rule 5-87, Reinstatement Of Temporary Suspension, filed 1/28/1987. Rule 18-95, License Renewal Procedures, filed 2/20/95.

**History of Repealed Material:**

16.4.12 NMAC, Classification Of Chiropractic Licensure filed 1/31/2006, Repealed effective 8/10/2019.

**Other History:**

That portion of Rule 18-95, License Renewal Procedures (filed 2/20/95) was renumbered, reformatted and replaced by 16 NMAC 4.12, Classification of Chiropractic Licensure, effective 11/16/1997. 16 NMAC 4.12, Classification of Chiropractic Licensure (filed 10/17/97) was renumbered, reformatted, amended and replaced by 16.4.12 NMAC, Classification of Chiropractic Licensure, effective 3/15/2006. 16.4.12 NMAC, Classification Of Chiropractic Licensure filed 1/31/2006 was replaced by 16.4.12 NMAC, Classification Of Chiropractic Licensure effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 4 CHIROPRACTIC PRACTITIONERS  
PART 13 REINSTATEMENT OF CHIROPRACTIC LICENSURE**

**16.4.13.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504. [16.4.13.1 NMAC - Rp 16.4.13.1 NMAC 8/10/2019]

**16.4.13.2 SCOPE:** All chiropractic physicians.

[16.4.13.2 NMAC - Rp 16.4.13.2 NMAC 8/10/2019]

**16.4.13.3 STATUTORY AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-14 NMSA 1978.

[16.4.13.3 NMAC - Rp 16.4.13.3 NMAC 8/10/2019]

**16.4.13.4 DURATION:** Permanent.

[16.4.13.4 NMAC - Rp 16.4.13.4 NMAC 8/10/2019]

**16.4.13.5 EFFECTIVE DATE:** August 10, 2019, unless a later date is cited at the end of a section.

[16.4.13.5 NMAC - Rp 16.4.13.5 NMAC 8/10/2019]

**16.4.13.6 OBJECTIVE:** To establish reinstatement procedures for chiropractic physicians.

[16.4.13.6 NMAC - Rp 16.4.13.6 NMAC 8/10/2019]

**16.4.13.7 DEFINITIONS:** (Refer to 16.4.1 NMAC).

[16.4.13.7 NMAC - Rp 16.4.13.7 NMAC 8/10/2019]

**16.4.13.8 REINSTATEMENT OF CHIROPRACTIC LICENSURE:**

**A.** Any person whose license has been suspended, revoked or which has lapsed may apply to the board for reinstatement of the license at any time within two (2) years of the suspension, revocation or lapse.

**(1)** In making application for reinstatement, the applicant should state why the license

should be reinstated and should specifically set forth any changed circumstances which would justify reinstatement.

**(2)** Applicant must include in the application, evidence that applicant meets the current requirements for licensure.

**(3)** Any licensed chiropractor applying for reinstatement of a license must pay all back renewal and penalty fees for each year of suspension, revocation or lapse, an application fee as set forth in Subparagraph (d) of Paragraph (1) of Subsection A of 16.4.22.8 NMAC and provide proof of attendance of continuing education hours as set forth in Subsection A of 16.4.10.8 NMAC for each year of suspension, revocation or lapse to a maximum of two years.

**B.** The board may require an applicant to complete certain education or training requirements, in addition to any continuing education requirements; to be completed prior to or after reinstatement to ensure that the applicant is competent to practice chiropractic. The board may, in its discretion, require that an applicant for reinstatement take and pass a written examination as prescribed by the board.

**C.** Upon receipt of an application for reinstatement, the board shall grant the applicant a hearing, at which time the applicant may appeal to the board to reinstate the license.

**D.** After two years, the applicant must apply for licensure without examination.

**E.** Applicant agrees to a national practitioner databank and a federation of chiropractic licensing board's (FCLB) background check. [16.4.13.8 NMAC - Rp 16.4.13.8 NMAC 8/10/2019]

**HISTORY OF 16.4.13 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: BCE 69-1, Board Rules And Regulations, filed 9/30/1969.

Rule 5-87, Reinstatement Of Temporary Suspension, filed 1/28/1987.

Rule 5-93, Reinstatement Of Licensure, filed 1/13/1993.

**History of Repealed Material:**

16.4.13 NMAC, Reinstatement Of Chiropractic Licensure filed 1/31/2006, Repealed effective 8/10/2019.

**Other History:**

Rule 5-93, Reinstatement Of Licensure (filed 1/13/1993) was renumbered, reformatted and replaced by 16 NMAC 4.13, Reinstatement of Chiropractic Licensure, effective 11/16/1997.

16 NMAC 4.12, Reinstatement of Chiropractic Licensure (filed 10/17/1997) was renumbered, reformatted, amended and replaced by 16.4.13 NMAC, Reinstatement of Chiropractic Licensure, effective 3/15/2006.

16.4.13 NMAC, Reinstatement Of Chiropractic Licensure filed 1/31/2006 was replaced by 16.4.13 NMAC, Reinstatement Of Chiropractic Licensure effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 4 CHIROPRACTIC PRACTITIONERS  
PART 14 MANAGEMENT OF MEDICAL RECORDS**

**16.4.14.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.  
[16.4.14.1 NMAC - Rp 16.4.14.1 NMAC, 8/10/2019]

**16.4.14.2 SCOPE:**

Chiropractors for licensure who must take a licensing examination for the state of New Mexico.

[16.4.14.2 NMAC - Rp 16.4.14.2 NMAC, 8/10/2019]

**16.4.14.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-3.G and 61-4-4 NMSA 1978.

[16.4.14.3 NMAC - Rp 16.4.14.3 NMAC, 8/10/2019]

**16.4.14.4 DURATION:**

Permanent.

[16.4.14.4 NMAC - Rp 16.4.14.4 NMAC, 8/10/2019]

**16.4.14.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.14.5 NMAC - Rp 16.4.14.5 NMAC, 8/10/2019]

**16.4.14.6 OBJECTIVE:**

This part establishes requirements and procedures for management of chiropractic records.

[16.4.14.6 NMAC - Rp 16.4.14.6 NMAC, 8/10/2019]

**16.4.14.7 DEFINITIONS:**

“**Chiropractic record**” means all information maintained by a chiropractic physician relating to the past, present or future physical or mental health of a patient, and for the provision of health care to a patient. This information includes, but is not limited to, the chiropractic physician’s notes, reports summaries, and x-rays and laboratory and other diagnostic test results. A patient’s complete chiropractic record includes information generated and maintained by the chiropractic physician, as well as information provided to chiropractic physician by the patient, by any other physician who has consulted with or treated the patient, and other information acquired by the chiropractic physician about the patient in connection with the provision of health care to the patient.

[16.4.14.7 NMAC - Rp 16.4.14.7 NMAC, 8/10/2019]

**16.4.14.8 RELEASE OF CHIROPRACTIC RECORDS:**

Chiropractic physicians must provide complete copies of medical records to a patient or to another physician in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. If the medical records are the property of a separate and independent organization, the chiropractic physician should act as the patient’s advocate and work to facilitate the patient’s request for records.

**A.** Medical records may not be withheld because an account is overdue or a bill for treatment medical records, or other services is owed.

**B.** A reasonable cost-based charge may be made for the cost of duplicating and mailing chiropractic records. A reasonable charge is not more than \$25 and \$0.25 per page. Patients may be charged the actual cost of reproduction for electronic records and record formats other than paper, such as x-rays. The board will review the reasonable charge periodically. Chiropractic physicians charging for the cost of reproduction of 16.4.1 NMAC medical records shall give consideration to the ethical and professional duties owed to other physicians and their patients.

[16.4.14.8 NMAC - Rp 16.4.14.8 NMAC, 8/10/2019]

**16.4.14.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE:**

Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current chiropractic physician to the new treating physician. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. Whenever possible, notification of patients is the responsibility of the current treating physician.

**A.** Whenever possible, active patients and patients seen within the previous three years must be notified at least 30 days before closing, selling, relocating or leaving a practice.

**B.** Whenever possible, patients should be notified within at least 30 days after the death of their chiropractic physician.

**C.** Notification shall be through a notice in newspaper in the local practice area, and should include responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address. To reach a maximum number of patients, the notification must run a minimum of two times per month for three months. In addition to a notice in the newspaper, notification may also be through an individual letter to the patient’s last known address. Notification shall also be sent to the board.

**D.** A chiropractic physician or chiropractic physician group should not withhold patient lists or other information from a departing chiropractic physician that is necessary for notification of patients.

**E.** Patients of a chiropractic physician who leaves a group practice must be notified the chiropractic physician is leaving, notified of the chiropractic physician’s new address and offered the opportunity to have their medical records transferred to the departing chiropractic physician at his new practice.

**F.** When a practice is sold, all active patients must be notified that the chiropractic physician is transferring the practice to another chiropractic physician or entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another physician or entity of their choice.

[16.4.14.9 NMAC - Rp 16.4.14.9 NMAC, 8/10/2019]

**16.4.14.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS:**

**A.** Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes a violation of Paragraph (16) of Subsection A of 61-4-10 NMSA 1978 Chiropractic physicians must post a written copy of their policy or their employer’s policy for medical record retention, maintenance and destruction.

**B.** Written medical record policy shall include:

**(1)** responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

**(2)** how the records can be obtained or transferred;

**(3)** how long the records will be maintained before they are destroyed; and

**(4)** cost of obtaining copies of records, and of recovering records/transferring records.

**C.** Chiropractic physicians must retain medical records that they own for at least two years beyond what is required by state insurance laws and by medicare and medicaid regulations. Medical records for patients who are minors must be retained for at least two years beyond the date that the patient is 18 years old.

**D.** A log must be kept of all charts destroyed, including the patient’s name and date of record destruction.

[16.4.14.10 NMAC - Rp 16.4.14.10 NMAC, 8/10/2019]

**HISTORY OF 16.4.14 NMAC:**  
[RESERVED]

**History of Repealed Material:**  
16.4.14 NMAC, Management Of Medical Records filed 7/9/2008, Repealed effective 8/10/2019.

**Other History:**  
16.4.14 NMAC, Management Of Medical Records filed 7/9/2008 was replaced by 16.4.14 NMAC, Management Of Medical Records filed 7/9/2008 effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

**CHAPTER 4 CHIROPRACTIC PRACTITIONERS**

**PART 16 PARENTAL RESPONSIBILITY ACT COMPLIANCE**

**16.4.16.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.16.1 NMAC - Rp 16 NMAC 4.16.1, 8/10/2019]

**16.4.16.2 SCOPE:** All chiropractic physicians.

[16.4.16.2 NMAC - Rp 16 NMAC 4.16.2, 8/10/2019]

**16.4.16.3 STATUTORY**

**AUTHORITY:** Parental Responsibility Act Ch. 25, Laws of 1995, Sections 40-5A-1 to 40-5A-13 NMSA 1978.

[16.4.16.3 NMAC - Rp 16 NMAC 4.16.3, 8/10/2019]

**16.4.16.4 DURATION:**

Permanent.

[16.4.16.4 NMAC - Rp 16 NMAC 4.16.4, 8/10/2019]

**16.4.16.5 EFFECTIVE**

**DATE:** August 10, 2019, unless a later date is cited at the end of a section or paragraph.

[16.4.16.5 NMAC - Rp 16 NMAC 4.16.5, 8/10/2019]

**16.4.16.6 OBJECTIVE:**

This part establishes the requirements and possible penalties for non-compliance of the Parental Responsibility Act.

[16.4.16.6 NMAC - Rp 16 NMAC 4.16.6, 8/10/2019]

**16.4.16.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in this part.

[16.4.16.7 NMAC - Rp 16 NMAC 4.16.7, 8/10/2019]

**16.4.16.8 PARENTAL RESPONSIBILITY ACT COMPLIANCE:**

**A.** The board adopts this rule pursuant to the Parental Responsibility Act (Ch. 25, Laws of 1995 40-5A-1 TO 40-5a-13 NMSA 1978). All terms defined in the Parental Responsibility Act shall have the same meanings in this rule.

**B.** If an applicant or licensee is not in compliance with a judgment or order for support, the board:

(1) shall deny an application for license;

(2) shall deny the renewal of a license; and

(3) has grounds for suspension or revocation of a license.

**C.** Upon determination that the name and social security number of an applicant or licensee appears on a certified list of obligors not in compliance with a judgment or order for support provided by the human services department, the board shall:

(1) notify the licensee that the licensee's name is on the certified list and that the licensee must provide the board with a subsequent certified statement from the human services department or court order stating that the licensee is in compliance with such judgment or order for support; or

(2) commence a formal proceeding under Subsection C of 16.4.16.8 NMAC to take the appropriate action under Subsection A of 16.4.16.8 NMAC.

**D.** Prior to taking any action specified in Subsection A of 16.4.16.8 NMAC, the board shall serve upon the applicant or licensee a written notice stating that the board has grounds to take such action and that the board shall take such action unless the applicant or licensee:

(1) mails a letter (certified mail return receipt requested) within 20 days after service of the notice requesting a hearing; or

(2) provides the board, within 30 days of the date of the notice, a certified statement from the human services department or court order stating that the applicant or licensee is in compliance with a judgment or order of support.

**E.** In any hearing under this rule relevant evidence shall include, but not be limited to, the following:

(1) A certified statement from the human services department stating that the applicant or licensee is not in compliance with a judgment or order for support is prima facie evidence that requires the board to take any action under Subsection A of 16.4.16.8 NMAC of this rule, unless:

(2) The applicant or licensee can provide the board with a subsequent certified statement from the human service department or court order stating that the applicant or licensee is in compliance with such judgment or order for support. Such statement of compliance shall preclude the board from taking any action specified in Subsection A of 16.4.16.8 NMAC.

(3) Any other evidence which the applicant or licensee presents to evidence of compliance with a judgment or order of support.

**F.** When an action is taken under this rule solely because the applicant or licensee is not in compliance with a judgment or order of support, the board's order shall state that the application or license shall be reinstated upon presentation of a subsequent certified statement of compliance from the human services department or upon presentment of other proof of compliance.

**G.** Proceedings under this rule shall be governed by the Uniform Licensing Act, Section 61-1-1 NMSA 1978 et seq. (Repl. Pamp. 1993).

[16.4.16.8 NMAC - Rp 16 NMAC 4.16.8, 8/10/2019]

**HISTORY OF 16.4.16 NMAC:** Pre-NMAC History: The material in this part was derived from that

previously filed with the State Records Center and Archives under: Rule 21-95, Parental Responsibility Act Compliance, filed 12/14/1995.

**History of Repealed Material:** 16 NMAC 4.16 Parental Responsibility Act Compliance filed 10/17/1997 Repealed effective 8/10/2019.

**Other History:** 16 NMAC 4.16 Parental Responsibility Act Compliance filed 10/17/1997 was replaced by 16.4.16 NMAC Parental Responsibility Act Compliance effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 4 CHIROPRACTIC PRACTITIONERS PART 17 SUPERVISION OF INTERNS**

**16.4.17.1 ISSUING AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504. [16.4.17.1 NMAC - Rp 16 NMAC 4.17.1, 8/10/2019]

**16.4.17.2 SCOPE:** All chiropractic physicians. [16.4.17.2 NMAC - Rp 16 NMAC 4.17.2, 8/10/2019]

**16.4.17.3 STATUTORY AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsection F of Section 61-4-3 NMSA 1978. [16.4.17.3 NMAC - Rp 16 NMAC 4.17.3, 8/10/2019]

**16.4.17.4 DURATION:** Permanent.

[16.4.17.4 NMAC - Rp 16 NMAC 4.17.4, 8/10/2019]

**16.4.17.5 EFFECTIVE**

**DATE:** August 10, 2019, unless a later date is cited at the end of a section.

[16.4.17.5 NMAC - Rp 16 NMAC 4.17.5, 8/10/2019]

**16.4.17.6 OBJECTIVE:** To establish requirements for supervising chiropractic physicians to safely train interns.

[16.4.17.6 NMAC - Rp 16 NMAC 4.17.6, 8/10/2019]

**16.4.17.7 DEFINITIONS:** (Refer to 16.4.1 NMAC).

[16.4.17.7 NMAC - Rp 16 NMAC 4.17.7, 8/10/2019]

**16.4.17.8 SUPERVISION OF INTERNS PRE AND POST:**

**A.** The purpose for the intern program in New Mexico shall be to safely complete advanced training for the under graduate and graduate chiropractic intern in the areas including, but not limited to, history taking, exams, imaging procedures, proper shielding and radiation monitoring procedures and interpretation, patient report of findings, treatment recommendations, treatment room control, staff management, general clinic policies, problem solving skills, team concepts, goal setting, administrative skills, and other training the doctor may feel appropriate to complete the intern's advanced chiropractic training. This purpose enhances the professional training of the intern, the chiropractic college curriculum, the teaching skills of the doctor, the professional status of the profession of chiropractic and the professional standard of chiropractic health care available to New Mexico consumers.

**B.** Supervising doctor must have a current New Mexico license in "good standing" with the board and have been in active practice for at least three years.

**C.** Supervising doctor must have written verification from the college that intern or unlicensed

graduate of a council on chiropractic education (CCE), or board approved equivalent thereof, accredited chiropractic college sanctioned intern program, and the doctor must assure compliance to the guidelines of the intern program.

**D.** Supervising doctor must personally train intern in chiropractic procedure.

**E.** Supervising doctor must be physically in the same building and immediately available in order for the intern to adjust any patient.

**F.** Public must be informed that the intern is an "intern chiropractor, not licensed in the state", and must sign an informed consent document approved by the board to this effect.

**G.** The supervising doctor must consult with intern prior to the intern's initial treatment of any patient.

**H.** Supervising doctor must continue to supervise progress of the patient and must personally treat the patient at least every third visit, or at any time there is a significant change in the patient's condition.

**I.** Supervising doctor may allow intern to assist in various exams and therapies after being trained and cleared by the supervising doctor on proper chiropractic procedures.

**J.** The supervising doctor must inform the college and the board if the intern is deemed professionally incompetent in diagnosis or treatment or if the intern has other personal habits (alcoholism, drug addiction, moral turpitude, etc.) that would be unsafe for the public.

**K.** A supervising doctor may not supervise more than two interns at one time. The board must approve the training of more than four interns in any individual or group practice at the same time.

**L.** Supervising doctor must register with the New Mexico board of chiropractic examiners the interns' names, the college they are from, and the term of the internship, and provide proof of malpractice insurance for the supervising doctor

in minimum amount of \$100,000 per person - \$300,000 per occurrence coverage, at least 15 days before the first day of the internship.

**M.** Supervising doctor must sign an affidavit agreeing to abide by the rule as set forth in 16.4.17 NMAC.

**N.** The board is to be sent a copy of any regular report sent to the college involving the intern at the time the report is sent to the college.

[16.4.17.8 NMAC - Rp 16 NMAC 4.17.8, 8/10/2019]

**16.4.17.9 CHIROPRACTIC INSURANCE CONSULTANTS AND PEER REVIEW CONTRACTORS:**

**A.** Chiropractic insurance consultants and peer review contractors advise insurance companies, third-party administrators and other similar entities of New Mexico standards of:

(1) recognized and accepted chiropractic services and procedures permitted by the New Mexico chiropractic statute, usual and customary practices and procedures and administrative rules; and

(2) the propriety of chiropractic diagnosis and care.

**B.** All licensees who review chiropractic records for the purposes of determining the adequacy or sufficiency of chiropractic treatments, or the clinical indication for those treatments, shall notify the board annually that they are engaged in those activities and of the location where those activities are performed.

**C.** Any person or professional shall not hold themselves out as chiropractic insurance consultants or provide chiropractic peer review services unless they meet the following requirements:

(1) hold a current chiropractic license in New Mexico;

(2) have practiced chiropractic in the state of New Mexico during the immediately preceding five years;

(3) are actively involved in a chiropractic practice during the term of employment as a chiropractic insurance consultant or peer review consultant; active practice includes but is not limited to maintaining an office location and providing clinical care to patients that comprises more than fifty percent of their total compensable work product. [16.4.17.9 NMAC - Rp 16 NMAC 4.17.9, 8/10/2019]

#### HISTORY OF 16.4.17 NMAC:

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 13-92, Supervision of Interns, filed 4/2/1992.

**History of Repealed Material:** 16 NMAC 4.17, Supervision of Interns filed 12/15/2004 Repealed effective 8/10/2019.

#### Other History:

Rule 13-92, Supervision of Interns (filed 4/2/92) was renumbered, reformatted and replaced by 16 NMAC 4.17, Supervision of Interns, effective 11/16/1997.

16 NMAC 4.17, Supervision of Interns (filed 10/17/1997) was renumbered, reformatted, amended and replaced by 16.4.17 NMAC, Supervision of Interns, effective 1/15/2005.

16 NMAC 4.17, Supervision of Interns filed 12/15/2004 was replaced by 16.4.17 NMAC, Supervision of Interns effective 8/10/2019.

### REGULATION AND LICENSING DEPARTMENT CHIROPRACTIC PRACTITIONERS

#### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 4 CHIROPRACTIC PRACTITIONERS PART 18 PRACTICE PROCEDURES

#### 16.4.18.1 ISSUING

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504. [16.4.18.1 NMAC - Rp 16 NMAC 4.18.1, 8/10/2019]

#### 16.4.18.2 SCOPE: All chiropractic physicians.

[16.4.18.2 NMAC - Rp 16 NMAC 4.18.2, 8/10/2019]

#### 16.4.18.3 STATUTORY

**AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsection F of 61-4-3 NMSA 1978, Subsection D of 61-4-6 NMSA 1978, and Subsection B of 61-4-9 NMSA 1978.

[16.4.18.3 NMAC - Rp 16 NMAC 4.18.3, 8/10/2019]

#### 16.4.18.4 DURATION:

Permanent.

[16.4.18.4 NMAC - Rp 16 NMAC 4.18.4, 8/10/2019]

#### 16.4.18.5 EFFECTIVE

**DATE:** August 10, 2019, unless a later date is cited at the end of a section.

[16.4.18.5 NMAC - Rp 16 NMAC 4.18.5, 8/10/2019]

#### 16.4.18.6 OBJECTIVE:

To establish practice procedures to include diagnostic procedures, meridian therapy, obstetrics, invasive therapeutic procedures, imaging examinations, chiropractic rehabilitation of the neuromusculoskeletal system, manipulation under anesthesia and spinal manipulation.

[16.4.18.6 NMAC - Rp 16 NMAC 4.18.6, 8/10/2019]

#### 16.4.18.7 DEFINITIONS:

(Refer to 16.4.1 NMAC).

[16.4.18.7 NMAC - Rp 16 NMAC 4.18.7, 8/10/2019]

#### 16.4.18.8 DIAGNOSTIC PROCEDURES:

**A.** Chiropractic physicians being primary care providers are authorized to perform diagnostic procedures specified in this regulation, on the general population ranging from pediatrics through geriatrics, which shall include the authority to perform and take.

(1) Medical case history.

(2) Physical examination of all body systems including, but not limited to:

(a) skin, hair, nails, head, eyes, ears, nose, throat and teeth;

(b) cardio-vascular and respiratory system, including auscultation;

(c) thorax and abdomen, including breast and rectal examination, when clinically appropriate;

(d) genito-urinary and reproductive system, to include vaginal and prostate examination, when clinically appropriate;

(e) musculo-skeletal system;

(f) neurological system.

**B.** Authority to order diagnostic procedures. Chiropractic physicians are authorized to order any diagnostic procedure reasonably necessary to clinically correlate a physical examination to a diagnostic impression, which shall include, but not be limited to:

(1) laboratory procedures involving the collection of human fluids such as saliva, blood, urine, vaginal and seminal fluids, hair, feces;

(2) EEG, EKG, ECG and surface or needle EMG;

(3) imaging procedures such as x-ray, CT scan, MRI, nuclear scans, PET scans, SPECT, ultrasonography, thermography or other pertinent diagnostic studies.

**C.** Authority to perform diagnostic procedures.

(1) Chiropractic physicians are required

to perform appropriate diagnostic procedures reasonably necessary to clinically correlate a physical examination to a diagnostic impression, (excluding surgical procedures and invasive procedures not herein specified), including but not limited to the collection and testing of human fluids, such as saliva, blood, urine, vaginal and seminal fluids, hair, feces, and conventional radiography.

**(2)**

Chiropractic physicians who are trained in a course of doctoral or post-doctoral studies certified with an accredited institution recognized by the board are authorized to perform diagnostic procedures, including but not limited to MRI, CT, nuclear scans, ultrasonography; thermography, B.E.A.M., EEG, EKG, ECG and surface or needle EMG.

[16.4.18.8 NMAC - Rp 16 NMAC 4.18.8, 8/10/2019]

**16.4.18.9 MERIDIAN THERAPY:**

**A.** Chiropractors who practice meridian therapy must do so in conjunction with standard chiropractic adjusting and/or manipulative techniques.

**B.** Chiropractors who practice meridian therapy may not advertise or promote themselves in the media to be acupuncturists unless licensed pursuant to the Acupuncture Act.

**C.** Dry needling is a physical intervention that uses a filiform needle to stimulate trigger points, diagnose and treat neuromuscular pain and functional movement deficits; is based on the western medical concepts; requires an examination and diagnosis, and treats specific anatomic entities selected according to physical signs. Dry needling does not include the stimulation of auricular distal points. [16.4.18.9 NMAC - Rp 16 NMAC 4.18.9, 8/10/2019]

**16.4.18.10 OBSTETRICS:**

**A.** No chiropractor shall undertake to deliver a human child or to assist the mother of the

child during such delivery, except in cases of emergency or where another practitioner of the healing arts whose license authorizes him or her to deliver human children is present and actively participating in the delivery.

**B.** Nothing in this regulation shall preclude a chiropractor from undertaking to provide prenatal care to a pregnant woman provided that the chiropractor affirmatively advises the woman that it would be unlawful for the chiropractor to deliver the child and that the patient should make arrangements with another practitioner of the healing arts whose license authorizes him or her to deliver human children to attend the woman during her delivery; and provided further that during the course of the delivery the chiropractor refrains from any cutting of human tissues, including but not limited to the cutting of the umbilical cord.

**C.** Nothing in this regulation shall be construed to prevent a licensed chiropractor from obtaining a license in another healing arts profession which includes the delivery of human babies in the normal scope of its practice and from practicing obstetrics pursuant to such a second healing arts license.

[16.4.18.10 NMAC - Rp 16 NMAC 4.18.10, 8/10/2019]

**16.4.18.11 IMAGING EXAMINATION:**

**A.** The following requirements for imaging examination have been established because of concerns about over-radiation and unnecessary X-ray exposure. The following should appear on films:

- (1) patient's name and age;
- (2) doctor's name, facility name, and address;
- (3) date of study;
- (4) left or right marker;
- (5) other markers as indicated;
- (6) adequate collimation;
- (7) gonad shielding, where applicable.

**B.** Minimum of A-P and lateral views are necessary for any regional study unless clinically justified.

**C.** As clinical evidence indicates, it may be advisable to produce multiple projections where there is an indication of possible fracture, significant pathology, congenital defects, or when an individual study is insufficient to make a comprehensive diagnosis/analysis.

**D.** Each film should be of adequate density, contrast, and definition, and no artifacts should be present.

**E.** The subjective complaints, if any, and the objective findings substantiating the imaging study must be documented in the patient record.

**F.** These rules are intended to complement and not supersede those rules adopted by the environmental improvement board set forth in x-rays in the healing arts, 20.3.6 NMAC including but not limited to the requirement of certification.

[16.4.18.11 NMAC - Rp 16 NMAC 4.18.11, 8/10/2019]

**16.4.18.12 CHIROPRACTIC EXERCISE AND THERAPUTIC TREATMENT OF THE NEUROMUSCULOSKETLETAL SYSTEM:**

Chiropractic physicians may prescribe or administer all necessary mechanical, hygienic and sanitary measures incident to the care of the body including but not limited to air, sound, cold, diet, nutritional adjuncts, exercise, heat, light, massage, physical culture, rest, ultrasound, water, oxygen and electricity and other devices used for the delivery of chiropractic physiologic therapeutic procedures. [16.4.18.12 NMAC - Rp 16 NMAC 4.18.12, 8/10/2019]

**16.4.18.13 MANIPULATION UNDER ANESTHESIA:**

Chiropractic physicians who can demonstrate training in a course of doctoral or post-doctoral studies certified within an accredited



institution recognized by the board are authorized to perform manipulation under anesthesia, with that anesthesia administered by an appropriate, licensed provider.

[16.4.18.13 NMAC - Rp 16 NMAC 4.18.13, 8/10/2019]

**HISTORY OF 16.4.18 NMAC:**

**PRE-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives under:

BCE 69-1, Board Rules and Regulations, filed 9/30/1969.

BCE 80-1, Obstetrics (Rule 12.00), filed 7/11/1980.

Rule 9-87, Acupuncture, filed 1/28/1997.

Rule 12-87, Obstetrics, filed 1/28/1987.

Rule 9-91, Meridian Therapy, filed 8/6/1991.

Rule 9-92, Meridian Therapy, filed 4/2/1992.

Rule 15-93, Radiographic Examination, filed 3/18/1993.

Rule 15-94, Radiographic Examination, filed 1/7/1994.

Rule 16-94, Diagnostic Procedures, filed 4/4/1994.

**History of Repealed Material:**

16.4.18 NMAC, Practice Procedures filed 12/15/2004 Repealed effective 8/10/2019.

**Other History:**

Rule 9-92, Meridian Therapy (filed 4/2/1992); Rule 12-87, Obstetrics (filed 1/28/1987); Rule 15-94, Radiographic Examination (filed 1/7/1994); and Rule 16-94, Diagnostic Procedures (filed 4/4/1994) were all renumbered, reformatted, and replaced by 16 NMAC 4.18, Practice Procedures, effective 11/16/1997. 16 NMAC 4.18, Practice Procedures (filed 10/17/1997) was renumbered, reformatted, amended and replaced by 16.4.18 NMAC, Practice Procedures, effective 1/15/2005.

16.4.18 NMAC, Practice Procedures filed 12/15/2004 was replaced by 16.4.18 NMAC, Practice Procedures effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

**CHAPTER 4 CHIROPRACTIC PRACTITIONERS**

**PART 19 CHIROPRACTIC ASSISTANTS**

**16.4.19.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.19.1 NMAC - Rp 16 NMAC 4.19.1, 8/10/2019]

**16.4.19.2 SCOPE:** All

chiropractic physicians and chiropractic assistants.

[16.4.19.2 NMAC - Rp 16 NMAC 4.19.2, 8/10/2019]

**16.4.19.3 STATUTORY**

**AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsection F of Section 61-4-3 and Subsection D of 61-4-5 NMSA 1978.

[16.4.19.3 NMAC - Rp 16 NMAC 4.19.3, 8/10/2019]

**16.4.19.4 DURATION:**

Permanent.

[11/16/97; Recompiled 12/31/01]

**16.4.19.5 EFFECTIVE**

**DATE:** August 10, 2019, unless a later date is cited at the end of a section or paragraph.

[16.4.19.5 NMAC - Rp 16 NMAC 4.19.5, 8/10/2019]

**16.4.19.6 OBJECTIVE:** To

establish educational requirements and duties for chiropractic assistants and defines supervision of a chiropractic physician and define supervision of a chiropractic physician.

[16.4.19.6 NMAC - Rp 16 NMAC 4.19.6, 8/10/2019]

**16.4.19.7 DEFINITIONS:**

(Refer to subsection D of 16.4.1.7 NMAC).

[16.4.19.7 NMAC - Rp 16 NMAC 4.19.7, 8/10/2019]

**16.4.19.8 CHIROPRACTIC ASSISTANT:**

**A.** The minimum education requirement for a chiropractic assistant is high school graduation or equivalent with a minimum of three months of supervised training in the specific duties and procedures the chiropractic assistant will perform.

**B.** The chiropractic assistant can, under the supervision of the chiropractic physician, perform diagnostic tests and administer the use of any or all natural agencies imbued with the healing act such as food, water, heat, cold, electrical mechanical appliances, herbs, nutritional supplements and homeopathic remedies.

**C.** As used in this section, the term “under the supervision of the chiropractic physician” means that:

**(1)** the chiropractic physician shall have a current New Mexico license in “good standing” with the board;

**(2)** the chiropractic physician shall personally train the chiropractic assistant in any procedure they practice; and

**(3)** the chiropractic physician must be physically present in the same building and immediately available in order for the chiropractic assistant to treat the patient.

[16.4.19.8 NMAC - Rp 16 NMAC 4.19.8, 8/10/2019]

**HISTORY OF 16.4.19 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 20-95, Chiropractic Assistant, filed 12/14/95.

**History of Repealed Material:** 16 NMAC 4.19, Chiropractic Assistants

filed 10/17/1997 Repealed effective 8/10/2019.

**Other History:** 16 NMAC 4.19, Chiropractic Assistants filed 10/17/1997 was replaced by 16.4.19 NMAC, Chiropractic Assistants effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 4 CHIROPRACTIC PRACTITIONERS  
PART 20 ADVERTISING**

**16.4.20.1 ISSUING**

**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.  
[16.4.20.1 NMAC - Rp 16.4.20.1 NMAC, 8/10/2019]

**16.4.20.2 SCOPE:** All licensed chiropractic physicians.  
[16.4.20.2 NMAC - Rp 16.4.20.2 NMAC, 8/10/2019]

**16.4.20.3 STATUTORY AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-2, 61-4-4, 61-4-6, 61-4-12 and 61-4-13 NMSA 1978.  
[16.4.20.3 NMAC - Rp 16.4.20.3 NMAC, 8/10/2019]

**16.4.20.4 DURATION:** Permanent.  
[16.4.20.4 NMAC - Rp 16.4.20.4 NMAC, 8/10/2019]

**16.4.20.5 EFFECTIVE DATE:** August 10, 2019, unless a later date is cited at the end of a section.  
[16.4.20.5 NMAC - Rp 16.4.20.5 NMAC, 8/10/2019]

**16.4.20.6 OBJECTIVE:** To establish guidelines for advertising which must be followed by all licensed chiropractic physicians and non-licensed chiropractic practice owners.  
[16.4.20.6 NMAC - Rp 16.4.20.6 NMAC, 8/10/2019]

**16.4.20.7 DEFINITIONS:** Refer to 16.4.1.7 NMAC.  
[16.4.20.7 NMAC - Rp 16.4.20.7 NMAC, 8/10/2019]

**16.4.20.8 STATEMENT OF POLICY:** It is the policy of the board that advertising by licensed practitioners of chiropractic should be regulated in order to fulfill the duty of the state of New Mexico to protect the health, safety and welfare of its residents, while not abridging any rights guaranteed to the practitioners or to the public by the Constitution of the United States and the Constitution of the state of New Mexico as construed by the United States supreme court and the New Mexico supreme court. To that end, the board permits the dissemination of legitimate information to the public concerning the science of chiropractic and individual practitioners thereof. Such dissemination of information must be done in accordance with this rule which is designed to reasonably facilitate the flow of accurate information and prevent fraudulent, false, deceptive, misleading or confusing advertising. Advertising not contrary to the prohibitions in this rule shall be deemed an appropriate means of informing the public of the availability of professional services.  
[16.4.20.8 NMAC - Rp 16.4.20.8 NMAC, 8/10/2019]

**16.4.20.9 CERTAIN ADVERTISING PROHIBITED:**  
**A.** Any chiropractor who disseminates or causes to be disseminated or allows to be disseminated any advertising which is in any way fraudulent, false, deceptive, misleading or confusing, shall be deemed to be in violation of the Chiropractic Physician Practice Act.

**B.** Fraudulent, false, deceptive, misleading or confusing advertising includes, but is not limited, to:

- (1) advertising which contains a misrepresentation of any fact or facts;
- (2) advertising which, because of its contents or the context in which it is presented, fails to disclose relevant or material facts or makes only partial disclosure of relevant or material facts;
- (3) advertising which makes claims of, or conveys the impression of superior professional qualifications which cannot be substantiated by the chiropractor;
- (4) advertising which contains distorted claims or statements about any individual chiropractor, chiropractic group or chiropractic office, clinic or center;
- (5) advertising which creates unjustified expectations of beneficial treatment or successful cures;
- (6) advertising which guarantees the results of any service, painless treatment, or which promises to perform any procedure painlessly;
- (7) advertising which in any way appeals to fears, ignorance or anxieties regarding a persons state of health or physical or mental well-being;
- (8) advertising which in any way intimidates or exerts undue pressure on the recipient;
- (9) advertising which fails to conspicuously identify the chiropractor or chiropractors referred to in the advertising as practitioners of chiropractic by use of the term “chiropractor”, “chiropractors”, “chiropractic”, “chiropractic physician”, “chiropractic physicians”, “doctor of chiropractic”, or “doctors of chiropractic”;
- (10) advertising which fails to be conspicuously identified as “chiropractic” advertising;
- (11) advertising which fails to conspicuously identify the chiropractic practice, office,

clinic or center being advertised by a name which includes the term “chiropractor”, “chiropractors”, “chiropractic”, “chiropractic physician”, “chiropractic physicians”, “doctor of chiropractic” or “doctors of chiropractic”;

(12) advertising which invades the field of practice of other licensed healthcare practitioners when the chiropractor is not allowed by rule or license to practice such profession;

(13) advertising which appears in a classified directory or listing, or otherwise under a heading which, when considered alone or together with the advertisement, does not accurately convey the professional status of the chiropractor or the professional services being advertised;

(14) advertising which concerns a transaction that is in itself illegal;

(15) advertising which employs testimonials which, by themselves or when taken together with the remainder of the advertisement intimidate, exert undue pressure on, or otherwise improperly influence the recipient.

C. Advertising which offers gratuitous services or discounts in connection with professional services; provided, however, that advertising may offer gratuitous services or discounts if:

(1) such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services which may be needed or appropriate in individual cases, and the possible range of such additional charges if such charges may be incurred;

(2) such advertising is not otherwise false, fraudulent, deceptive, misleading or confusing;

(3) such advertising offering a “spinal examination”, “examination” or “scoliosis examination” or using any other similar phrase includes, at a minimum, the following tests or procedures: blood pressure,

weight, height, reflexes, pulse, range of motion and orthopedic tests appropriate to the history; and

(4) such advertising offering “an examination” or using any other similar phrase includes the taking of a detailed problem focused history of the patient as it relates to the presenting complaints, and an appropriate neurological, orthopedic, and chiropractic physical examination including, where professionally indicated, the taking, developing and interpretation of x-rays and the performance and interpretation of laboratory or other specialized tests when necessary to establish a diagnosis; such x-rays and laboratory and other specialized tests must constitute a diagnostically complete study.

D. Advertisements may quote fixed prices for specific routine services if such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services and the possible range of such additional charges if such charges may be incurred. A routine service is one which is not so unique that a fixed rate cannot meaningfully be established.

E. Chiropractors, their agents or any representatives who engage in telemarketing are required to inform the parties they call at the beginning of the call:

(1) who they are (caller’s name);

(2) who they represent (clinic/doctor); and

(3) chiropractors, their agents or representatives engaging in telemarketing, either directly or through others, shall keep a voice recorded log of all phone call conversations and a written log to include date, telephone number, and the name of every person called; all such chiropractors, their agents or representatives shall keep such logs for a period of three years from the date of the telemarketing.

F. No chiropractor engaging in, or authorizing another

to engage in, telemarketing of prospective patients shall misrepresent to the person called any association with an insurance company, other licensed health care provider or another chiropractor or group of chiropractors, nor shall such solicitor promise successful chiropractic treatment of injuries, or make any other misrepresentation of whatever kind for the purpose of selling chiropractic services.

G. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall engage in such practices during hours prohibited by applicable municipal ordinance or state law, or in the absence of either, then other than between the hours 9 a.m. and 8 p.m. local time.

H. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall make more than one telephone call to any telephone number unless requested by the recipient to call again.

I. No chiropractor shall advertise directly or indirectly, through any device or artifice, that the advertising chiropractor will not collect from any prospective patient, that patient’s insurance deductible or co-payment obligations arising by virtue of any medical insurance policy provided for the payment, in whole or in part, of any chiropractor’s charge. The words free initial consultation must be explicitly explained what a consultation consist of and at exactly what point charges begin to accrue with clear delineation between a free consultation and an exam with treatment for which services will be charged. At no time can any representation in regards to payment for services be misleading to the consumer or patient and it must be stated up front that if the patient decides to accept the care that they will be charged for all services and that payment will be expected whether it be from the patient, third-party payor, insurance, or medpay.

J. No applicant for licensure to practice chiropractic, and no unlicensed practitioner, shall

advertise chiropractic services in this state in any way.

**K.** All advertisements by a chiropractor must include the full name of the chiropractor as it appears on his or her chiropractic license followed by the letters D.C. or the designation “chiropractor”, “chiropractic physician” or “doctor of chiropractic”.

**L.** Any form of solicitation offered to individuals whose identities are known through the use of any form of public record, including but not limited to police reports, shall be reviewed and approved by the board and re-approved annually. Unless specifically disapproved by the committee designated by the board the copy submitted may be used for patient solicitation. If approved or disapproved, that information shall be communicated to the submitting doctor within 30 days of submission. The submitting physician has the right to request a determination be made by the full board at its next scheduled meeting. The board holds the right during each renewal cycle to complete a random audit of all written materials, and mandatory voice recordings of all phone conversations for a period up to three years following any telemarketing procedures from public record.

**M.** Any direct, individual contact by a licensee or the agent of a licensee with prospective patients through the use of public records, including but not limited to police or accident reports is prohibited.

**N.** The script for any telemarketing advertising shall be submitted to the board for approval and must be resubmitted yearly for ongoing use by any licensee or their agent.

[16.4.20.9 NMAC - Rp 16.4.20.9 NMAC, 8/10/2019]

**HISTORY OF 16.4.20 NMAC:**  
**[RESERVED]**

**History of Repealed Material:**  
16.4.20 NMAC, Advertising filed 7/20/2012, Repealed effective 8/10/2019.

**Other History:** 16.4.20 NMAC, Advertising filed 7/20/2012 was replaced by 16.4.20 NMAC, Advertising effective 8/10/2019.

**REGULATION AND LICENSING DEPARTMENT  
CHIROPRACTIC PRACTITIONERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 4 CHIROPRACTIC PRACTITIONERS  
PART 22 FEES**

**16.4.22.1 ISSUING**  
**AGENCY:** New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.  
[16.4.22.1 NMAC - Rp 16.4.22.1 NMAC, 8/10/2019]

**16.4.22.2 SCOPE:** All licensed chiropractic physicians and non-licensee owners.  
[16.4.22.2 NMAC - Rp 16.4.22.2 NMAC, 8/10/2019]

**16.4.22.3 STATUTORY AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsection F of 61-4-7 and Subsection B of 61-4-13 NMSA 1978.  
[16.4.22.3 NMAC - Rp 16.4.22.3 NMAC, 8/10/2019]

**16.4.22.4 DURATION:** Permanent.  
[16.4.22.4 NMAC - N, 8/20/2012]

**16.4.22.5 EFFECTIVE DATE:** August 10, 2019, unless a later date is cited at the end of a section.  
[16.4.22.5 NMAC - Rp 16.4.22.5 NMAC, 8/10/2019]

**16.4.22.6 OBJECTIVE:** To establish annual administrative fees.  
[16.4.22.6 NMAC - Rp 16.4.22.6 NMAC, 8/10/2019]

**16.4.22.7 DEFINITIONS:**  
Refer to 16.4.1.7 NMAC.  
[16.4.22.7 NMAC - Rp 16.4.22.7 NMAC, 8/10/2019]

**16.4.22.8 ADMINISTRATIVE FEES:**  
**A.** In accordance with Subsection F of Section 61-4-7 and Subsection B of Section 61-4-13 of the New Mexico Chiropractic Physicians Practice Act, NMSA 1978, the board of chiropractic examiners establishes the following nonrefundable fees:

- (1) fees:
  - (a) application fee \$350;
  - (b) initial license fee with or without examination \$350;
  - (c) reinstatement of license \$125 (in addition to back renewal and penalty fees for each year, not to exceed two years);
  - (d) reactivation application fee \$200;
  - (e) application fee for advanced practice certification \$100;
- (2) annual renewal fees:
  - (a) active \$300;
  - (b) inactive \$100;
  - (c) advanced practice certification \$100;
  - (d) impairment fee of \$25 in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed \$60 per renewal period;
  - (3) penalty for late renewal \$100 (per month or portion of a month for which the license renewal fee is in arrears, the penalty not to exceed \$1000);
  - (4) continuing education fee individual course \$50;
  - (5) continuing education fee yearly for approved institution \$500;
  - (6) miscellaneous fees listed below will be approved annually by the board

and made available by the board office upon request:

- (a) photocopying \$0.25;
- (b) written license verifications \$25;
- (c) list of licensees \$75;
- (d) duplicate licenses \$25;
- (e) duplicate renewal certificate \$25;
- (f) copies of statutes, rules and regulations are free online at board web site.

**B.** The board shall annually designate that proportion of renewal fees which shall be used for the exclusive purposes of investigating and funding hearings regarding complaints against chiropractic physicians.  
[16.4.22.8 NMAC - Rp 16.4.22.8 NMAC, 8/10/2019]

**HISTORY OF 16.4.22 NMAC:  
[RESERVED]**

**History of Repealed Material:**

16.4.22 NMAC, Fees filed 7/20/2012 Repealed effective 8/10/2019.

**Other History:** 16.4.22 NMAC, Fees filed 7/20/2012 was replaced by 16.4.22 NMAC, Fees effective 8/10/2019.

**REGULATION AND  
LICENSING DEPARTMENT  
CHIROPRACTIC  
PRACTITIONERS**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 4 CHIROPRACTIC  
PRACTITIONERS  
PART 23 LICENSURE FOR  
MILITARY SERVICE MEMBERS,  
SPOUSES AND VETERANS**

**16.4.23.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department.

[16.4.23.1 NMAC - Rp 16.4.23.1 NMAC, 8/10/2019]

**16.4.23.2 SCOPE:** This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.

[16.4.23.2 NMAC - Rp 16.4.23.2 NMAC, 8/10/2019]

**16.4.23.3 STATUTORY AUTHORITY:** These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Uniform Licensing Act, Section 61-1-34 and the Chiropractic Physicians Act, Section 61-4-5 NMSA 1978.

[16.4.23.3 NMAC - Rp 16.4.23.3 NMAC, 8/10/2019]

**16.4.23.4 DURATION:** Permanent.

[16.4.23.4 NMAC - Rp 16.4.23.4 NMAC, 8/10/2019]

**16.4.23.5 EFFECTIVE DATE:** August 10, 2019 unless a later date is cited at the end of a section.

[16.4.23.5 NMAC - Rp 16.4.23.5 NMAC, 8/10/2019]

**16.4.23.6 OBJECTIVE:** The purpose of this part is to expedite licensure for military service members, spouses and veterans pursuant to Chapter 61, Articles 4 through 17 NMSA 1978.

[16.4.23.6 NMAC - Rp 16.4.23.6 NMAC, 8/10/2019]

**16.4.23.7 DEFINITIONS:**

**A. “Military service member”** means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

**B. “Recent veteran”** means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational

or professional license pursuant to this section.

**C. “Spouse”** means any partner of a “military service member” or “recent veteran” who has been legally recognized by any state or country.

[16.4.23.7 NMAC - Rp 16.4.23.7 NMAC, 8/10/2019]

**16.4.23.8 APPLICATION REQUIREMENTS:**

**A.** In accordance with the section of the Uniform Licensing Act entitled “Expedited Licensure Military service members, spouses of military service members and Veterans”, Section 61-1-34 NMSA 1978, the board shall expedite the issuance of a license to practice chiropractic in New Mexico for doctors who provide evidence of meeting the following minimal requirements. Applications for registration shall be completed on a form provided by the board.

**B.** The information shall include:

(1) Completed application and fee pursuant to 16.4.23.9 NMAC.

(2) Satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Article 4, NMSA 1978.

(3) Proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.

[16.4.23.8 NMAC - Rp 16.4.23.8 NMAC, 8/10/2019]

**16.4.23.9 FEES:** Applicant must complete the application for Expedited Licensure, pay a non-refundable fee of \$350.00, and pay a licensing fee of \$350.00 once the applicant is accepted for licensure.  
[16.4.23.9 NMAC - Rp 16.4.23.9 NMAC, 8/10/2019]

**16.4.23.10 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Article 4, NMSA 1978.

**B.** A license issued pursuant to this section shall be required to meet the provisions stated in 16.4.9 NMAC for the renewal of the granted license.

[16.4.23.10 NMAC - Rp 16.4.23.10 NMAC, 8/10/2019]

**HISTORY OF 16.4.23 NMAC: [RESERVED]****History of Repealed Material:**

16.4.23.10 NMAC, Licensure for Military Service Members, Spouses and Veterans filed 1/2/2015 Repealed effective 8/10/2019.

**Other History:** 16.4.23.10 NMAC, Licensure for Military Service Members, Spouses and Veterans filed 1/2/2015 was replaced by 16.4.23.10 NMAC, Licensure for Military Service Members, Spouses and Veterans effective 8/10/2019.

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**REGULATION AND LICENSING DEPARTMENT  
PHARMACY, BOARD OF**

**This is an amendment to 16.19.5 NMAC, Sections 7 and 9, effective 08/02/2019.**

**16.19.5.7 DEFINITIONS:**

As used in the internship program.

**A. “Approved training area”** means a place for instructing an intern for licensure subject to requirements of the board.

**B. “Approved program”** means a program of training as outlined by the “**standards of practice.**”

**C. “Computed time”** means that time credited towards the training period which begins from the date of intern registration and

continues under the requirements of the approved program. Computed time shall consist of a maximum of 48 hours per week acquired in the internship program; including those hours acquired in an academic clinical pharmacy program, extern program, radiopharmacy program, or a “demonstration project” approved by the board. [~~Any internship acquired and submitted to the board prior to July 30, 1986, under the November 1980 amended 16.19.5 NMAC Internship Training Program, shall be credited toward the required internship hours, under this regulation.~~]

**D. “Intern”** means a pharmacy student or a graduate from an accredited college of pharmacy and registered in an approved program of supervised training.

**E. “Intern certificate of registration”** means that certificate furnished by the board upon approval of, application for registration of intern, received from the intern applicant.

**F. “Training period”** means 1500 hours if in the doctor of pharmacy program of structured internship experience under the instruction of a licensed pharmacist that is a board approved or college approved preceptor, said hours to be acquired after the satisfactory completion of [~~30 semester hours in a~~] all courses in the first semester of college of pharmacy curriculum, or its equivalent. Satisfactory completion requires that the student be eligible to progress in the college of pharmacy curriculum.

**G. “Structured internship experience”** may be obtained through academic internship hours for a minimum of 1500 internship hours satisfactorily completed and documented in an academic setting in the doctor of pharmacy program.

**H. “Preceptor”** means a licensed pharmacist who meets those requirements for the supervision and training of an intern as stipulated in Subsection D of 16.19.5.8 NMAC of this regulation.

**I. “Supervision”**

means that the preceptor shall maintain personal contact with the intern and shall be responsible for the required training at all times during the training period.

[8/27/1990; 16.19.5.7 NMAC - Rn, 16 NMAC 19.5.7, 3/30/2002; A, 12/19/2013; A, 3/22/2015, A, 8/02/2019]

**16.19.5.9 SUMMARY OF OBJECTIVES FOR LAST YEAR PHARMACY STUDENTS IN THE RURAL HEALTH CLINIC SETTING:**

**A.** Last year training programs, using academic training as a foundation, will provide learning experience in designated rural clinics. This program as designed and operated by the UNM College of Pharmacy, with Board approval, will provide a learning experience, expressive of the needs of rural health services.

**B. Definitions:**

**(1)**

**“Approved Training Area”** means a rural health clinic serving fewer than [~~thirty~~] 30 patients per day (average) and more than [~~twenty-five~~] 25 miles from an established system of healthcare. The site to be served must be approved by the Board and UNM College of Pharmacy.

**(2)**

**“Approved program”** means a program of training as defined by the UNM College of Pharmacy and approved by the Board.

**(3) “Intern”**

accepted to serve as a clinic intern must be a pharmacy student in his last year prior to graduation who has completed all the didactic work in the College of Pharmacy.

**(4)**

**“Preceptor”** means the licensed pharmacist defined under Subsection H of 16.19.5.7 NMAC.

**(5)**

**“Supervision”** means the intern in a clinic environment will be supervised by a preceptor approved by the College of Pharmacy of UNM. The preceptor is required to perform an on sight consultation and review with the

intern assigned to that clinic once a week.

**(6) "Hours"**

and structure of those hours will be defined in the UNM College of Pharmacy Training Program.

**C. Instructional**

materials, affidavits, evaluation forms and reports will be developed by the UNM College of Pharmacy in cooperation with the Board. At a minimum they will include:

**(1)**

Application for registration

**(2) Preceptors**

affidavit

**(3) Preceptors**

evaluation of intern

**(4) Interns**

evaluation of preceptor

**(5) Preceptors**

Application

**(6)**

Certification as Approved Preceptor by the Board.

**(7) Manual**

for Standards and Training will be provided by the UNM College of Pharmacy for the Rural Health.

**D. Requirements**

for Approved Training Areas shall include:

**(1) Rural**

designation as defined in Paragraph 1 of Subsection B of 16.19.5.9 NMAC or Health Department designation as defined in Paragraph 5 of Subsection B of 16.19.5.9 NMAC.

**(2) Current**

licensing.

**(3) Lack**

of deficiencies relevant to the observation of federal, state and municipal laws and regulations.

**(4) Available**

reference materials as defined in Subparagraph c of Paragraph 1 of Subsection C of 16.19.5.8 NMAC.

**(5) All**

repackaging, labeling and dispensing of medication will be conducted as described in Paragraph 2 of Subsection C of 16.19.5.8 NMAC.

**E. Requirements for**

preceptor refer to Subsection D of 16.19.5.8 NMAC.

**F. Requirements for**

the Rural Internship Program.

**(1)**

Satisfactory completion of all didactic work in a College of Pharmacy with a curriculum approved and accredited by the ACPE and meeting all rules established by regulations of the Board.

**(2) The**

College of Pharmacy, may, at its own discretion, refuse to enroll an intern in the program.

**(3) Standard**

identification tags will be worn at the clinic.

**(4) The intern**

shall make all reports and complete all assignments as required under the program.

**(5) The intern**

shall be made fully acquainted with his legal status by the preceptor. [3/7/1980...8/27/1990; A, 3/2/1999; 16.19.5.9 NMAC - Rn, 16 NMAC 19.5.9, 3/30/2002; A, 8/02/2019]

**REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF**

**This is an amendment to 16.19.12 NMAC, Sections 1, 2, 3, 9, 10, 13, 16, 17, 19, and 20, effective 08/02/2019.**

**16.19.12.1 ISSUING**

**AGENCY:** Regulation and Licensing Department, Board of Pharmacy, Albuquerque, NM [~~-(505)-222-9830~~]. [2/15/1889...2/15/1996; 16.19.12.1 NMAC - Rn, 16 NMAC 19.12.1, 3/30/2002; A, 12/15/2002; A, 1/31/2007, A, 8/2/2019]

**16.19.12.2 SCOPE:** All applicants for licensure, registration or certification by the Board of Pharmacy [~~1650 University Blvd, NE - Ste. 400B, Albuquerque, NM-87102, (505)-841-9102~~]. [2/15/1996; 16.19.12.2 NMAC - Rn, 16 NMAC 19.12.2, 3/30/2002, A, 8/2/2019]

**16.19.12.3 STATUTORY AUTHORITY:** Section 30-31-11 NMSA 1978 authorizes the board of pharmacy ("board") to

charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 30-31B-6 NMSA 1978 authorizes the board to charge reasonable fees for the registration and control of the manufacture, possession, transfer and transportation of drug precursors. Sections 61-11-12, 61-11-13, and 61-11-14 NMSA 1978 authorize the board [of Pharmacy] to charge, and limit the maximum charges for: (i) applications for registration and renewal of registration as a pharmacist, [or] pharmacist intern, or pharmacy technician; and (ii) applications for the registration of retail pharmacies, wholesale drug distributors, nonresident pharmacies, [pharmaceutical sales representatives;] drug manufacturers, hospital pharmacies, drug rooms, nursing homes, industrial or public health clinics, the department of health clinics and health facilities, [and] home care services, [and] wholesalers, retailers and distributors of legend-bearing veterinary drugs, outsourcing facilities, repackagers, and third party logistics providers. [2/15/1996; 16.19.12.3 NMAC - Rn, 16 NMAC 19.12.3, 3/30/2002, A, 8/2/2019]

**16.19.12.9 REGISTRATION FEES:**

- A.** Registration by examination \$200.00
- B.** Registration by reciprocity \$200.00
- C.** Registration as an intern \$25.00[per year]
- D.** Registration as a pharmacy technician \$[30:00] 25.00

**E.** Waiver of registration fees: The board of pharmacy waives the registration fee set forth in regulation 16.19.12.9 for individuals who are currently serving in the United States military, and for those service member spouses, for change of duty location to New Mexico. [3/7/1980...8/27/1990; A, 7/15/1997;

A, 7/31/1998; 16.19.12.9 NMAC - Rn, 16 NMAC 19.12.6, 3/30/2002; A, 12/15/2002; A, 9/30/2003; A, 3/22/2015, A, 8/2/2019]

**16.19.12.10 CERTIFICATE OF REGISTRATION OR REPLACEMENT:** Any replacement of a certificate shall be accompanied by a notarized statement of the reason or cause of the loss of the original, or by the original certificate to be replaced in case of damage or name change. All replacement certificates will be given the same number as the original certificate and will be marked "DUPLICATE".

- A. Certificate of registration \$20.00
  - B. Replacement of a certificate of registration \$20.00
  - ~~C. NOTE: Any replacement of a certificate shall be accompanied by a notarized statement of the reason or cause of the loss of the original, or by the original certificate to be replaced in case of damage or name change. All replacement certificates will be given the same number as the original certificate and will be marked "DUPLICATE".~~
- [3/7/1980...8/27/1990; 16.19.12.10 NMAC - Rn, 16 NMAC 19.12.10, 3/30/2002, A, 8/2/2019]

**16.19.12.13 LICENSE FEES:**

- A. Drug manufacturer \$700.00 bi-ennially
- B. Wholesale drug distributor \$700.00 bi-ennially
- C. Drug manufacturer/re-packager \$700.00 bi-ennially
- D. Re-packager \$700.00 bi-ennially
- E. Retail pharmacy \$300.00 bi-ennially
- F. Hospital pharmacy \$300.00 bi-ennially
- G. Nonresident pharmacy \$400.00 bi-ennially
- H. Nonresident

- ~~pharmacy, sterile compounding \$600.00 bi-ennially~~
  - ~~[H] I. Seller or dispenser of contact lenses \$400.00 bi-ennially~~
  - ~~[F] J. Dangerous drug research \$200.00 bi-ennially~~
  - ~~[F] K. Drug warehouse \$200.00 bi-ennially~~
  - ~~[K] L. Duplicate license or permit(for all types) \$10.00 per each request~~
  - ~~[E] M. Letter of good standing, verification, and certification \$10.00 per each request~~
  - ~~[M] N. Roster of [New Mexico] board of pharmacy facility license [database] \$30.00 per license category~~
  - ~~[N] O. Outsourcing facility \$2000.00 bi-ennially~~
  - ~~[O] P. Third party logistics provider \$700.00 bi-ennially~~
- [3/7/1980...5/1/1993; 16.19.12.13 NMAC - Rn, 16 NMAC 19.12.13, 3/30/2002; A, 9/30/2003; A, 7/15/2004; A, 1/15/2005; A, 12/15/2005; A, 1/31/2007; A, 11/15/2010; A, 12/13/2015; A, 3/23/2016; A, 11/28/2017, A, 8/2/2019]

**16.19.12.16 HOME CARE SERVICES DRUG PERMIT FEE:**

- \$75.00 per year
- [3/7/1980...8/6/1994; 16.19.12.16 NMAC - Rn, 16 NMAC 19.12.16, 3/30/2002, A, 8/2/2019]

**16.19.12.17 LIMITED VETERINARY DRUG RETAIL OR WHOLESALE LICENSE:**

- Limited veterinary drug retail or wholesale license shall be: \$150.00 per year
- [3/7/1980...2/22/1993; 16.19.12.17 NMAC - Rn, 16 NMAC 19.12.17, 3/30/2002, A, 8/2/2019]

**16.19.12.19 DRUG PRECURSOR LICENSE:** Drug precursor manufacturer or distributor license: \$500.00 bi-ennially

[3/7/1980...2/22/1993; 16.19.12.19 NMAC - Rn, 16 NMAC 19.12.19, 3/30/2002, A, 8/2/2019]

**16.19.12.20 REINSTATEMENT FEES:**

- ~~[A] Any person whose board registration or license has expired and who seeks reinstatement of the certificate of license must pay the following reinstatement fee in addition to all delinquent renewal fees:~~
  - ~~[+] A. Pharmacists \$25.00~~
  - ~~[+] B. All other licenses issued by the board of pharmacy under the Pharmacy Act and the Drug Precursor Act including, but not limited to, licenses for retail pharmacy, non-resident pharmacy, wholesale drug distributor, drug manufacturer, hospital pharmacy, drug room, nursing home, clinic facility, wholesalers, retailers or distributors of veterinary drugs, and drug precursor, twenty-five percent of the license renewal fee not to exceed \$100.00~~
  - ~~[B] C. Controlled substance registrations are exempt from reinstatement fees.~~
- [3/7/1980...2/22/1993; 16.19.12.20 NMAC - Rn, 16 NMAC 19.12.20, 3/30/2002; A, 12/13/2015, A, 8/2/2019]

**End of Adopted Rules**



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**Other Material Related to Administrative Law**

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**AGRICULTURE  
DEPARTMENT****NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The New Mexico Agriculture Department 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:

The part name for 21.34.6 NMAC has been corrected to read: STANDARDS OF IDENTITY FOR FROZEN DAIRY DESSERTS; instead of, STANDARDS OF IDENTIY FOR FROZEN DAIRY DESERTS

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
Issue 13	July 5	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 15
Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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