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New Mexico Register

Volume XXX, Issue 17

September 10, 2019

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Notices of Rulemaking and Proposed Rules

DENTAL HEALTH CARE, BOARD OF

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

LEGAL NOTICE

The New Mexico Board of Dental Health Care will hold a rule hearing on Friday, October 25, 2019, at 8:30 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room.

The purpose of the rule hearing is to consider proposed amendments to include: (1) consolidating the advertising rules to one part, (2) updates to clinical exams for dentists, (3) sedation continuing education was updated, (4) guidelines for sleep apnea were added, (5) a grace period was added for EFDA apprenticeship. Also, parts 16.5.1, 16.5.6, 16.5.10, 16.5.16, 16.5.30 will be repealed and replaced to comply with State Records new updated formatting requirements. Amendments are intended to update definitions, consolidate advertising rules in one location for ease of understanding, clarifying specialty advertising and use of testimonials, clarifying continuing education requirements for dentists with sedation/anesthesia permits, adding guidelines for dentists who treat medically diagnosed snoring and sleep apnea, removing advertising language from dentists and hygienists sections and placing in general provisions, allowing a grace period for EFDA certifications, and adding language to opioid prescription requirements that is required by new statute. The amendments, repeal and replace are related to the following rules:

16.5.1 NMAC - General Provisions;
16.5.6 NMAC - Dentists, Licensure by Examination;

16.5.10 NMAC - Dentists, Continuing Education Requirements;
16.5.14 NMAC - Dentists, Adjunctive Dental Services;
16.5.16 NMAC - Dentists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions;
16.5.30 NMAC - Dental Hygienists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions;
16.5.42 NMAC - Expanded Function Dental Auxiliary, Requirements for Certification; and
16.5.57 NMAC - Management of Pain with Controlled Substances

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

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Roberta Perea, Board Administrator via electronic mail at dental.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Thursday, October 24, 2019. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: http://www.rld.state.nm.us/boards/Dental_Health_Care_Rules_and_Laws.aspx, no more than three business days following receipt to allow for public view.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Roberta Perea, Board Administrator at (505) 476-4622.

Statutory Authority: Sections 61-5A-6, 61-5A-10 and 61-5A-12, NMSA 1978.

Summary of Proposed Changes:

16.5.1 NMAC - General Provisions

Previous rules of advertising were in various parts of the code. This consolidates all guidelines for all licensees and adds and modifies new language. Additions include guidelines for bait advertising, responsibilities for advertisements, testimonials, scope of practice, promotional items and signage, websites, claims of superiority, use of acronyms, and specialty advertising. Our past rules have been inadequate in addressing the current multiple levels of advertising and promotion. Federal code and NM Statute have been referenced in these new rules. NERB has officially changed its name to CDCA. Both acronyms will be kept due to numerous references in Rules.

16.5.6 NMAC - Dentists, Licensure by Examination

The current landscape in clinical dental testing is changing to reduce requirements for passing examinations. The Board feels like certain clinical procedures should still remain in place in order to accept qualified dentists for licensure in NM. Currently, the board accepts clinical exams from all of the testing services. Consequently, the board feels that each clinical exam should be similar in testing the skills and judgment of dental candidates, and that no one single exam be more attractive to candidates because of reduced requirements.

16.5.10. NMAC - Dentists, Continuing Education Requirements

New rules for sedation passed last year therefore, an increase in the requirements for continuing education for re-certifications is required. This section was in conflict and now reflects same requirements by referring to the anesthesia section.

16.5.14 NMAC - Dentists, Adjunctive Dental Services

In the adjunctive services section, we need guidelines for the screening and

treatment of snoring and obstructive sleep apnea. There is a large overlap of medicine and dentistry, and scope of practice issues are sometimes at odds. These new rules reference the recommendations from the American Dental Association, and the American Academy of Dental Sleep Medicine. These two organizations are at the forefront of this very important and evolving health concern.

16.5.16 NMAC - Dentists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions

Refers to new advertising guidelines in Part 1, General Provisions. Also corrects grammar.

16.5.30 NMAC - Dental Hygienists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions

Refers to new advertising guidelines in Part 1, General Provisions. Also corrects grammar.

16.5.42 NMAC - Expanded Function Dental Auxiliary, Requirements for Certification

Allows a grace period for certification for EFDA for certain hardships during apprenticeship, for example, pregnancy or maternity leave, at the discretion of the board chair, or vice-chair.

16.5.57 NMAC - Management of Pain with Controlled Substances

Rules were added to comply with SB221 which went into law on June 14, 2019. This requires health care providers to co-prescribe an opioid antagonist.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico

Administrative Code (NMAC) rule 8.320.6 NMAC, *School-Based Services for MAP Eligible Recipients Under Twenty-One Years of Age*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: September 10, 2019
Hearing Date: October 10, 2019
Adoption Date: Proposed as January 1, 2020
Technical Citations: 34 CFR 300.142

The Department is proposing to amend the rule as follows:

Section 8 Mission Statement

This section is being removed to be consistent with other program rules. This change has no effect on any administrative or programmatic functions.

Section 11 Eligible Providers

Subsection B.11

HSD is proposing to add to the supervision requirements for licensed master level social workers and licensed baccalaureate social workers to include other supervisors approved by the NM Board of Social Work Examiners.

This addition will bring this rule into alignment with the current practice of NM Board of Social Work Examiners. This will allow mid-level practitioners in rural or underserved areas to obtain necessary supervision that is in accordance with the rule.

Subsection B.12

HSD is proposing to add licensed associate marriage and family therapist to the list of allowable providers.

This addition will allow school-based providers in rural and underserved areas access to an increased pool of eligible practitioners which can bill for services. This provider type is already allowed outside the school setting.

Section 13 Covered Services

Subsection H

HSD is proposing to add Behavioral Health Services as a covered service in the school-based setting.

This addition corrects a previous omission of these services from the rule effective 1/1/2014. Behavioral Health services should not have been omitted and have been covered since this time.

The register and proposed rule are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Department proposes to implement this rule effective January 1, 2020. A public hearing to receive testimony on this proposed rule will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on Thursday, October 10, 2019 at 9:00 a.m., Mountain Standard Time (MST).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MST on Thursday, October 10, 2019. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd>.

state.nm.us/2017-comment-period-open.aspx along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), Medical Assistance Division (MAD), is amending the following rule that is part of the New Mexico Administrative Code (NMAC): 8.321.2 NMAC - Specialized Behavioral Health Services.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: September 10, 2019
Hearing Date: October 16, 2019
Adoption Date: Proposed as January 1, 2020
Technical Citations: 42 CFR 400-1099

MAD is proposing some new services, as well as changes to some

existing services. The rule was also reviewed for currency and clarity with changes being made as necessary. Language was also added throughout the rule to direct individuals to the Behavioral Health (BH) Policy and Billing Manual for additional information.

The financial impact for the new services described in this proposed rule, is estimated to be \$34,000,000, annually, in combined federal and state funds. The primary fiscal impact is related to new services that are being added as part of the Department's 1115 waiver renewal for the Centennial Care program.

The Department proposes to amend the rule as follows:

Section 8: Mission Statement -

Language in this section was removed and will be reserved for promulgation at a later date.

Section 9: General Provider Instruction

Subsection C: The Department proposes to allow licensed alcohol and drug abuse counselors (LADACs) and certified alcohol and drug abuse counselors (CADCs) to provide therapeutic services for alcohol and drug abuse diagnoses only, including treatment of co-occurring mental health conditions when supervised by an independently licensed counselor or therapist. This addition will provide increased access to services for Medicaid recipients with a substance use disorder (SUD).

Subsection D: The Department proposes to add new types of agencies to the list of agencies that may utilize non-independent practitioners under supervision for rendering behavioral health services: 1) a CareLink NM Health Home (CLNM HH); 2) a crisis triage center licensed by the Department of Health (DOH); 3) a Behavioral Health Agency (BHA) with a Behavioral Health Services Division (BHSD) supervisory certificate; 4) an opioid treatment program in a methadone clinic with

a BHSD supervisory certificate; 5) a political subdivision of the state of New Mexico as a BHA with a BHSD supervisory certificate; and 6) a crisis services community provider as a BHA with a BHSD supervisory certificate. Each agency type will increase access to behavioral health services through the use of mid-level practitioners.

Subsection E: The Department proposes to add new non-independent practitioners to the list of those that can render services within one of the agencies listed in Subsection D. These are: 1) a registered nurse with existing New Mexico licensure when supervised by a behavioral health certified nurse practitioner, clinical nurse specialist, or physician; 2) a physician assistant; or 3) certain individuals in educational programs including a master's level behavioral health intern, a psychology intern (including psychology practicum students and pre doctoral internship), a pre-licensure psychology post doctorate student, a certified peer support worker, or a certified family peer support worker. All of the practitioners must be enrolled as a MAD provider. The addition of these non-licensed practitioners will extend access to behavioral health services for eligible recipients; provides needed experience for behavioral health interns; add to the workforce within agencies; and support the premise that interns, once assimilated into the New Mexico behavioral health workforce, are more likely to stay in New Mexico once they are licensed. All supervisory requirements must be met. In compliance with 2019 Senate Bill 207 the rule provides for licensed substance abuse associates to be reimbursed for the services provided to medical assistance recipients within the licensed substance abuse associate's scope of practice.

Subsection I: Added clarity that all pre-authorizations must comply with federal parity laws.

Subsection J: Changes are proposed to requirements for a practitioner to render therapeutic

services to an eligible recipient.

Detailed requirements for assessments and service or treatment plans have been moved to the BH Policy and Billing Manual. The rule requiring that the diagnostic evaluation and treatment plan must precede the rendering of behavioral health services is proposed to be waived when a recipient only requires up to four behavioral health encounters. Under this condition, a provisional diagnosis based on screening results can be utilized as in the “treat first” clinical model. When a recipient only requires up to four behavioral health encounters, a treatment plan is not required.

Subsection K: The Department proposes to add a requirement for the lead provider to complete a comprehensive assessment and service plan for all recipients with a serious mental illness (SMI) or severe emotional disturbance (SED), as determined through a diagnostic evaluation. Conditions for this requirement include: 1) only the agencies designated in Subsection D of 8.321.2.9 NMAC may bill for a comprehensive assessment. Other agency types and practitioners may bill for an assessment that does not require the accumulation of collateral information from multiple provider types; 2) all practitioner types within such agencies may develop the assessment and plan if they are under the supervision of an independently licensed practitioner and are HIPAA trained; and 3) a comprehensive assessment and service plan cannot be billed if care coordination is being billed through bundled service packages such as case rate, high fidelity wrap around, or CLNM Health Homes.

Subsection L: The Department proposes to add provisions to allow for interdisciplinary teaming to update treatment plans (referred to as “service plans” when developed by an interdisciplinary team). The team consists of a lead agency, which must be one of the agencies listed in Subsection D of 8.321.2.9 NMAC, and at least two other providers or agencies.

Section 10: Accredited Residential Treatment Center (ARTC) for Adults with Substance Use

Disorders - The Department proposes to add this benefit for both fee-for-service and managed care eligible recipients subject to approval by the federal Centers for Medicare and Medicaid Services (CMS) as part of the 1115 waiver renewal for Centennial Care and for inclusion in the Medicaid State Plan. This section outlines level-three services as defined by the American Society of Addiction Medicine (ASAM) and requires the ARTC to be accredited by the Joint Commission (JC), the Commission on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA). The effective date will be January 1, 2019, or as otherwise approved by CMS.

Section 11: Accredited Residential Treatment Center (ARTC) for Youth

- This section was updated to align with Children, Youth and Families Department (CYFD) regulations. Specifically, the Council on Accreditation (COA) was added as one of the national accrediting agencies. Individuals are directed to the Behavioral Health Policy and Billing Manual for details related to findings and recommendations for an Indian Health Service (IHS) or federally recognized tribal government’s ARTC.

Section 12: Applied Behavior Analysis (ABA)

Subsection A: The Department proposes to add a section on coverage criteria, outlining three items that must be in place for ABA services to be covered, unless otherwise allowed under Subsection B: 1) confirmation of the presence or risk of Autism Spectrum Disorder (ASD) by an approved autism evaluation provider (AEP) through a comprehensive diagnostic evaluation (CDE), targeted evaluation, or targeted risk evaluation; 2) an integrated service plan (ISP), which must be developed by the AEP together with a referral to an approved ABA

provider agency; or 3) completion of a behavioral or functional analytic assessment to determine if a focused or comprehensive model shall be selected, together with completion of a treatment plan. All services must be rendered in accordance with the treatment plan. In compliance with 2019 House Bill 322 the rule provides that autism spectrum disorder will not be subject to age restrictions or dollar limits.

Subsection B: To comply with new requirements, the Department proposes to update eligible providers based on the three stages of service. Specialty care providers or practitioners who are enrolled as approved behavior analysts (BAs) have been added but must provide additional documentation that demonstrates that the practitioner has the skills, training and clinical experience to oversee and render ABA services to highly complex eligible recipients who require specialized ABA services. The Department also proposes to add additional provider types that may refer a recipient for ABA services, including: psychologists licensed by the New Mexico Regulation and Licensing Division (RLD); psychiatric clinical nurse specialists or certified nurse practitioners with a specialty of pediatrics or psychiatry licensed by the New Mexico Board of Nursing; medical doctor (MD) or doctor of osteopathic medicine (DO) board licensed psychiatrists who are board certified in child and adolescents; or licensed pediatricians.

Subsection C: The Department proposes to update the identified population. The reader is directed to the BH Policy and Billing Manual for details.

Subsection D: The Department proposes to reorganize covered services in the structure of the rule. The reader is directed to the BH Policy and Billing Manual for details.

Subsection E: Language has been proposed to reflect that prior authorization is no longer required for stage-two ABA services. Stage-three ABA services still require prior authorization.

Section 13: Assertive Community Treatment Services (ACT)

Subsection A: The Department proposes to add three additional provider types as the lead to address the shortage of psychiatrists in New Mexico: 1) a certified psychiatric nurse practitioner; 2) a psychiatric clinical nurse specialist; and 3) a prescribing psychologist under the supervision/consultation of a MD, which may be provided via telehealth. Adds to the two nurse requirement to allow for other allied medical professionals to be used in place of one nurse. Previously, the team leader was required to be a psychiatrist. Added clarity that an ACT agency providing coordinated specialty care for an individual with first episode psychosis must provide services consistent with the coordinated specialty care (CSC) model.

Subsection B: Language is proposed to specify four levels of interaction to assure that services are based on evidence-based practice: 1) face-to-face encounters; 2) collateral encounters with the recipient's family or significant others; 3) assertive outreach with the recipient; and 4) group encounters including basic living skills development, psychosocial skills training, peer groups, and wellness and recovery groups.

Subsection C: Language is proposed to include ACT service eligibility for individuals 15 to 30 years of age who are within the first two years of their first episode of psychosis or meet the criteria of serious mental illness (SMI) with a special emphasis on psychiatric disorders.

Subsection D: Language is proposed to clarify that ACT is a voluntary medical, comprehensive case management and psychosocial intervention program provided on the basis of principles covered in the BH Policy and Billing Manual.

Subsection E: The Department is proposing to allow reimbursement for a six-month period while reimbursing another Medicaid covered service for transitioning

levels of care with the condition that the need is identified as a component of the treatment plan. Concurrent therapy modalities may assure a smooth transition with the potential outcome being that there will be no further need for the high level of support provided with ACT services.

Section 14: Behavioral Health Professional Services for Screenings, Evaluations, Assessments and Therapy

- The Department is proposing to allow validated screenings and brief interventions for high risk conditions in order to provide prevention or early intervention, based on New Mexico's "treat first" clinical model.

Subsection B: The Department proposes to remove the requirement for an assessment to be conducted at least annually. However, the rule also states that if a non-independent practitioner is conducting the assessment, it must be done under the supervision of an independent practitioner and must be counter-signed by the independent practitioner along with the diagnosis indicating the need for the assessment.

Subsection C: The Department proposes to add language that outpatient therapy services now include consultation with the recipient's family and other professional staff when the service is on behalf of the recipient.

Section 15: Behavioral Health Respite Care (MCO only)

- Proposed language has been incorporated to specify that behavioral health respite care is available to MCO members. BH Respite Care was previously outlined in a separate section of NMAC.

Section 16: Behavioral Management Skills (BMS)

- Proposed language has been added to align services with CYFD regulations. BMS is not provided as a stand-alone service but delivered as part of an integrated plan of services to maintain eligible recipients in their communities as an alternative to out-of-home services.

Subsection B: Coverage criteria for BMS has been updated to clarify that a treatment plan must include crisis planning based on an assessment that includes the identification of skills deficits that will benefit from the integrated program of therapeutic services; and 24 hour availability of appropriate staff or implementation of the crisis plan, which may include referral to respond to the recipient's crisis situation. The previous version of the rule did not have the option of referral to an outside source for 24 hour availability of crisis services. Based on the New Mexico Crisis and Access Line (NMCAL) 24 hour crisis service and its referral network, the Department believes this option should be available based on potentially limited resources in the BMS workforce. The rule expands the primary responsibilities of independently licensed supervisors and directs the reader to the BH Policy and Billing Manual for specifics. The rule also expands the team of professionals to include the recipient and his or her family, which must review the treatment plan every 30 days. If the team assesses a lack of progress over the last 30 days, the treatment plan will be amended and approved by the BMS supervisor.

Section 17: Cognitive Enhancement Therapy (CET)

- CET services were previously covered through individual and group therapy reimbursement, but the Department now proposes to classify CET as a "special service." Proposed language is added to require an application to BHSD to assure that required training has occurred, and that the use of the evidence-based practice is in place. A letter of approval from BHSD will be required to add this service to one of these approved agencies: a community mental health center (CMHC); a federally-qualified health center (FQHC); an IHS facility; a PL 93-638 tribal facility; a core service agency (CSA); a CLNM Health Home; or a BHA with a BHSD supervisory certificate. The effective date will be January 1, 2019, or as otherwise approved by CMS.

Section 18: Comprehensive Community Support Services (CCSS)

Subsection A: The Department proposes to add BHAs with a supervisory certificate, CMHCs, and CLNM Health Homes to the list of providers that can deliver CCSS. Training is available through the University of New Mexico (UNM). An attestation that this training has taken place is required for CCSS to be added to the provider's list of specialty services. If providing this service to children and adolescents, CYFD will provide required background checks.

Subsection B: The Department proposes to waive the requirement, up to the first four encounters, for which a diagnostic evaluation must occur prior to treatment; however, a provisional diagnosis must be included for billing. After four encounters, the diagnostic evaluation with a resultant diagnosis is required. This is consistent with the "treat first" clinical model.

Subsection D: The Department proposes to add eligible recipients with substance use disorders to the other two qualifying categories of behavioral health disorders, which are serious mental illness and severe emotional disturbance.

Section 19: Crisis Intervention Services

- In this section, the Department proposes to expand the three current crisis intervention services to include a fourth type: crisis stabilization services in a community-based center. Crisis stabilization services are defined as outpatient services for up to 24 hours of stabilization of crisis conditions that may, but do not necessarily, include American Society of Addiction Medicine (ASAM) level-two withdrawal management, and can also serve as an alternative to the emergency department or police department. The eligible population is age 14 years and older.

Subsection B: This section lists the proposed types of provider agencies eligible to deliver crisis

stabilization services and specifies proposed staffing requirements. Eligible providers include: CSAs; CMHCs; crisis triage centers; IHS or tribal 638 clinics; hospital outpatient clinics; BHAs with a supervisory certificate; political subdivisions of the state of NM with a supervisory certificate; and opioid treatment programs within a methadone clinic with a supervisory certificate. Staffing must include at least: during all hours of operation, one registered nurse with experience or training in crisis triage and managing intoxication and withdrawal management, if this service is provided; one master's level licensed mental health professional on-site during all hours of operation; a certified peer support worker on-site during all hours of operation; a physician or certified nurse practitioner either on-site or on call during all hours of operation; and at least one staff trained in basic cardiac life support and use of the automated external defibrillator equipment and first aid during all hours of operation.

Subsection C: Proposes to add clarification of covered services, including details of ambulatory withdrawal management, crisis stabilization, and navigational services for individuals transitioning to the community.

Section 20: Crisis Triage Center (CTC)

- This new section proposes to add information clarifying that CTC covers both outpatient crisis stabilization and residential services for up to eight days with a limit of 12 beds. The effective date of residential CTC services will be January 1, 2019, or as otherwise approved by the Centers for Medicare and Medicaid Services (CMS).

Section 21: Day Treatment (DT)

Subsection B: The Department proposes to add information clarifying the conditions under which DT services can be provided and changing covered services to be in alignment with CYFD regulations. Specifically, coverage criteria includes the following provisions: 1) a family

who is unable to attend the regularly scheduled sessions at the DT facility due to transportation difficulties or other reasons may receive individual family sessions scheduled in the family's home by the DT agency; 2) the certified DT services provider delivers adequate care and continuous supervision of the client at all times during the course of the client's DT program participation; and 3) 24-hour availability of appropriate staff or implementation of a crisis plan, which may include referral, to respond to the eligible recipient's crisis situation.

Subsection C: To align with CYFD requirements, the Department proposes to add language clarifying covered services. DT services must be identified in the treatment plan, including crisis planning, which is formulated on an ongoing basis by the treatment team. The treatment plan guides and records the following for each client: individualized therapeutic goals and objectives; individualized therapeutic services provided; and individualized discharge and aftercare plans. Treatment plan requirements are detailed in the BH Policy and Billing Manual. Advance schedules are posted for structured and supervised activities that include individual, group and family therapy, and other planned activities appropriate to the age, behavioral and emotional needs of the client subject to the treatment plan.

Section 22: Family Support Services (FSS) (MCO only)

- Proposed language has been added to specify that Family Support Services are available to MCO members.

Section 23: Inpatient Psychiatric Care in Freestanding Psychiatric Hospitals or Psychiatric Units of Acute Care Hospitals

- The Department proposes language clarifying that there is no age limit for treatment in psychiatric units of acute care hospitals.

Subsection B: The Department proposes to add language that a treatment plan and all supporting documentation must

be available for review in the eligible recipient's file.

Section 24: Institutions for Mental Disease (IMDs) - This new proposed section increases IMD coverage from 15 to 30 days for eligible recipients ages 22 through 64 for substance abuse disorders. The effective date of this benefit will be January 1, 2019, or as otherwise approved by CMS.

Section 25: Intensive Outpatient Program (IOP) for Substance Use Disorders

Subsection A: The Department proposes to add three new provider agency types that can deliver IOP services: a CLNM Health Home; a BHA with a BHSD supervisory certificate; or an opioid treatment program in a methadone clinic with a BHSD supervisory certificate. Non-independent practitioners that can provide IOP services under the supervision of the IOP supervisor include a LMSW, LMHC, LADAC, CADC, LSAA, or a master's level psychologist associate. The approval letter author was changed from a MAD IOP approval letter to an IOP Interdepartmental Council approval letter. BHSD, MAD, and CYFD work together in the approval and audit process for IOP services. The concept of a transitional age program for which the provider must specify the age range was added.

Subsection B: The Department proposes to eliminate the list of approved evidence-based programs (EBPs) from the rule and directs individuals instead to the IOP Interdepartmental Council or the BH Policy and Billing Manual. Also contained within those two sources are the directions for having another EBP approved. New wording was added to reemphasize that IOP must address co-occurring mental health disorders, as well as substance use disorders, when indicated.

Subsection C: Proposed language was added to clarify the addition of therapy or counseling services outside of the bundled IOP services. For other mental health therapies, outpatient therapies may

be rendered in addition to the IOP therapies of individual and group when the eligible recipient's co-occurring disorder requires treatment services that are outside the scope of the IOP therapeutic services. The eligible recipient's file must document the medical necessity of receiving outpatient therapy services in addition to IOP therapies, and a statement is required from the IOP agency that to postpone such therapy until the completion of the eligible recipient's IOP services is not in the best interest of the eligible recipient. Such documentation includes, but is not limited to: a current assessment, a co-occurring diagnosis, and the inclusion in the service plan for outpatient therapy services. An IOP agency may render these services when it is enrolled as a provider covered under Subsection D of 8.321.2.9 NMAC with practitioners listed in Subsections C and E of 8.321.2.9 NMAC whose scope of practice specifically allows for mental health therapy services; or may refer the eligible recipient to another provider if the IOP agency does not have such practitioners available. The IOP agency may continue the eligible recipient's IOP services in coordination with the new provider.

Subsection D: The Department proposes to lower the age range of adolescents from 13 years to 11 years. This section also includes provision of services that have been mandated by the local judicial system; adds the transitional age group for a separate service; adds the judicial system mandate; and adds the judicial mandate for the adult population program.

Subsection F: Proposes to clarify that medication assisted treatment (MAT) and other mental health therapies are billed and reimbursed separately from the bundled rate and to allow for inclusion of contract employees within the IOP team.

Section 26: Intensive Outpatient Program for Mental Health Conditions (IOP for MH) - This proposed new section of the rule was added to comply with IOP

regulations. IOP for mental health conditions currently have no approved evidence-based practices (EBP); therefore, any agency requesting coverage must submit the EBP being proposed to the Interdepartmental IOP Council for approval as indicated in the BH Policy and Billing Manual. The effective date will be January 1, 2019, or as otherwise approved by CMS.

Section 27: Medication Assisted Treatment (MAT): Buprenorphine Treatment for Opioid Use Disorder

- The Department proposes to restructure the rule by adding this new section. MAT is already a covered Medicaid benefit.

Section 29: Non-Accredited Residential Treatment Centers (RTCs) and Group Homes (GHs) -

Proposed changes were made to align with CYFD regulations.

Subsection A: Proposed language in the rule directs the reader to the BH Policy and Billing Manual for details on CYFD findings and recommendations for RTCs operated by IHS or a federally recognized tribal government.

Subsection B: In this section, the Department proposes the following: 1) to add the statement that RTC services are provided through a treatment team approach and the roles, responsibilities and leadership of the team are clearly defined; 2) to delineate the 24 hour therapeutic group living environment as one that meets the recipient's developmental, psychological, and emotional needs; 3) to update the provision of appropriate on-site staff based on the acuity of recipient needs on a 24 hour basis to ensure adequate supervision of recipients and response in a proactive and timely manner; 4) to direct the reader to the BH Policy and Billing Manual for details on development of the interdisciplinary treatment plan. If the recipient is solely receiving RTC services, a treatment plan is not required; it is only required if the recipient is also receiving other behavioral health services; 5) to assure appropriate

discharge timing and planning by requiring regular assessments outlining clinically appropriate after-care services. Discharge planning begins when the recipient is admitted to residential treatment and is updated and documented in the recipient record at every treatment plan review, or more frequently as needed; and 6) to add the requirement that services, care and supervision are provided at all times, including the provision of, or access to, medical services on a 24 hour basis, and the maintenance of a staff-to-recipient ratio appropriate to the level of care and needs of the recipient.

Section 30: Opioid Treatment

Program (OTP) - This new proposed section incorporates the previously named Medication Assisted Treatment (MAT) in a methadone clinic with new federal regulations for more comprehensive services when a recipient is receiving methadone treatment. In compliance with 2019 Senate Bill 221 requires prescribers of opioid analgesics shall provide the patient information on the risks of overdose and inform the patient of the availability of an opioid antagonist.

Section 31: Partial Hospitalization (PH) Services in an Acute Care or Freestanding Psychiatric Hospital

- The Department proposes to expand the definition of PH and to update requirements.

Subsection A: This section lists the required practitioners for PH: a registered nurse; a clinical supervisor that is an independently licensed behavioral health practitioner or psychiatric nurse practitioner or psychiatric nurse clinician; or a licensed behavioral health practitioner. This section also lists other practitioners that may, but are not required, to be part of the PH team: physician assistants; certified peer support workers; certified family peer support workers; licensed practical nurses; and mental health technicians.

Subsection B: This section lists eight new proposed criteria that must be adhered to for this service:

1) all services must be ordered by a psychiatrist or licensed Ph.D.; 2) PH is a voluntary, intensive, structured and medically staffed psychiatrically supervised treatment program with an interdisciplinary team intended for stabilization of acute psychiatric or substance use symptoms and adjustment to community settings; 3) a history and physical must be conducted within 24 hours of admission; 4) an interdisciplinary biopsychosocial assessment must be conducted within seven days of admission including alcohol and drug screening; 5) services are furnished under an individualized written treatment plan established within seven days of initiation of service, which must be reviewed and updated every 15 days; 6) documentation must be sufficient to demonstrate that coverage criteria are met; 7) treatment must be reasonably expected to improve the recipient's condition or designed to reduce or control psychiatric symptoms to prevent relapse or hospitalization, and to improve or maintain the recipient's level of function; and 8) for recipients in elementary or secondary school, educational services must be coordinated with the recipient's school system.

Subsection C: The Department proposes language that specifies the conditions for which eligible recipients may receive PH including: the recipient is under the care of a psychiatrist for SMI, SED, or moderate to severe SUD, the recipient must have an adequate support system to sustain/maintain him or herself outside the PH program; recipients 19 and over must have a serious mental illness including substance use and be safely managed in the community with high intensity therapeutic intervention, and would be at risk of requiring inpatient care without this treatment; and recipients age 5 to 18 must have severe emotional disturbances which may include substance use disorders, are able to be safely managed in the community with high intensity therapeutic intervention, and would be at risk of requiring inpatient care without this treatment.

Subsection E: The Department proposes to clarify that a program that only monitors the management of medication for recipients whose psychiatric condition is otherwise stable, is not the combination, structure, and intensity of service that makes up active treatment in a PH program and, therefore, is a non-covered service.

Subsection F: The Department proposes to eliminate prior authorization (PA) unless the length of stay exceeds 45 days, at which time prior authorization is required. The proposed rule stipulates the conditions that must be documented when requesting PA.

Subsection G: The Department lists the services that may be billed separately from PH, which include: performance of necessary evaluations and psychological testing for development of the treatment plan; physical examinations and any resultant medical treatment; any medically necessary occupational or physical therapy; and other professional services not rendered as part of the program.

Section 32: Psychosocial Rehabilitation Services (PSR)

- The Department proposes to update the definition of PSR. PSR is to be a transitional level of care based on the recipient's recovery and resiliency goals.

Subsection A: Proposes to add PSR staffing requirements. PSR services must meet a staff ratio guideline of 1:2 minimum and 1:10 maximum. In both the clubhouse and classroom settings, the entire staff works as a team and the team must have a clinical supervisor/team lead that can include: certified peer support workers; certified family support workers; community support workers; and other HIPAA trained individuals working under the direct supervision of the clinical supervisor. Minimum qualifications for the clinical supervisor/team lead include: an independently licensed behavioral health professional; one year of demonstrated supervisory experience; demonstrated knowledge

and competence in the field of PSR; and an attestation of training related to providing clinical supervision of non-clinical staff.

Subsection D: The Department proposes to revise the PSR services rendered to include four major components: 1) basic living skills development; 2) psychosocial skills training; 3) therapeutic socialization; and 4) individual empowerment. Components of each of the four major services are also listed.

Subsection F: The Department proposes to clarify that although there is no PA requirement for PSR, the factors for determining medical necessity are: recipient assessment; recipient diagnostic formation; recipient service and treatment plans; and compliance with 8.321.2 NMAC.

Section 33: Recovery Services

(MCO only) - This section is currently in rule; however, the Department proposes to move it under this section.

Section 34: Screening, Brief

Intervention & Referral to

Treatment (SBIRT) - This proposed new section adds the SBIRT service to the Medicaid benefit package. The effective date of this change will be January 1, 2019, or as approved by CMS. Expanded the list of eligible providers to provide this important service to capture the range of psychical health settings where this service can be provided.

Section 36: Supportive Housing
Pre-Tenancy and Tenancy Services

(PSH-TSS) - This proposed new section adds PSH-TSS to the Medicaid benefit package for recipients enrolled in Centennial Care. The effective date will be July 1, 2019, or as otherwise approved by CMS.

Section 37: Treatment Foster Care
I and II (TFC)

- The Department proposes to update this section to align with CYFD regulations. TFC I and II have been combined, rather than listed separately, as

requirements are similar. When there is a difference, it is cited in the rule. The definition was modified to reinforce the use of a treatment plan directed to the development of skills and re-integration into family and community.

Subsection A: The Department proposes to update TFC eligibility criteria to include a CYFD certified TFC agency that must be licensed as a child placement agency by CYFD Protective Services.

Subsection B: The Department proposes to add a section clarifying the conditions of coverage for both the agency and TFC families. The conditions are: 1) the TFC agency provides intensive support, technical assistance, and supervision of all treatment foster parents; 2) a TFC I and II parent is either employed or contracted by the TFC agency and receives appropriate training and supervision by the TFC agency; 3) placement does not occur until after a comprehensive assessment of how the prospective treatment foster family can meet the recipient's needs and preferences, and a documented determination by the agency that the prospective placement is a reasonable match for the recipient; 4) an initial treatment plan must be developed within 72 hours of admission and a comprehensive treatment plan must be developed within 14 calendar days of the eligible recipient's admission to a TFC I or II program; 5) the treatment team must review the treatment plan every 30 calendar days; 6) TFC families must have one parent readily accessible at all times, cannot schedule work when the eligible recipient is normally at home, and be able to be physically present to meet the eligible recipient's emotional and behavioral needs; 7) in the event that the treatment foster parents request a treatment foster recipient be removed from their home, a treatment team meeting must be held and an agreement made that a move is in the best interest of the involved recipient. Any treatment foster parent(s) who demands removal of a treatment foster recipient from his or her home without first discussing with and

obtaining consensus of the treatment team, may have their license revoked; and 8) a recipient eligible for TFC I or II may change treatment foster homes only under the following circumstances: an effort is being made to reunite siblings; or a change of treatment foster home is clinically indicated, as documented in the client's record by the treatment team.

Subsection C: This section emphasizes the rights of recipients, describes the transition between levels of care, and differentiates between TFC I and TFC II. TFC I services are for an eligible recipient who meets the following criteria: is at risk for placement in a higher level of care or is returning from a higher level of care and is appropriate for a lower level of care; or has complex and difficult psychiatric, psychological, neurobiological, behavioral, psychosocial problems; and requires and would optimally benefit from the behavioral health services and supervision provided in a treatment foster home setting. TFC II services are for an eligible recipient who meets the criteria listed in Section 25 Subsection B of 8.321.2.9 NMAC and also meet one of the following criteria: has successfully completed treatment foster care services level I (TFC I), as indicated by the treatment team; or requires the initiation or continuity of the treatment and support of the treatment foster family to secure or maintain therapeutic gains; or requires this treatment modality as an appropriate entry level service from which the client will optimally benefit. An eligible recipient has the right to receive services from any MAD TFC enrolled agency of his or her choice.

Subsection D: The Department proposes to add new requirements and clarify processes. The TFC parental responsibilities include but are not limited to: 1) meeting the recipient's base needs and providing daily care and supervision; 2) reunification with the recipient's family. The treatment foster parents work in conjunction with the treatment team toward the accomplishment of the reunification

objectives outlined in the treatment plan; and 3) ensuring proper and adequate supervision is provided at all times. Treatment teams determine that all out-of-home activities are appropriate for the recipient's level of need, including the need for supervision. The treatment foster care agency provides intensive support, technical assistance, and supervision of all treatment foster parents. The following services must be furnished by both TFC I or II agencies unless specified for either I or II: a) provision of individual, family or group psychotherapy to recipients as described in the treatment plan. The TFC therapist is an active treatment team member and participates fully in the treatment planning process; b) family therapy is required when client reunification with their family is the goal; c) providing crisis intervention on call to treatment foster parents, recipient's and their families on a 24-hour, seven days a week basis including 24-hour availability of appropriate staff to respond to the home in crisis situations; d) assessing the family's strengths, needs and developing a family service plan when an eligible recipient's return to his or her family is planned; e) conducting a private face-to-face visit with the eligible recipient within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator; f) conducting a face-to-face interview with the eligible recipient's TFC parents within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator; g) conducting at a minimum one phone contact with the TFC I parents weekly; phone contact is not necessary in the same week as the face-to-face contact by the treatment coordinator; h) conducting a private face-to-face interview with the eligible recipient's TFC II parent within the first two weeks of TFC II placement and at least once monthly thereafter by the treatment coordinator; i) conducting a face-to-face interview with the eligible recipient's TFC II parent within the first two weeks of TFC II placement

and at least once monthly thereafter by the treatment coordinator; and j) conducting at a minimum, one phone contact with the TFC II parents weekly by the treatment coordinator; phone contact is not necessary in the same week as the face-to-face contact.

Subsection E: Proposes to update the dual reimbursement for TFC and CCSS to allow CCSS to be reimbursed while transitional planning from one level to the next, or to family or community is occurring: CCSS as part of the discharge planning from either the eligible recipient's TFC I or II placement.

The register for these proposed amendments to this rule will be available September 10, 2019 on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement this rule effective January 1, 2020. A public hearing to receive testimony on this rule will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico, 87505 on Wednesday, October 16, 2019 at 9:00 a.m. Mountain Time (MT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on October 16, 2019. Written and recorded comments will be given the same consideration as oral testimony

made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

NOTICE OF REGULAR BOARD MEETING AND RULE HEARING

The New Mexico Board of Pharmacy will convene on October 24th & 25th, 2019 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting.

The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: www.rld.state.nm.us/boards/pharmacy.aspx. All proposed language regarding rule hearings is linked on the *Agenda*, the *Notice to the Public* on our website and the *New Mexico Sunshine Portal*.

Individuals petitioning the board regarding requests/waivers and/

or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Executive Director, Cheranne McCracken, Cheranne.McCracken@state.nm.us at least one week in advance to the scheduled meeting, if in attendance must also provide 12 copies of that documentation for distribution to board members and staff, as public comment is allowed during the rule hearing. (*Board staff is not required to make copies.*)

The board may go into Executive Session to discuss items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Kristina Benavidez at 505-222-9878 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Kristina Benavidez, at 505-222-9878 or e-mail kristina.benavidez@state.nm.us if a summary or other type of accessible format is needed.

The Board will address:

All Board Matters:

Rule Hearings:

16.19.18 NMAC – NUCLEAR PHARMACY: Amendments to Sections 1, 3, 7, 9, and 10; administrative updates - board address, citation format; Section 7, update training requirements consistent with current standards and training availability; Section 9, allow paper or electronic records,

require equipment as applicable to the scope of nuclear pharmacy services provided, and recognize required standards of USP <825> and applicable general chapters numbered 1000 or less. Section 10, delete obsolete citation.

STATUTORY AUTHORITY: Paragraphs (1) (3) and (6) of Subsection (A) of Section 61-11-6 NMSA 1978

16.19.20 NMAC – CONTROLLED SUBSTANCES: Amendments to Sections 9, 16, 20, 26, 36, 37, 38, 40, 41, 53, 65, 66, and 69; administrative updates – renewal applications may be sent to physical, mailing or electronic address, clarify section title, update alpha to numeric; Section 20 update and clarify inventory requirements; Section 37 update and clarify disposal of controlled substance waste process; Section 38, update and clarify disposition of unusable, outdated or unwanted controlled substance processes; Section 41, update to allow prescribing of narcotic controlled drug for dependence when approved by the FDA specifically for use in maintenance or detoxification; Section 65, add phenazepam to list of Schedule I controlled substances; Section 66, add dronabinol in an oral solution in a drug approved for marketing by the FDA to Schedule II controlled substance list; Section 69, add brivaracetam and drug product approved by the FDA and which contains cannabidiol derived from cannabis and no more than 0.1 percent tetrahydrocannabinols to the Schedule V controlled substance list.

STATUTORY AUTHORITY: Sections 30-31-1 through 30-31-42 NMSA 1978

Disciplinary Hearings: note – the information below is tentative. Final hearing date and time for each case will be included in the agenda posted to the board's website at least 72 hours before the meeting.

10/24/19 @ 1:30 p.m. - Tom White
RP 3712, PC 204, TW Wellness PH
4187 - case 2017-021

*Additional hearing(s), if scheduled,

will be included in the agenda

Executive Director's Report:

Published in Albuquerque Journal
September 10, 2019

Published in NM Register September
10, 2019

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

Effective Date and Validity of Rule Filings

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

CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

This is an emergency amendment to 8.26.4 NMAC, Sections 7, 8 and 12, effective 8/21/2019.

CYFD will be issuing a temporary emergency rule. CYFD is amending the rule to be in compliance with the federal law which would otherwise place CYFD in violation. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.

8.26.4.7 DEFINITIONS:

A. “Administrative appeal” is a formal hearing for families whose license has been revoked, suspended, or not renewed. The family has the opportunity to present evidence to an impartial hearing officer in accordance with CYFD’s Administrative Appeals regulations 8.8.4 NMAC.

B. “Administrative review” is an informal process for families whose application for license has been denied. The review may include an informal conference or a record review, and does not create any substantive rights for the family.

C. “Adoptee” refers to any person who is the subject of an adoption petition.

D. “Adoption” is the establishment of a court sanctioned legal parental relationship between an adult and a child.

E. “Adoptive parent” refers to a foster parent licensed by PSD or by a licensed child placement agency who has finalized the adoption of a foster child.

F. “Agency” means any PSD licensed individual, partnership, association or corporation, for profit or non-profit, undertaking to place a child in a home in this or any other state for the purpose of providing foster care or adoption services. An agency may be licensed as an adoption agency, a foster care agency or both.

(1) “Adoption agency” means an agency licensed by PSD to facilitate the adoption of a child or perform a service within the adoption process.

(2) “Foster care agency” means an agency licensed by PSD for the purpose of supervising foster care homes, treatment foster care homes, or other levels of foster care as developed by PSD.

G. “Applicant” is any person who applies to become licensed as a foster parent to be considered as a potential foster care provider, treatment foster care provider, or an adoptive parent.

H. “Application” is the document by which persons who wish to become foster or adoptive parents request an assessment of their home and family, and the issuance of a license. The document also authorizes the department or licensed child placement agency to obtain relevant information from the applicant and other authorized persons in order to conduct an assessment of the applicant’s qualifications. The applicant shall certify that there are no willful misrepresentations in the application.

I. “Assessment” is the process of collecting information and conducting interviews with applicants by the licensing agent, and evaluating that information to determine the suitability of an applicant for a foster parent license.

J. “Child abuse and neglect check” is a review of the PSD information management system (also known as FACTS), or another state’s central abuse or neglect registry to determine if there have been any previous referrals on the family to this state’s or any other state’s child protective services division.

K. “Client” means a foster care or adoptive parent applicant, foster care or adoptive family, a foster or adoptive child, or the child’s biological family who receives services from a child placement agency or protective services.

L. “Criminal records check (CRC)” means federal, state or local checks for criminal offenses conducted by CYFD on potential and current foster and adoptive parents, and of all adults living in the foster or adoptive home.

M. “CRC Clearance letter” is a document provided to the licensing agent to inform them if the prospective foster or adoptive parent is cleared to proceed with licensing process.

N. “CYFD” means the New Mexico children, youth and families department.

O. “FACTS” means the PSD management information system.

P. “Fictive kin” means a person not related by birth, adoption or marriage with whom a child has an emotionally significant relationship.

Q. “Foster care provider” or “foster parent” means a person, including a relative of the child, licensed by the department or a child placement agency to provide care for children in the custody of the department or agency.

R. “Foster child” as referred to as “child” herein,

means a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children’s Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement Agency Licensing Act. If the court orders legal custody to a relative, person, facility, or agency other than the children, youth and families department protective services division, the child is not a foster child of protective services division.

S. “Foster home license” is the document which bears the name and address of those individuals who have met these licensing requirements and are foster parents for the protective services division or licensed child placement agency. The license displays the ages and number of foster children the licensees are authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized person who issued the license.

T. “Home study” is the final written document that results from the assessment process to determine the suitability of an applicant for a foster parent license.

U. “Licensing agent” means the qualified individual who conducts a home study.

V. “Pre-adoptive parent” refers to a foster care provider who has signed an adoption agreement to adopt a foster child, but whose adoption has not yet finalized.

W. “Protective services division (PSD)” refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

X. “PSD custody” means custody of children as a result of an action filed pursuant to the New Mexico Children’s Code, 32A-4-1 et seq. NMSA 1978 or 32A-3B-1 et seq. NMSA 1978.

Y. “Relative” means a person related to another person by birth, adoption or marriage, within the fifth degree of consanguinity or affinity. Fictive kin, as defined herein, may be considered a relative if it is determined to be in the best interest of the child.

~~[Z. “Resident of New Mexico” means a person who has become domiciled in the state by establishing legal residence with the intention of maintaining residency indefinitely.]~~

~~[AA] Z. “Respite care”~~ is a short period of time when a foster child is cared for by an alternate foster parent because the original foster parent is temporarily unavailable to provide care.

[BB] AA. “SAFE” means the structured analysis family evaluation home study format, which is the only home study format approved for use in New Mexico.

[CC] BB. “Specialized foster home” means a family foster home licensed by PSD in which at least one adult has the required education, training or experience necessary to care for a child who has been certified as special needs.

[DD] CC. “Treatment foster care home” is a foster home licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

[8.26.4.7 NMAC - Rp, 8 NMAC 27.3.7 & 8.27.2.7 NMAC, 5/29/2009; A, 8/15/2011; A, 7/16/2019; A/E, 8/21/2019]

8.26.4.8 ELIGIBILITY:

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

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

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

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

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

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

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

H. At least one applicant in the home must have functional literacy such as having the ability to read medication labels.

[8.26.4.8 NMAC - N, 5/29/2009; A, 8/15/2011; A, 6/25/2019; A, 7/16/2019; A/E, 8/21/2019]

8.26.4.12 ASSESSMENT PROCESS FOR FOSTER OR ADOPTIVE HOME LICENSE:

A. Only qualified PSD and CPA staff or individuals certified by PSD as licensing agents shall conduct home studies. (See process for certification as a licensing agent as set forth in the Adoption Act Regulations, 8.26.3.17 NMAC)

B. Upon receipt of the application to become a foster care provider, the licensing agent has five days to contact the family.

C. Home study forms and requirements are determined by

PSD. The SAFE home study is the approved format to be used in New Mexico.

D. All applicants are assessed for their suitability to care for children who might be placed in their home. Although any previous foster care assessments and home studies that are obtainable shall be considered, the licensing agent shall conduct an independent assessment and home study.

E. In addition to the CRC and abuse and neglect checks, as described herein at 8.26.4.10 and 8.26.4.11 NMAC, the minimum documentation required for the assessment process includes:

(1) a physical exam report, paid for by the applicant, which certifies that all applicants are in good mental and physical health with a statement from the physician as to whether any medical or mental health conditions may affect the applicant's ability to care for a foster child. The medical report shall be dated within 12 months of the application date and include a list of any prescribed medications and the reasons for which they are prescribed to include use of medical marijuana;

(2) immunization records or waiver issued by the department of health for any child residing in the home;

(3) all household members who will be caregivers of infants must have an up to date pertussis (whooping cough) vaccine consistent with the recommendations of the Advisory Committee on Immunization Practices (ACIP), unless the immunization is contrary to the individual's health as documented by a licensed care professional;

(4) all household members who will be caregivers of infants and children with special needs must have an up to date annual influenza vaccine consistent with the recommendations of the ACIP, unless the immunization is contrary to the individual's health as documented by a licensed care professional;

(5) a copy of the applicant's current and valid driver's license and proof of motor vehicle insurance for any vehicle used to transport a foster child;

(6) a copy of the applicant's current marriage license and all previous divorce decrees, if applicable;

(7) proof of school enrollment or home schooling for all school aged children residing in the home;

~~(8) the applicant's Permanent Residency Card or proof of U.S. citizenship such a birth certificate or certificate of naturalization;~~

~~(9)~~ (8) a signed PSD approved release of information form; and

~~(10)~~ (9) a signed foster parent agreement.

F. The licensing agent shall contact the four (two related and two non-related) references provided by each applicant and shall contact any adult children living in and out of the parental home. The purpose of the contact is to assist in determining the applicant's suitability to become a foster care provider. In addition to completion of the SAFE reference form, the licensing agent shall contact the adult children in person or by phone.

G. The licensing agent shall conduct at least one individual interview with each person living in the applicant's home, including children and any relatives or other adults living in the home. The individual interviews shall be conducted separately, in private, and away from other household members. If any person(s) who lives in the home declines to be interviewed or participate in the home study process, the foster care provider shall not be licensed.

H. A minimum of three home visits shall be made to the prospective foster care provider.

I. The licensing agent shall assess the physical and mental health history of the applicant, including any history of drug and alcohol abuse or treatment. This

information shall be used to determine suitability for licensure.

J. If it is determined by the licensing agent that the applicant has willfully misrepresented any information during the home study process, the licensing agent may deny licensure.

K. The results of a foster home home study are documented in PSD's approved home study format and filed in the foster care provider record maintained by the licensing agent.

L. From the date of application, the licensing agent shall complete the home study within the following timeframes:

(1) For a non-relative applicant: 120 days;

(2) For a relative or fictive kin applicant who takes placement of the child upon the child's initial entry into foster care: 60 days with one possible 30 day extension approved by the regional manager;

(3) For a relative or fictive kin applicant who is applying for placement of a child already in a currently licensed foster home: 90 days.

[8.26.4.12 NMAC - Rp, 8 NMAC 27.3.14 & 15, 5/29/2009; A, 3/31/2010; A, 8/15/2011; A, 7/16/2019; A/E, 8/21/2019]

**GAME AND FISH,
DEPARTMENT OF**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 6 MIGRATORY
GAME BIRD**

19.31.6.1 ISSUING
AGENCY: New Mexico department of game and fish.
[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 9-10-2019]

19.31.6.2 SCOPE:
Sportspersons interested in migratory game bird management and hunting. Additional requirements may be

found in Chapter 17 NMSA 1978 and Title 19 NMAC.

[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 9-10-2019]

19.31.6.3 STATUTORY

AUTHORITY: Section 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 9-10-2019]

19.31.6.4 DURATION:

September 10, 2019 - March 31, 2020.

[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 9-10-2019]

19.31.6.5 EFFECTIVE

DATE: September 10, 2019, unless a later date is cited at the end of a section.

[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 9-10-2019]

19.31.6.6 OBJECTIVE:

Establishing open hunting seasons, regulations, rules, and procedures governing the issuance of migratory game bird licenses and permits by the department.

[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 9-10-2019]

19.31.6.7 DEFINITIONS:

A. "Bernardo pond unit" shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and west of the unit 7 drain.

B. "Bernardo youth unit" shall mean that portion of Bernardo wildlife management area immediately south of the Quagmire and east of the unit 7 drain.

C. "Central flyway" shall mean that portion of New Mexico east of the continental divide.

D. "Dark goose" shall mean Canada goose or white-fronted goose.

E. "Department" shall mean the New Mexico department of game and fish.

F. "Director" shall mean the director of the New Mexico department of game and fish.

G. "Dove north zone" or "north zone" shall mean that portion of New Mexico north of Interstate 40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

H. "Dove south zone" or "south zone" shall mean that portion of New Mexico south of Interstate 40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

I. "Eastern New Mexico sandhill crane hunt area" or "eastern" shall mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt.

J. "Estancia valley sandhill crane hunt area" or "EV" shall mean that area beginning at Mountainair bounded on the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

K. "Falconry" shall mean hunting migratory game birds using raptors.

L. "Federal youth waterfowl hunting days" shall mean the special seasons where only those 17 years of age and younger may hunt ducks and geese. A supervising adult at least 18 years of age must accompany the youth hunter. The adult may not hunt ducks, but may participate in other seasons that are open on the special youth days.

M. "Light geese" shall mean snow geese, blue phase snow geese, and Ross's geese.

N. "Light goose conservation order" shall mean those methods, bag and possession

limits, and dates approved by the U.S. fish and wildlife service towards reducing over-abundant light goose populations.

O. "Middle Rio Grande valley (MRGV) dark goose hunt area" shall mean Sierra, Socorro and Valencia counties.

P. "Middle Rio Grande valley (MRGV) sandhill crane hunt area" shall mean Valencia and Socorro counties.

Q. "Migratory game bird" shall mean band-tailed pigeon, mourning dove, white-winged dove, sandhill crane, American coot, common moorhen/gallinule, snipe, ducks, geese, sora, purple gallinule, and Virginia rail.

R. "North zone" shall mean that portion of the Pacific flyway north of Interstate 40; and that portion of the central flyway north of Interstate 40 from the continental divide to Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

S. "Pacific flyway" shall mean that portion of New Mexico west of the continental divide.

T. "Possession limit" shall mean the number of birds in a person's possession regardless of the location stored.

U. "Quagmire" shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and east of the unit 7 drain.

V. "South zone" shall mean that portion of the Pacific flyway south of Interstate 40; and that portion of the central flyway south of Interstate 40 from the continental divide to Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

W. "Southwest band-tailed pigeon hunting area" or "southwest BPHA" shall mean that portion of New Mexico both south of U.S. 60 and west of Interstate 25.

X. "Southwest New Mexico sandhill crane hunt area" or "SW" shall mean that area bounded on the south by the New

Mexico-Mexico border; on the west by the New Mexico-Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico-Mexico border.

Y. “Wildlife management areas” or “WMAs” shall mean those areas as described in 19.34.5 NMAC, Wildlife Management Areas. [19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 9-10-2019]

19.31.6.8 ADJUSTMENT OF SANDHILL CRANE LICENSES AND PERMITS: The director, with verbal concurrence of the chairperson or their designee, may adjust the number of licenses and permits to address significant changes in harvest levels. This adjustment may be applied to any or all of the entry hunt codes. [19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 9-10-2019]

19.31.6.9 LICENSE AND APPLICATION REQUIREMENTS:
A. License: A Harvest Information Program (HIP) number shall be required. Waterfowl hunters 16 years of age and older are required to have in their possession a federal migratory bird hunting and conservation stamp (duck stamp). It shall be unlawful to take or attempt to take migratory birds without a HIP number, or duck stamp if required.

(1) Any person taking or attempting to take sandhill cranes in the eastern hunt area must have a valid license and a free sandhill crane hunting permit obtained from department offices or website.

(2) For EV sandhill crane, MRGV sandhill crane, MRGV youth-only sandhill crane, and SW sandhill crane: in addition to a valid license, a special permit obtained by drawing shall be required.

(3) For the light goose conservation order: in addition to a valid license, a free light goose conservation order permit obtained from department offices or website shall be required.

(4) For band-tailed pigeon hunting: in addition to a valid license, a free band-tailed pigeon permit obtained from department offices or website shall be required.

B. Valid dates of license or permit: All permits and licenses shall be valid only for the dates, legal sporting arms, bag limit and area printed on the permit or license.

C. Applications: Applications for EV sandhill crane, MRGV sandhill crane, SW sandhill crane, and MRGV youth-only sandhill crane hunt permits shall be submitted via the department website.

(1) No more than four persons may apply per application. For the MRGV youth-only sandhill crane hunt, no more than two persons may apply per application.

(2) Applicants may apply for a first, second and third choice of seasons, if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(3) The application deadline date for the EV, MRGV, MRGV youth-only, and SW sandhill crane hunt permits shall be on date(s) set by the state game commission. If any permits are available after the drawing, those permits may be sold online via a secondary sale.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth-only hunt. [19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 9-10-2019]

19.31.6.10 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Hours: Migratory game birds may be hunted or taken only during the period from one-half hour before sunrise to sunset, unless otherwise specifically allowed or restricted by rule.

(1) On the Bottomless lakes overflow, and Bernardo, Casa Colorada, Jackson lake, La Joya, and W.S. Huey WMAs, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. unless otherwise stated in rule. For hunting September teal on Bernardo and La Joya WMAs, hunting hours are from one-half hour before sunrise to sunset.

(2) During the light goose conservation order hunt dates, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset, excluding the WMAs listed in Paragraph (1) above.

B. Seizure: Any officer authorized to enforce Chapter 17 NMSA 1978 and state game commission rules shall seize any migratory game birds or parts that are illegally obtained or possessed.

C. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) State wildlife management areas open, species that can be hunted, and days open for hunting (use of vehicles will be restricted to designated areas):

(a)
 Bernardo WMA:
(i) That portion of the Bernardo WMA south of U.S. 60 is open to teal hunting each day of the September teal season and the federal youth waterfowl days. That portion of the Bernardo WMA north of U.S. 60 is closed except during the light goose conservation order.

(ii)
 The Quagmire shall be open only on Tuesday, Thursday, and Sunday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot, and snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) The Bernardo pond unit shall be open for general waterfowl hunting on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot, and snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) The Bernardo youth unit shall be open for youth waterfowl hunting on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot, and snipe during established seasons, unless otherwise specifically allowed by rule.

(b) The Charette lake WMA shall be open each day of the federal youth waterfowl days and on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot, and snipe during established seasons. Charette lake WMA is closed during the September teal season.

(c) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker WMAs shall be open for hunting dove and band-tailed pigeon during established seasons.

(d) The portion of Jackson lake WMA west of N.M. 170 shall be open on Mondays, Wednesdays, and Saturdays to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot, and snipe. The portion of Jackson lake WMA east of N.M. 170 shall be open to falconry-only migratory game bird hunting during established seasons.

(e) The lesser prairie-chicken management areas shall be open to hunt dove during established seasons.

(f) La Joya WMA:

(i) the entire La Joya WMA shall be open to teal hunting each day of the September teal season and each day of the federal youth waterfowl days;

(ii) that portion of La Joya WMA north of the main east/west entrance road and west of the railroad tracks shall be open on Saturdays, Mondays, and Wednesdays to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot, and snipe during established seasons, unless otherwise specifically allowed by rule;

(iii) that portion of La Joya WMA south of the main east/west entrance road and west of the railroad tracks shall be open on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot, and snipe during established seasons, unless otherwise specifically allowed by rule;

(iv) that portion of La Joya WMA east of the railroad tracks shall be open to hunt dove, ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot, and snipe during established seasons.

(g) The McAllister lake, Wagon Mound, Tucumcari, and Socorro-Escondida WMAs shall be open for all migratory game bird hunting during established seasons.

(h) The William S. Huey WMA shall be open for dove hunting on Monday, Wednesday, and Saturday during established seasons.

(2) The Hammond tract and Retherford tract WMAs shall be open for waterfowl hunting during established seasons.

(3) The Sandia ranger district of the Cibola national forest shall be open only to falconry, bow and crossbow migratory game bird hunting during established seasons.

(4) All WMAs shall be open to falconry waterfowl hunting each day of the established falconry season, unless otherwise restricted by rule.

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 9-10-2019]

Continued Next Page

19.31.6.11 SPECIES, OPEN AREAS, SEASON DATES AND DAILY BAG LIMITS: 2019-2020_season, all dates are 2019 unless otherwise specified. Possession limits are three times the daily bag limit unless otherwise specified.

Species	open areas	season dates	daily bag limit
mourning and white-winged dove	north zone	Sept. 1 - Nov. 29	15 (singly or in aggregate)
	south zone	Sept. 1 - Oct. 28 and Dec. 1 - Jan. 1, 2020	
band-tailed pigeon	southwest BPHA	Oct. 1 - 14	2
	statewide except southwest BPHA	Sept. 1 - 14	
regular season sandhill crane (free permit required)	eastern	Oct. 26 - Jan. 26, 2020	3 (6 in possession)

CENTRAL FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.

species	season dates	daily bag limit
September teal: blue-winged teal, green-winged teal, and cinnamon teal	Sept. 14 - 22	6 (singly or in the aggregate)
ducks	north zone: Oct. 12 - Jan. 15, 2020	6 (singly or in the aggregate); that consists of no more than 5 mallard of which only 2 may be female mallard, (Mexican-like ducks are included towards the mallard bag limit), 3 wood duck, 3 scaup, 2 redhead, 2 hooded merganser, 1 pintail, and 2 canvasback
	south zone: Oct. 28 - Jan. 31, 2020	
youth waterfowl days	north zone: Sept. 28 - 29	
	south zone: Oct. 5 - 6	
American coot	north zone: Oct. 12 - Jan. 15, 2020	15
	south zone: Oct. 28 - Jan. 31, 2020	
common moorhen/gallinule	Sept. 14 - Nov. 22	1
snipe	Oct. 12 - Jan. 26, 2020	8
Virginia rail & sora	Sept. 14 - Nov. 22	10 (singly or in the aggregate); 20 in possession
dark goose: Canada & white-fronted geese (regular season closed in Sierra, Socorro, and Valencia counties)	Oct. 17 - Jan. 31, 2020	5
dark goose: special MRGV season	Dec. 21 - Jan. 31, 2020	2 (2 per season)
light goose: Ross's & snow geese	Oct. 17 - Jan. 31, 2020	50 (no possession limit)
light goose conservation order	Feb. 1 - Mar. 10, 2020	no bag or possession limit

PACIFIC FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.

species	season dates	daily bag limit
youth waterfowl days	Oct. 5 - 6	7 (singly or in the aggregate); that consists of no more than 2 female mallard, 2 redhead, 1 pintail, and 2 canvasback
ducks	Oct. 19 - Jan. 31, 2020	
scaup	Oct. 19 - Jan. 12, 2020	3 (as part of the aggregate duck bag)
American coot and common moorhen/gallinule	Oct. 19 - Jan. 31, 2020	25 daily (singly or in the aggregate)
snipe	Oct. 17 - Jan. 31, 2020	8
Virginia rail & sora	Sept. 14 - Nov. 22	25 daily (singly or in the aggregate)
goose	north zone: Sept. 21 - Oct. 6 and Nov. 2 - 31, 2020	4 Canada geese, 10 white-fronted geese, and 20 light geese
	south zone: Oct. 17 - Jan. 31, 2020	

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 9-10-2019]

19.31.6.12 FALCONRY SEASONS: 2019-2020 season, all dates are 2019 unless otherwise specified. Bag limits are three singly or in the aggregate and nine in possession unless otherwise specified.

CENTRAL FLYWAY		
species	open areas	season dates
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 21 - Jan. 1, 2020
	south	Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2020
band-tailed pigeon	southwest BPHA	Oct. 1 - 14
	statewide except southwest BPHA	Sept. 1 - 14
sora and Virginia rail	all	Sept. 14 - Dec. 29
snipe	all	Oct. 12 - Jan. 26, 2020
common moorhen/gallinule	all	Sept. 14 - Dec. 29
ducks	north	Sept. 14 - 22 and Oct. 12 - Jan 15, 2020
	south	Sept. 14 - 22 and Oct. 28 - Jan 31, 2020
goose (light and dark)	all	Oct. 17 - Jan. 31, 2020
goose (dark)	MRGV	Dec. 21 - Jan. 31, 2020
sandhill crane	regular (eastern)	Oct. 12 - Jan. 26, 2020; 3 (6 in possession)
	Estancia valley	Oct. 26 - Dec. 24; 3 (6 in possession)

PACIFIC FLYWAY		
species	open areas	season dates
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 21 - Jan. 1, 2020
	south	Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2020
band-tailed pigeon	southwest BPHA	Oct. 1 - 14
	statewide except southwest BPHA	Sept. 1 - 14
duck	all	Oct. 19 - Jan. 31, 2020
scaup	all	Oct. 19 - Jan. 12, 2020
goose	north	Sept. 21 - Oct. 6 and Nov. 2 - Jan. 31, 2020
	south	Oct. 17 - Jan. 31, 2020
snipe	all	Oct. 17 - Jan. 31, 2020
coots and common moorhen/gallinule	all	Oct. 19 - Jan. 31, 2020
sora and Virginia rail	all	Sept. 14 - Nov. 22

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 9-10-2019]

19.31.6.13 FEDERAL YOUTH WATERFOWL HUNTING DAYS: Requirements for youth hunters to participate in this hunt are as follows:

A. An adult, 18 years of age or older, must accompany the youth hunter in the field (the adult may not hunt ducks but may participate in other seasons that are open on the special youth days).

B. Only ducks, coots, and common moorhens/gallinules may be taken by the youth hunter (sandhill cranes, geese or any other migratory game bird species may not be taken unless the season is open).

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 9-10-2019]

19.31.6.14 REQUIREMENTS FOR THE SPECIAL BERNARDO YOUTH WATERFOWL UNIT: Blind selection will be available on a first-come, first-serve basis from one-half hour before sunrise to 1:00 p.m. Youth hunters must be accompanied by a supervising adult who may not hunt. A maximum of four people is allowed per blind, at least half of which must be youth hunters.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 9-10-2019]

19.31.6.15 SEASON DATES, OPEN AREAS, BAG LIMITS, HUNT CODES AND PERMIT NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY, AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. The daily bag limit is 3. The possession limit is twice the daily bag limit, except for the MRGV youth-only hunt where the bag and possession limits are 3. The hunting seasons for 2019-2020 are:

hunt location	hunt dates	hunt code	permits
EV	Oct 26 - Oct 29 and Oct. 31 - Nov. 3	SCR-0-101	65
MRGV	Nov. 9 - 10	SCR-0-102	55
MRGV	Nov. 30 - Dec. 1	SCR-0-103	50
MRGV	Dec. 14 - 15	SCR-0-104	55
MRGV	Jan. 4 - 5, 2020	SCR-0-105	55
MRGV	Jan. 11 - 12, 2020	SCR-0-106	55
MRGV, youth-only	Dec. 7	SCR-0-107	24
SW	Oct. 26 - Nov. 3	SCR-0-108	70
SW	Jan. 4 - 5, 2020	SCR-0-109	60

B. Hunters who participate in the MRGV season shall be required to check-out at designated check stations when they harvest any sandhill cranes.

C. The department may cancel one or more EV, MRGV or SW sandhill crane hunts if harvest is expected to exceed our federal allocation of greater sandhill cranes.

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 9-10-2019]

HISTORY OF 19.31.6 NMAC:

Pre-NMAC Filing History: The material in this part was derived from that previously filed with the State Records Center & Archives under: Regulation No. 486, Establishing 1967 Seasons On Quail, Pheasants, Prairie Chickens, and Lesser Sandhill (Little Brown) Crane And Additional Seasons On Migratory Waterfowl, filed 9/22/67; Regulation No. 494, Establishing 1968 Seasons On Migratory Waterfowl, Common Snipe, Lesser Sandhill Crane, Scaled, Gambel's, And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 10/2/68; Regulation No. 508, Establishing 1969 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Scaled, Gambel's And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 9/19/69; Regulation No. 527, Establishing 1971 Seasons On Migratory Waterfowl And Lesser Sandhill Cranes, filed 9/10/71; Regulation No. 540, Establishing 1972 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, And Wilson's Swiipe, filed 9/26/72; Regulation No. 551, Establishing 1973 Seasons On Migratory Waterfowl And Lesser Sandhill Crane, filed 8/20/73; Regulation No. 560, Establishing 1974 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/21/74; Regulation No. 570, Establishing 1975 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/5/75; Regulation No. 578, Establishing 1976 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 8/31/1976; Regulation No. 588, Establishing 1977 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/6/1977; Regulation No. 594, Establishing 1978 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/11/1978; Regulation No. 601, Establishing 1979 Seasons on Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/30/1979; Regulation No. 606, Establishing 1980 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/3/80; Regulation No. 611, Establishing 1981 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/4/1981; Regulation No. 616, Establishing 1982 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/3/1982; Regulation No. 626, Establishing 1983 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/7/1983; Regulation No. 631, Establishing 1984 Seasons On Migratory Waterfowl, filed 8/31/1984; Regulation No. 638, Establishing 1985 Seasons On Migratory Waterfowl, filed 9/11/1985; Regulation No. 643, Establishing 1986-1987 Seasons On Migratory Birds, filed 8/24/1987; Regulation No. 660, Establishing 1988-1989 Seasons On Migratory Birds, filed 6/28/1988; Regulation No. 669, Establishing 1989-1990 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Sandhill Crane, Band-tailed Pigeon, Dove, And Setting Falconry Seasons, filed 10/5/1989; Regulation No. 680, Establishing 1990-1991 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 9/28/1990; Regulation No. 687, Establishing 1991-1992 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 8/6/1991; Regulation No. 698, Establishing 1991-92 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons,

filed 8/6/1991; Regulation No. 698, Establishing 1992-1993 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry seasons, filed 9/15/1992; Regulation No. 704, Establishing 1993-1994 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 3/11/1993; Regulation No. 707, Establishing The 1994-1995, 1995-1996, 1996-1997 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 7/28/1994; Regulation No. 708, Establishing The 1994-1995, 1995-1996, And 1996-1997 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 9/7/1994.

NMAC History:

19 NMAC 31.6, Waterfowl, filed 8-31-1995
 19.31.6 NMAC, Waterfowl, filed 8-15-2000
 19.31.6 NMAC, Waterfowl, filed 8-26-2002
 19.31.6 NMAC, Waterfowl, filed 8-12-2003
 19.31.6 NMAC, Waterfowl, filed 8-2-2004
 19.31.6 NMAC, Waterfowl, filed 8-8-2005
 19.31.6 NMAC, Waterfowl, filed 8-1-2006
 19.31.6 NMAC, Waterfowl, filed 8-16-2007
 19.31.6 NMAC, Migratory Game Bird, filed 8-13-2008
 19.31.6 NMAC, Migratory Game Bird, filed 8-17-2009
 19.31.6 NMAC, Migratory Game Bird, filed 8-2-2010
 19.31.6 NMAC, Migratory Game Bird, filed 8-1-2011
 19.31.6 NMAC, Migratory Game Bird, filed 8-14-2012
 19.31.6 NMAC, Migratory Game Bird, filed 8-29-2013

History of Repealed Material:

19.31.6 NMAC, Waterfowl, filed 8-15-2000 - duration expired 3-31-2002

19.31.6 NMAC, Waterfowl, filed 8-26-2002 - duration expired 3-31-2003
 19.31.6 NMAC, Waterfowl, filed 8-12-2003 - duration expired 3-31-2004
 19.31.6 NMAC, Waterfowl, filed 8-2-2004 - duration expired 3-31-2005
 19.31.6 NMAC, Waterfowl, filed 8-8-2005 - duration expired 3-31-2006
 19.31.6 NMAC, Waterfowl, filed 8-1-2006 - duration expired 3-31-2007
 19.31.6 NMAC, Waterfowl, filed 8-16-2007 - duration expired 3-31-2008
 19.31.6 NMAC, Migratory Game Bird, filed 8-13-2008 - duration expired 3-31-2009
 19.31.6 NMAC, Migratory Game Bird, filed 8-17-2009 - duration expired 3-31-2010
 19.31.6 NMAC, Migratory Game Bird, filed 8-2-2010 - duration expired 3-31-2011
 19.31.6 NMAC, Migratory Game Bird, filed 8-1-2011 - duration expired 3-31-2012
 19.31.6 NMAC, Migratory Game Bird, filed 8-14-2012 - duration expired 3-31-2013
 19.31.6 NMAC, Migratory Game Bird, filed 8-29-2013 - duration expired 3-31-2014
 19.31.6 NMAC, Migratory Game Bird, filed 8-31-2014 - duration expired 3-31-2015
 19.31.6 NMAC, Migratory Game Bird, filed 9-1-2015 - duration expired 3-31-2016
 19.31.6 NMAC, Migratory Game Bird, filed 6-30-2016 - duration expired 3-31-2017
 19.31.6 NMAC, Migratory Game Bird, filed 7-27-2017 - duration expired 3-31-2018
 19.31.6 NMAC, Migratory Game Bird, filed 7-2-2018 - duration expired 3-31-2019

MEDICAL BOARD

The New Mexico Medical Board approved and adopted, at its 8/9/2019 Board Meeting, to repeal its rule 16.10.16 NMAC - Administering, Prescribing, and Distribution of Medications (filed 6/8/2001) and replace it with 16.10.16 NMAC - Administering, Prescribing, and Distribution of Medications, adopted on 8/9/2019 and effective 9/10/2019.

MEDICAL BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
 CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
 PART 16 ADMINISTERING, PRESCRIBING AND DISTRIBUTION OF MEDICATION**

16.10.16.1 ISSUING

AGENCY: New Mexico Medical Board, hereafter called the board. [16.10.16.1 NMAC - Rp 16.10.16.1 NMAC, 9/10/2019]

16.10.16.2 SCOPE: This part applies to physician assistants and their supervising physicians. [16.10.16.2 NMAC - 16.10.16.2 NMAC, 9/10/2019]

16.10.16.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978. [16.10.16.3 NMAC - 16.10.16.3 NMAC, 9/10/2019]

16.10.16.4 DURATION:

Permanent. [16.10.16.4 NMAC - 16.10.16.4 NMAC, 9/10/2019]

16.10.16.5 EFFECTIVE

DATE: September 10, 2019 unless a later date is cited at the end of a section. [16.10.16.5 NMAC - 16.10.16.5 NMAC, 9/10/2019]

16.10.16.6 OBJECTIVE:
This part sets forth the manner in which a physician assistant may prescribe, administer, dispense and distribute dangerous drugs.
[16.10.16.6 NMAC - 16.10.16.6 NMAC, 9/10/2019]

16.10.16.7 DEFINITIONS:

A. "Administer"
means to apply a drug directly to the body of a patient by any means.

B. "Dispense" means to deliver a drug directly to a patient and includes the mixing, labeling and repackaging of a drug from a bulk or original container.

C. "Distribute"
means to administer or supply to a patient under the direct care of the distributing physician assistant prepared or repackaged drugs or the manufacturer's original container(s), containing a quantity suitable for the prescribed treatment or condition.

D. "Established physician assistant-patient relationship" means a relationship between a physician assistant and a patient that is for the purpose of maintaining the patient's well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician assistant involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician assistant or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

E. "Physician assistant" means a health professional who is licensed by the board to practice as a physician assistant.

F. "Prescribe" means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written or electronic order signed by the prescriber, bearing the name and address of the prescriber, license

classification, the name and date of birth of the patient, the name of the drug prescribed, direction for use and the date of issue.
[16.10.16.7 NMAC - 16.10.16.7 NMAC, 9/10/2019]

16.10.16.8 PRESCRIBING, ADMINISTERING, DISPENSING AND DISTRIBUTING DANGEROUS DRUGS:

A. Physician
assistants may prescribe, administer, dispense and distribute dangerous drugs; including Schedule II-V controlled substances, where there is an established physician assistant-patient relationship. Physician assistants must comply with all other state and federal laws regulating prescribing, administering, dispensing and distributing dangerous drugs including Schedule II-V controlled substances.

B. A physician
assistant may only provide pharmaceuticals within the extent of their scope of practice and training. Physician assistants may not provide dangerous drugs to individuals for other than those that they have a physician assistant-patient relationship.
[16.10.16.8 NMAC - 16.10.16.8 NMAC, 9/10/2019]

HISTORY OF 16.10.16 NMAC:
Pre-NMAC History: Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:
NMBME Rule 79-15, Rules and Regulations Pertaining to Physicians' Assistants, filed 10/4/1979.
86-2, Physicians Assistants, filed, 2/5/1986.
89-PA7, Physician Assistant-Administering and Prescribing Dangerous Drugs Other Than Controlled Substances, 6/16/1989.
89-PA 8, Physician Assistant-Distribution of Medications, filed 6/16/1989.
PA Rule 7, Physician Assistant-Administering and Prescribing Dangerous Drugs, filed 10/27/1994.
PA Rule 8, Physician Assistants -

Distribution of Medications, filed 10/27/1994.

NMAC History:
16 NMAC 10.16, Administering, Prescribing and Distribution of Medications, filed 3/5/1997.

History of the Repealed Material:
16 NMAC 10.16, Administering, Prescribing and Distribution of Medications filed 3/5/1997 - Repealed, 6/8/2001.
16.10.16 NMAC, Administering, Prescribing and Distribution of Medications filed 6/8/2001 - Repealed 9/10/2019.

NMAC History:
16 NMAC 10.16, Administering, Prescribing and Distribution of Medications filed 3/5/1997 was replaced by 16.10.16 NMAC, Administering, Prescribing and Distribution of Medications, effective 7/15/2001.
16.10.16 NMAC, Administering, Prescribing and Distribution of Medications filed 6/8/2001 was replaced by 16.10.16 NMAC, Administering, Prescribing and Distribution of Medications, effective 9/10/2019.

SECRETARY OF STATE, OFFICE OF

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 14 RANKED CHOICE VOTING AND TOP- TWO RUNOFF ELECTION

1.10.14.1 ISSUING AGENCY: The Office of the New Mexico Secretary of State.
[1.10.14.1 NMAC - N, 9/10/2019]

1.10.14.2 SCOPE: This rule applies to runoff elections covered under the election code.
[1.10.14.2 NMAC - N, 9/10/2019]

1.10.14.3 STATUTORY AUTHORITY: This rule is authorized by Sections 1-2-1 and 1-22-16 NMSA 1978, of the Election Code.
[1.10.14.3 NMAC - N, 9/10/2019]

1.10.14.4 DURATION: Permanent.
[1.10.14.4 NMAC - N, 9/10/2019]

1.10.14.5 EFFECTIVE DATE: September 10, 2019, unless a later date is cited at the end of a section.
[1.10.14.5 NMAC - N, 9/10/2019]

1.10.14.6 OBJECTIVE: The purpose of this rule is to provide effective procedures for runoff elections.
[1.10.14.6 NMAC - N, 9/10/2019]

1.10.14.7 DEFINITIONS:
A. "Choice" means an indication on a ballot of a voter's assigned ranking of candidates for any single office according to the voter's preference. The standards for what constitutes a vote is codified in 1.10.23.12 NMAC and is incorporated by reference.

B. "Continuing ballot" means a ballot with votes that count towards a continuing candidate.

C. "Continuing candidate" means a candidate that has not been eliminated, including a candidate in the first round.

D. "Duplicate ranking" means a voter has ranked the same candidate at multiple rankings for the office being counted.

E. "Exhausted ballot" means a ballot that cannot be advanced because no further continuing candidates are ranked on that ballot.

F. "Incorrectly marked ballot" means a ballot showing an overvote or duplicate ranking.

G. "Majority of votes" means more than half of the votes cast for a continuing candidate.

H. "Next ranked" means the highest ranked choice for a continuing candidate.

I. "Overvote" means a voter has ranked more than one candidate at the same ranking.

J. "Ranked choice voting" means an election system in which voters rank the candidates for office in order of preference, and the votes cast for that office are counted in rounds that simulate a series of runoffs until one candidate receives a majority of votes. Ranked choice voting is also known as "instant runoff voting."

K. "Round" means a step in the counting process during which votes for all continuing candidates are tabulated for the purpose of determining whether a candidate has achieved a majority of votes cast for a particular office and, absent a majority, which candidate or candidates must be eliminated.

L. "Skipped ranking" means a voter has left a ranking blank and ranks a candidate in a subsequent ranking.

M. "Undervote" means an office on a ballot in which the voter did not rank any candidates for that office.

N. "Unused ranking" means the voter has ranked at least one but not all candidates.

O. "Vote" means a choice that is counted toward the election of a candidate in a runoff election.
[1.10.14.7 NMAC - N, 9/10/2019]

1.10.14.8 FORM OF RANKED CHOICE RUNOFF BALLOT:

A. The ranked choice voting ballot shall allow voters to rank all candidates in order of choice. The ranked choice voting ballot shall also contain a space on the ballot for a qualified write-in candidate to be ranked.

B. Instructions on the ballot shall conform substantially to the following specifications and appear only once on the top of the ballot: "Vote by indicating your first choice candidate and ranking additional candidates in order of choice. Rank as many candidates as you wish. Marking additional choices

will not count against your first choice."

C. Sample ballots illustrating the procedures for ranked choice voting shall be posted in or near the voting booth, included in the instruction materials for mailed ballots, and posted on the secretary of state's website.

D. Upon submission of an incorrectly marked ballot, the voting machine shall provide a detailed warning message to the voter with a "cast" or "return" option and require confirmation of the voter's choice. A person who spoils or erroneously prepares the ballot may return the spoiled or erroneously prepared ballot to the election judge and receive a new ballot.

E. If any ballot is physically damaged so that it cannot properly be counted by the vote tabulation system, a true duplicate copy shall be made publicly of the damaged ballot and substituted for the damaged ballot. All duplicate ballots shall be clearly labeled "duplicate," bear a serial number which shall be recorded on the damaged or incorrectly marked ballot, and be counted in lieu of the damaged ballot. After a ballot has been duplicated, the damaged ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied by the tabulator with the other ballots for that precinct.

F. Ranked choice voting is only applicable to elections in which the governing body has chosen to elect its officers by ranked choice. Any other candidate contest or question on a ballot will not be chosen by ranked choice voting.
[1.10.14.8 NMAC - N, 9/10/2019]

1.10.14.9 TABULATION FOR SINGLE WINNER ELECTION:

A. In the first round every ballot shall count as a vote towards the first choice candidate. During each successive round of counting, each continuing ballot contains one vote. All first choices are votes and lower ranked choices are potential runoff votes that may,

in accordance with the requirements of this section, become votes and subsequently credited to a continuing candidate.

B. After any round, if any candidate receives a majority of votes in that round, that candidate shall be declared the winner and the tabulation is complete.

C. If no candidate receives a majority of votes in that round, the candidate receiving the fewest number of votes shall be eliminated.

D. Ballots for which a vote counted towards a now eliminated candidate shall be transferred to the next ranked continuing candidate. All the continuing ballots for all continuing candidates shall be counted again in a new round.

E. If after the first round of transferring votes, no continuing candidate has received a majority of votes, the process of eliminating candidates, transferring votes, and tabulating revised results shall continue until one continuing candidate receives a majority of the votes cast.

F. If a tie between candidates occurs at any stage in the tabulation, the tie shall be resolved in favor of the candidate who received the greatest number of combined first choice votes and transferred votes at the previous stage of tabulation. If the first round tabulation results in a tie between candidates, the tie shall be resolved against the candidate who received the least number of combined second choice votes.

G. In tabulating duplicate rankings, the highest ranking for the candidate is valid and any lower rankings of that candidate shall be ignored.

H. In tabulating an overvote, the voter's rankings shall be counted in order of preference, stopping at the point where the ballot contains the same ranking for more than one candidate.

I. In tabulating a skipped ranking, the skipped ranking will be ignored and the next indicated ranking on that ballot will be valid. [1.10.14.9 NMAC - N, 9/10/2019]

1.10.14.10 TABULATION FOR MULTIPLE WINNER ELECTION:

A. In any contest in which more than one officer position is conducted by ranked choice voting, the tabulation proceeds in rounds. If, in the initial tabulation, the number of continuing candidates is less than or equal to the number of offices to be elected, then all continuing candidates are elected and tabulation is complete. Otherwise, each round proceeds sequentially, until tabulation is complete, as follows:

(1) Each ballot shall count, at its current transfer value, for the highest-ranked continuing candidate on that ballot. If the sum of the number of elected candidates and the number of continuing candidates is equal to the sum of one and the number of offices to be elected, then the candidate with the fewest votes is defeated, all other continuing candidates are elected, and tabulation is complete.

(2) If at least one continuing candidate has more votes than the election threshold for the contest, then each such candidate is elected. Each ballot counting for an elected candidate is assigned a new transfer value by multiplying the ballot's current transfer value by the surplus fraction for the elected candidate, rounded down to four decimal places and ignoring any remainder. Each candidate elected under this subsection is deemed to have a number of votes equal to the election threshold for the contest in all future rounds. A new round begins with Paragraph (1) of Subsection A of this section.

(3) If no candidate is elected under Paragraph (2) of Subsection A of this section, then the continuing candidate with the fewest votes is defeated, and a new round begins with Paragraph (1) of Subsection A of this section.

B. If a tie between candidates occurs at any stage in the tabulation, the tie shall be resolved in favor of the candidate who received the greatest number of combined first choice votes and transferred votes at

the previous stage of tabulation. [1.10.14.10 NMAC - N, 9/10/2019]

1.10.14.11 REPORTING OF RESULTS FOR RUNOFF ELECTIONS:

A. The configuration of voting machine settings for a ranked choice or a top-two runoff election shall be determined by the secretary of state.

B. At a minimum, election results shall be posted online in the statewide reporting system. [1.10.14.11 NMAC - N, 9/10/2019]

1.10.14.12 TOP-TWO RUNOFF ELECTION:

A. If no candidate receives the percentage of votes required by the laws of the municipality to be elected in the first round of voting for the particular office in question, a runoff election shall be held no sooner than 21 days nor later than 45 days after approval of the report of the canvass of the election in question as now provided by the election code.

B. The top two candidates who receive the highest number of votes cast for the office in question shall automatically become the candidates at the runoff election. The top two candidates do not need to file declarations of candidacy for the runoff election.

C. If a top-two runoff election is required pursuant to this section, only the election day polling locations in the affected district, alternate polling locations in the affected district, and the county clerk's office are required to be open. It is up to the county clerk, in consultation with the municipal clerk, to determine if any other polling locations are to be opened during a top-two runoff election.

D. The automatic recount provisions under Paragraph (3) of Subsection A of Section 1-14-24 NMSA 1978, apply to the first round of voting, only when a candidate has received a percentage of votes required by the laws of the municipality to be elected or in a top-two runoff election. The automatic

recount provisions are not applicable to the first round of voting, where two candidates receiving the greatest number of votes for an office will proceed to a top-two runoff election. [1.10.14.12 NMAC - N, 9/10/2019]

1.10.14.13 SEVERABILITY CLAUSE: If any part of this rule is declared unconstitutional by a court of competent jurisdiction, the remaining parts shall survive in full force and effect. [1.10.14.13 NMAC - N, 9/10/2019]

History of 1.10.14 NMAC:
[RESERVED]

**SECRETARY OF STATE,
OFFICE OF**

**TITLE 1 GENERAL
GOVERNMENT
ADMINISTRATION
CHAPTER 10 ELECTIONS AND
ELECTED OFFICIALS
PART 16 BALLOT
QUESTIONS**

1.10.16.1 ISSUING AGENCY: Office of the New Mexico Secretary of State. [1.10.16.1 NMAC - N, 9/10/2019]

1.10.16.2 SCOPE: This rule applies to all state and local ballot questions. [1.10.16.2 NMAC - N, 9/10/2019]

1.10.16.3 STATUTORY AUTHORITY: This rule is authorized by Sections 1-16-7 and 1-2-1, NMSA 1978. [1.10.16.3 NMAC - N, 9/10/2019]

1.10.16.4 DURATION: Permanent. [1.10.16.4 NMAC - N, 9/10/2019]

1.10.16.5 EFFECTIVE DATE: September 10, 2019, unless a later date is cited at the end of a section. [1.10.16.5 NMAC - N, 9/10/2019]

1.10.16.6 OBJECTIVE: The purpose of this rule is to provide

uniform guidelines on how state and local ballot questions are to appear on a ballot. [1.10.16.6 NMAC - N, 9/10/2019]

1.10.16.7 DEFINITIONS:
A. "Ballot question"

means a question submitted to the voters of the state or a local government on a ballot pursuant to the provisions of the Election Code and does not include a candidate nomination, election contest or nonpartisan judicial retention election.

B. "Form of ballot question" means the final format of the ballot question as it will appear on the ballot.

C. "Election official" means either the county clerk or municipal clerk.

D. "Local government ballot question" means any:

(1) tax authorization for bond issues, mill levy or gross receipts tax, as provided by law;

(2) recall of county, school board or certain municipal officers, as provided by law or by municipal home rule charter;

(3) petition for the creation of a special district or consideration of a statutory local option, as provided by law;

(4) referendum on local government taxation authority, as provided by law;

(5) referendum on local government ordinances, as provided by the charter of a home rule municipality, by an incorporated or urban county, or otherwise provided by law;

(6) change in the laws of a home rule municipality, as provided by the municipal charter or by law;

(7) changes in the charter of an incorporated or urban county, as provided by the charter of the incorporated or urban county or by law; and

(8) other questions, as provided by state statute or the constitution of New Mexico.

E. "State ballot question" means any:

(1) proposed amendment to the constitution of New Mexico, as provided in a joint resolution passed by the legislature;

(2) tax authorization for general obligation bonds or mill levy, as provided by law;

(3) referendum, as provided in Article 4, Section 1 of the constitution of New Mexico; and

(4) other questions, as provided by state statute or the constitution of New Mexico. [1.10.16.7 NMAC - N, 9/10/2019]

1.10.16.8 THE FORM OF BALLOT QUESTION:

A. The form of ballot question shall be stated as a question that seeks permission of the voters to accomplish an act with a legal consequence. The form of the ballot question shall contain such information necessary to give a reasonably prudent voter notice of the act proposed to be taken by the state or local government proposing the ballot question. The full text of the act, resolution, charter amendment, or ordinance itself is not part of the form of the ballot question and shall not be printed on the ballot.

B. The secretary of state shall approve the form of ballot question to be placed on a ballot.

C. The ballot question must be written in the form of a question, which must be answerable with a "Yes" or "No," unless otherwise required by state law. The ballot question must be styled in such a manner that an affirmative answer to the ballot question will indicate approval and a negative answer to the ballot question will indicate rejection.

D. The appropriate election official shall submit the proposed form of a ballot question to the secretary of state pursuant to Subsection B of Section 1-16-3 NMSA 1978. The proposed form of a ballot question shall include the required information in Subsection G of Section 1.10.16.8 NMAC. The proposed form of the ballot question need not contain language that

amounts to an advisory question. When an election official submits a proposed form of a ballot question to the secretary of state, the election official must also submit the full text of the act, resolution, charter amendment, or ordinance. The proposed form of the condensed text for a ballot question must be received by the secretary of state at least 67 days before the election on which the ballot question shall appear.

E. The full text of the act, resolution, charter amendment, or ordinance shall be posted on the secretary of state's website for a state ballot question or, for a local government ballot question, on the proposing local government's website and be made available at the election official's office for inspection 10 days after the certification of the ballot question. The full text of the act, resolution, charter amendment, or ordinance may also be posted on the elections official's website.

F. A copy of the full text of the proposed ballot question shall be posted in every polling place in a location that is easily accessible to the voters.

G. Each ballot question shall appear on the ballot containing the following information:

- (1) a question number
- (2) a brief designation of the source of the question;
- (3) a brief descriptive title in boldface type;
- (4) the form of ballot question; and
- (5) the voting choices available to the voter.

H. For a proposed constitutional amendment, the form of the ballot question shall include the full title of the joint resolution proposing the constitutional amendment and the constitutional amendment number assigned to the joint resolution by the secretary of state.

[1.10.16.8 NMAC - N, 9/10/2019]

1.10.16.9 BALLOT

POSITION: Ballot questions shall be printed on the ballot in the order provided in Subsection D of Section 1-10-8 NMSA 1978.

[1.10.16.9 NMAC - N, 9/10/2019]

1.10.16.10 SEVERABILITY

CLAUSE: If any part of this rule is declared unconstitutional by a court of competent jurisdiction, the remaining parts shall survive in full force and effect.

[1.10.16.10 NMAC - N, 9/10/2019]

History of 1.10.16 NMAC:

[RESERVED]

End of Adopted Rules

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Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
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