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New Mexico Register

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

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The New Mexico Register

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Notices of Rulemaking and Proposed Rules

CHILDREN YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

NOTICE OF PUBLIC HEARING

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing in Santa Fe on Wednesday December 4th, 2019, from 8:00 a.m. to 10:00 a.m. at the PERA Building, 1120 Paseo de Peralta, Santa Fe, NM Room #227, to take comments regarding the proposed changes to 8.26.4 NMAC—Licensing Requirements for Foster and Adoptive Homes.

Proposed changes are to establish federal licensing standards for applicants who wish to become foster care providers for children in PSD custody. Proposed changes will allow PSD to become in compliance with federal guidelines regarding licensing foster care providers.

A free electronic copy of the proposed changes can be found at <https://cyfd.org/for-providers/rfp>. A hard copy of the proposed changes may be reviewed between 8:00 a.m.-5:00 p.m. at the PSD Director's office, Room 254, in the PERA building in Santa Fe.

Written comments can be provided in person at the public hearing or via e-mail to Serra Dittel-Payne at serra.dittel-payne@state.nm.us or by mail to CYFD, Serra Dittel-Payne, Protective Services Division, PO Drawer 5160, Santa Fe, NM 87502. All written comments must be received no later than 8:00 a.m. on Tuesday, December 3rd, 2019. Written comments provided carry the same weight as comments received during the public hearings.

Subsection D of Section 9-2A-7 NMSA 1978 states "The secretary may make and adopt such reasonable and procedural rules and regulations

as may be necessary to carry out the duties of the department and its divisions" which provides the authority authorizing the proposed rule and the adoption of the proposed rule.

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

ENVIRONMENT DEPARTMENT

NOTICE OF PUBLIC HEARING FOR ADOPTION OF NEW RULE 20.10.2 NMAC, HEMP POST- HARVEST PROCESSING

The Secretary of the New Mexico Environment Department ("NMED") will hold a public hearing beginning at 9:00 a.m. on December 2, 2019 and continuing thereafter as necessary at the Runnels Auditorium in the Harold Runnels Building, 1190 South St. Francis Drive, Santa Fe, NM, 87505. The hearing location may change prior to the hearing date, and those interested in attending should visit NMED's website prior to the hearing: <https://www.env.nm.gov/public-notices/>. The purpose of the hearing is to consider the adoption of new rule 20.10.2 NMAC, Hemp Post-Harvest Processing of the Environmental Protection Regulations, which provides a regulatory framework for the emerging hemp market through a permitting process. NMED's Environmental Health Bureau ("Bureau") is the proponent of the proposed new rule.

On July 1, 2019 the Hemp Manufacturing Act ("Hemp Act") NMSA 1978, Sections 76-24-1 to -10 took effect, delegating regulatory authority to NMED over the extraction, processing, transportation,

and testing of post-harvest hemp and hemp-derived products. In adherence to the Hemp Act, NMED promulgated 20.10.2 NMAC- Hemp Post-Harvest Processing ("Emergency Rule") on an emergency basis in accordance with Section 14-4-5.6 of the State Rules Act, NMSA 1978, § 14-4-1 to -11. NMED concluded that, in these circumstances, the time required to comply with and complete the procedures of the State Rules Act would cause an imminent peril to the environment, public health, safety and welfare. The Emergency Rule took effect on August 1, 2019 and will expire on January 28, 2020. Therefore, it is necessary for NMED to adopt a permanent new rule in order to protect the environment, public health, safety, and welfare.

The Hemp Act authorizes the cultivation, harvest, extraction, and processing of cannabidiol oils and products from hemp, defined as the plant *Cannabis Sativa L.* and any part of that plant, including seeds and all derivatives, with a THC concentration of not more than three-tenths percent (0.3%). The Hemp Act requires NMED to adopt rules to regulate the extraction, processing, or other manufacturing activities regarding hemp, including manufacturing intermediate hemp-derived products and hemp finished products. The proposed new rule 20.10.2 NMAC ensures public safety by providing for the regulation of hemp extraction, manufacturing, and warehouse facilities, hemp transporters, hemp product labeling, hemp laboratories, and hemp products. It requires hemp extractors and manufacturers to adhere to standards of sanitation and safe food handling practices and requires that all final hemp products are properly labeled and tested for THC concentration, residual solvents, and CBD and THC content in hemp finished product packages.

The proposed new rule creates three different types of hemp permits with associated fees for each one. An individual, business, agency,

institution, or other entity engaged in the transportation, extraction, storage, or processing of hemp products in New Mexico will be required to apply for, obtain, and maintain the appropriate hemp permit(s).

The Bureau proposes the Secretary adopt the proposed new rule, 20.10.2 NMAC, Hemp Post-Harvest Processing pursuant to its authority under NMSA 1978, § 9-7A-6 and NMSA 1978, §76-24-8(C). Please note that formatting and minor technical changes to 20.10.2 NMAC, other than those proposed by NMED, may be proposed at the hearing. Additionally, the Secretary may make other changes as necessary in response to public comments and evidence presented at the hearing.

The proposed new rule 20.10.2 NMAC may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Santa Fe, NM, 87505. The full text of the proposed 20.10.2 NMAC is also available online at www.env.nm.gov/hempprogram.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to 20.1.9.13 NMAC, those wishing to present technical testimony must file a written notice of intent to present technical testimony with the Hearing Office on or before 5:00 p.m. on November 15, 2019. Notices of intent to present technical testimony should reference the name of the regulation, the date of the hearing, and the docket number NMED 19-41 (R).

The form and content of the notice shall:

- * Identify the person for whom the witness(es) will testify;
- * Identify each technical witness the person intends to present and state the qualification of that witness, including a description of their education and work background;
- * Include a copy of the direct testimony of each technical witness in narrative form;
- * Include the text of any recommended modifications to the proposed regulatory change; and
- * List and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notices of intent to present technical testimony shall be submitted to:

Cody Barnes, Hearing Office
Administrator
New Mexico Environment
Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502
telephone: (505) 827-2428
email: cody.barnes@state.nm.us

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed new rule may be addressed to Mr. Cody Barnes, Hearing Office Administrator, at the above address, and should reference docket number NMED 19-41 (R). Pursuant to 20.1.9.14 NMAC, any member of the public may file an entry of appearance as a party at the hearing. The entry of appearance shall be filed with Cody Barnes, at the above address, no later than 5:00 p.m. on November 15, 2019.

The Hearing Officer will allow for public comment at various points during the hearing. There will be a section dedicated to public comment on December 2, 2019 beginning at 6:00 p.m.

The hearing will be conducted in accordance with NMED's Rulemaking Procedures (20.1.9 NMAC); the Department of Environment Act, NMSA 1978, § 9-7A-6; the State Rules Act, NMSA 1978, § 14-4-5.3; and other applicable procedures. Written comments regarding the proposed regulations may be addressed to Cody Barnes, Hearing Clerk, at the above address, referencing docket number NMED 19-41 (R).

STATEMENT OF NON-DISCRIMINATION

If any person requires assistance, an interpreter or auxiliary aid to access documents, please contact 505.222.9515 (Relay users please access the number via the New Mexico Relay Network) or hemp.program@state.nm.us.

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

above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

ENVIRONMENT DEPARTMENT

AVISO DE AUDIENCIA PUBLICA PARA LA ADOPCION DE LA NUEVA REGLA 20.10.2 NMAC, PROCESAMIENTO POSTERIOR A LA COSECHA DE HEMP

El Secretario del Departamento de Medio Ambiente de Nuevo México ("NMED, por sus siglas en inglés") celebrará una audiencia pública a partir de las 9 de la mañana del 2 de diciembre de 2019 y continuará según sea necesario en el auditorio de Runnels en Harold Runnels Building, 1190 South St. Francis Drive, Santa Fe, NM, 87505. La ubicación de la audiencia puede cambiar antes de la fecha de la audiencia y los interesados en asistir deben visitar el sitio web de NMED antes de la audiencia: <https://www.env.nm.gov/public-notice/>.

El propósito de la audiencia es considerar la adopción de la nueva regla 20.10.2 NMAC, Procesamiento Posterior a la Cosecha de Hemp del Reglamento de Protección Ambiental, que proporciona un marco regulatorio para el mercado emergente de hemp a través de un proceso de permiso. La Oficina de Salud Ambiental de NMED ("Oficina") es la proponente de la nueva regla propuesta.

El 1 de julio de 2019 entró en vigor la Ley de Fabricación de Hemp ("Ley de Hemp") NMSA 1978, Secciones 76-24-1 a -10, delegando la autoridad de reglamentación a NMED sobre la extracción, procesamiento, transporte y pruebas de hemp posterior a la cosecha y productos derivados del hemp. En cumplimiento de la Ley de Hemp, NMED promulgó 20.10.2 NMAC- Procesamiento Posterior a la Cosecha de Hemp ("Regla de Emergencia") en caso de emergencia de acuerdo con la Sección 14-4-5.6 de la Ley de Normas del Estado,

NMSA 1978, § 14-4-1 a -11. NMED concluyó que, en estas circunstancias, el tiempo requerido para cumplir y completar los procedimientos de la Ley de Normas del Estado causaría un peligro inminente para el medio ambiente, la salud pública, la seguridad y el bienestar. La Regla de Emergencia entró en vigor el 1 de agosto de 2019 y expirará el 28 de enero de 2020. Por lo tanto, es necesario que NMED adopte una nueva regla permanente para proteger el medio ambiente, la salud pública, la seguridad y el bienestar.

La Ley de Hemp autoriza el cultivo, la cosecha, la extracción y el procesamiento de aceites de cannabidiol y productos del Hemp, definida como planta Cannabis Sativa L., y cualquier parte de esa planta, incluidas las semillas y todos los derivados, con una concentración de THC de no más de tres décimas por ciento (0.3%). La Ley de Hemp requiere que NMED adopte normas para regular la extracción, el procesamiento y otras actividades de fabricación relacionadas con el hemp, incluida la fabricación de productos intermedios derivados de hemp y productos terminados de hemp. La nueva norma propuesta 20.10.2 NMAC garantiza la seguridad pública al regular la extracción, fabricación y almacenamiento de hemp, transportadores de hemp, etiquetado de productos de hemp, laboratorios de hemp y productos de hemp. Requiere que los extractores de hemp y los fabricantes cumplan con las normas de saneamiento y prácticas seguras de manipulación de alimentos y que todos los productos finales de hemp estén debidamente etiquetados y sometidos a pruebas de concentración de THC, solventes residuales y el contenido de CBD y THC en los paquetes de productos terminados de Hemp.

La nueva regla propuesta crea tres tipos diferentes de permisos de hemp con tarifas asociadas para cada uno. Se requerirá que una persona, empresa, agencia, institución u otra entidad dedicada al transporte,

extracción, almacenamiento o procesamiento de productos de hemp en Nuevo México solicite, obtenga y mantenga los permisos de hemp apropiados.

La Oficina propone que el Secretario adopte la nueva norma propuesta, 20.10.2 NMAC, Procesamiento Posterior a la Cosecha de Hemp de conformidad con su autoridad bajo NMSA 1978, § 9-7A-6 y NMSA 1978, §76-24-8(C). Tenga en cuenta que el formato y cambios técnicos menores a 20.10.2 NMAC, distintos de los propuestos por NMED, pueden proponerse en la audiencia. Además, el Secretario puede hacer otros cambios según sea necesario en respuesta a los comentarios públicos y la evidencia presentada en la audiencia.

La nueva norma propuesta 20.10.2 NMAC puede revisarse durante las horas hábiles en la Oficina de Audiencias de NMED ubicada en Harold Runnels Building, 1190 South St. Francis Drive, Santa Fe, NM, 87505. El texto completo de la propuesta 20.10.2 NMAC también está disponible en línea en www.env.nm.gov/hempprogram.

Todas las personas interesadas tendrán una oportunidad razonable en la audiencia para presentar pruebas relevantes, datos, opiniones y argumentos, oralmente o por escrito; para presentar documentos u objetos de prueba; y para examinar testigos. Cualquier persona que desee presentar una declaración escrita no técnica para el registro en lugar de testimonio oral debe presentar dicha declaración antes del cierre de la audiencia.

De conformidad con 20.1.9.13 NMAC, aquellos que deseen presentar un testimonio técnico deben presentar un aviso por escrito de la intención de presentar un testimonio técnico en la Oficina de Audiencias a más tardar a las 5:00 de la tarde del 15 de noviembre. Los avisos de intención de presentar testimonio técnico deben hacer referencia al nombre del reglamento, la fecha de la audiencia,

el número de expediente NMED 19-41 (R).

La forma y el contenido del aviso deberán:

- * Identificar a la persona para quien el testigo(s) testificará(n);
- * Identificar a cada testigo técnico que la persona tiene la intención de presentar y declarar la calificación de ese testigo, incluida una descripción de su historial educativo y laboral;
- * Incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;
- * Incluir el texto de cualquier modificación recomendada al cambio reglamentario propuesto; y
- * Hacer una lista y adjuntar todos los documentos y objetos de prueba que se anticiparán que van a ser presentados por esa persona en la audiencia, incluida cualquier declaración propuesta de razones para la adopción de reglas.

Los avisos de intención de presentar un testimonio técnico deberán ser enviados a:

Cody Barnes, Hearing Office
Administrator
New Mexico Environment
Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502
teléfono: (505) 827-2428
correo electrónico: cody.barnes@state.nm.us

Las personas que lo deseen pueden ofrecer comentarios públicos no técnicos en la audiencia o presentar una declaración escrita no técnica en lugar de un testimonio oral en la audiencia o antes de la audiencia. Los comentarios por escrito sobre la nueva norma propuesta pueden dirigirse al Sr. Cody Barnes, administrador de la Oficina de Audiencias, a la dirección anterior, y deben hacer referencia al número de expediente NMED 19-41 (R). De conformidad con 20.1.9.14 NMAC, cualquier miembro del público puede presentar una entrada de comparecencia como parte

interesada en la audiencia. La entrada de comparecencia se debe presentar ante Cody Barnes, en la dirección anterior, a más tardar a las 5:00 de la tarde del 15 de noviembre de 2019.

El Oficial de Audiencias permitirá comentarios públicos en varios puntos durante la audiencia. Habrá una sección dedicada a comentarios públicos el 2 de diciembre de 2019 a partir de las 6:00 de la tarde.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de NMED (20.1.9 NMAC); la Ley del Departamento de Medio Ambiente, NMSA 1978, § 9-7A-6; la Ley de Normas del Estado, NMSA 1978, § 14-4-5.3; y otros procedimientos aplicables. Los comentarios escritos sobre los reglamentos propuestos pueden dirigirse a Cody Barnes, secretario de audiencias, a la dirección anterior, haciendo referencia al número de expediente NMED 19-41 (R).

DECLARACIÓN DE NO DISCRIMINACIÓN

Si alguna persona necesita asistencia, un intérprete o un dispositivo auxiliar para acceder a los documentos, comuníquese por correo electrónico hemp.program@state.nm.us o llamando al 505.222.9515 (los usuarios de retransmisión pueden acceder al número a través de New Mexico Relay Network).

NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigen las leyes y regulaciones aplicables. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas sobre los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972 y la Sección

13 de las Enmiendas de la Ley de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o alguno de los programas, políticas o procedimientos de no discriminación de NMED o si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con: Kristine Yuridin, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, teléfono (505) 827-2855, correo electrónico nd.coordinator@state.nm.us. También puede visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una queja de discriminación.

GENERAL SERVICES DEPARTMENT

NOTICE OF RULE HEARING

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

Repeal and Replace 2.20.1 NMAC - Annual Inventory

The hearing is scheduled to occur on December 3, 2019 at 10:00 a.m. at the Joseph Montoya Building, Room 2016, 1100 St. Francis Drive, Santa Fe, New Mexico 87505.

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

Purpose: The purpose of this is to repeal and replace 2.20.1 NMAC for updated statute and rule requirements.

Summary of full text: The repeal and replace is to increase the values of state property that must be inventoried and listed from \$1,000 to \$5,000, change the name of the property control division of the general services department to the facilities management division per Section

12-6-10 NMSA 1978. Interested individuals may provide comments at the public hearing and/or submit written or electronic comments to Michael Lujan, via email at Michael.Lujan@state.nm.us or fax at 505 827-2896, or mail to Michael B. Lujan, General Services Department, Administrative Services Division, PO Box 6850, Santa Fe, New Mexico 87502.

Written comments must be received no later than 5:00 pm on November 29, 2019 prior to the public hearing. However, the submission of written comments as soon as possible is encouraged. Persons may also submit written comments at the public hearing. All comments will be posted on the agency website within three days of receipt.

Copies of the proposed rule are available for download on the Administrative Services Division's website at <https://www.generalservices.state.nm.us/adminservices/> and available at the Administrative Services Division located at General Services Department, Administrative Services Division, Joseph Montoya Building, Room 3078, 1100 St. Francis Drive, Santa Fe, New Mexico 87505. A copy of the proposed rule may also be requested by contacting Michael B. Lujan at (505) 827-1730.

Individuals with disabilities who require this information in an alternative format or need any form or auxiliary aid to attend or participate in the public hearing are asked to contact Michael B. Lujan at (505) 827-1730 to provide requested special accommodations.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department)

will hold a public rulemaking hearing on December 4, 2019. The hearing will begin at 9:00 a.m. and will be held at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed amendment to **5.7.4 NMAC, PRIMARY CARE PHYSICIAN STUDENT LOAN-FOR-SERVICE PROGRAM.**

Amendments:

5.7.4.4 NMAC, DURATION

Purpose:

The purpose of the proposed rule change is to remove the rule's current expiration date of December 31, 2019 and make the rule permanent as the Primary Care Physician Loan-For-Service Program is an ongoing program.

Summary of proposed changes:

The amendment to Section 5.7.4.4 NMAC removes the December 31, 2019 expiration date and makes the rule permanent.

Details for Obtaining a Copy, Public Hearing and Comments:

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

A public hearing will be held from 9:00 a.m. until 9:30 a.m. at NMHED on December 4, 2019. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on December 2, 2019.** Please

note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Sections 9-25-8, 21-1-26 and 21-22G-1 through 21-22G-4, NMSA 1978.

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

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Employee Labor Relations Board ("PELRB") hereby gives notice that it will conduct a public hearing at its offices at 2929 Coors Blvd. NW, Albuquerque, NM 87120 on December 2, 2019, from 1:30 p.m. to 4:00 p.m. The purpose of the public hearing will be to obtain input on the proposed amendment of PELRB administrative rules as described below. Copies of the full text of the proposed rules may be accessed on the PELRB website (www.pelrb.state.nm.us) or at the PELRB offices. Concerned parties may provide comments at the public hearing or submit written comments prior to the hearing. Written comments may be submitted to the PELRB via US Mail c/o Matthew Huchmala, Administrative Assistant; New Mexico Public Employee Labor

Relations Board; 2929 Coors Blvd. NW, Suite 303; Albuquerque, NM 87120; or by electronic mail to matt.huchmala@state.nm.us. The submission of written comments as soon as possible is encouraged. Written comments must be received no later than 5:00 p.m. on December 1, 2019.

This information can be provided in a variety of accessible formats. If you are an individual who requires an alternative format or any other form of auxiliary aid to attend or participate in the rulemaking process, please contact the administrative assistant at 505-831-5422 or matt.huchmala@state.nm.us as soon as possible to arrange the appropriate accommodations.

Statutory Authority

Authority for this rulemaking is the Public Employee Bargaining Act, NMSA 1978 §§ 10-7E-1 through 10-7E-26 (2003, amended 2005).

Summary of Proposed Changes

This list provides a concise statement of the various ways the proposed rules change or codify current practice, and the general reasoning in support of the changes. It is not an elaborate analysis of the rules or of the detailed considerations upon which they are based; rather, it is designed to enable the public to obtain a general idea of the purpose of, and a statement of the basic justification for, the rules. As this list shows, the amendments provide targeted solutions to discrete, specifically identified problems.

11.21.1.11 REPRESENTATION OF A PARTY: This change will eliminate an apparent exception to the requirement that a representative of a party file a notice of appearance for employees of a party to reflect the reality that all representatives of a party to file a notice of appearance, typically upon the filing of an initial pleading. This will enable PELRB staff to ensure all appropriate individuals receive notice of Board action.

11.21.1.12 EX PARTE COMMUNICATIONS: This change removes the specific enumeration of types of proceedings (specifically, the outdated reference to “fact finding” which is a term of art related to impasse resolution proceedings) to which the prohibition of ex parte communications applies and makes it applicable to any proceeding before the Board

11.21.1.15 RECORDS OF PROCEEDINGS: This change removes references to the now obsolete practice of “tape recording” to encompass modern audio recording technologies.

11.21.1.16 NOTICE OF HEARING: This change clarifies the duties of PELRB staff in notifying parties of proceedings and expands the scope to include conferences in addition to hearings.

11.21.1.18 MISCONDUCT: This change clarifies the duty and power of the Board to control its proceedings. The added language clarifies the statutory authority for the rule, adds abusive behavior to the list of prohibited conduct, includes examples of the possible remedies for misconduct, and provides for Board review of the exercise of this power by one of its agents.

11.21.1.22 BURDEN OF PROOF: This change removes outdated language related to impasse resolution proceedings applicable under PEBA I but inapplicable since the passage of PEBA II.

11.21.1.23 MOTIONS AND RESPONSES TO MOTIONS: This change adds language to provide a deadline for responses to motions not addressed in a scheduling order or filed in the absence of a scheduling order.

11.21.1.33 CHAIRPERSON SUCCESSION: This new rule is intended to ensure that the chairperson has at least one year of experience in PELRB rules and

procedures as well as parliamentary procedure, and that a chairperson with such experience is always in place regardless of the expiration of terms.

11.21.2.23 OPPORTUNITY TO PRESENT FURTHER SHOWING OF INTEREST: This change corrects an error in punctuation to provide more clarity.

11.21.2.25 PRE-ELECTION CONFERENCE: These changes have two major components: 1) adding language that allows for conducting an election using electronic ballots, and 2) allowing the waiver of the requirement for a pre-election conference if the parties can stipulate to a satisfactory consent election agreement that is approved by the director at or soon after a Status and Scheduling Conference.

11.21.2.27 BALLOTS AND VOTING: This rule adds language referring to electronically conducted elections in light of the changes to 11.21.2.25 allowing electronic balloting. It also allows the director to delegate the responsibility of conducting elections to an election supervisor pursuant to the authority granted by 11.21.1.28.

11.21.2.30 CHALLENGED BALLOTS: In light of the proposed changes to rule 11.21.2.27 which allow the director to delegate election duties, the word director has been changed to election supervisor.

11.21.2.31 TALLY OF BALLOTS: In light of the proposed changes to rule 11.21.2.27 which allow the director to delegate election duties, the word director has been changed to election supervisor.

11.21.2.33 CERTIFICATION: This change clarifies the action required of the director after an election and adds language that codifies the Board’s longstanding practice of reviewing the results of representation elections before issuing a certification, a practice that might not take place within ten (10) days.

11.21.2.39 VOLUNTARY RECOGNITION: This change corrects a grammatical error.

11.21.2.42 DISCLAIMER OF INTEREST: This new rule codifies the right of a labor organization to disclaim its interest in a bargaining unit without the necessity of undergoing decertification, so long as its conduct is not inconsistent with such disclaimer.

11.21.3.17 BRIEFS: This change corrects a typographical error which incorrectly cited the rule for briefs.

11.21.5.12 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD: The changes to subsection (A) and (B) and (D) clarify the types of enactments that can be submitted for Board approval to better reflect the reality that the Board does not approve “boards,” which might not be constituted at the time of approval, but rather the ordinances, charter amendments, or resolutions authorizing their creation. The changes to subsection (C) clarify the Board’s jurisdiction over public employee labor relations matters in the absence of a “fully functional” local labor board complying with section 10 of the Act and ensure that public employees have a mechanism for exercising the rights established by the PEBA regardless of the functional status of a local labor board.

11.21.5.13 POST APPROVAL REPORTING REQUIREMENTS: The first change (“and” to “any”) corrects a typographical error. The added language clarifies the duty of local boards to comply with section 9 of the PEBA. The third change conforms the citation to NMSC citation guidelines.

PUBLIC SAFETY, DEPARTMENT OF

NOTICE OF RULE MAKING AND PUBLIC RULE HEARING

Notice of Rulemaking: The State Ethics Commission [the commission] will hold a public hearing on the proposed adoption of certain rules, as detailed below in the description of Proposed Rules, governing the conduct and procedures for administrative hearings before the commission. These new rules are proposed pursuant to Section 10-16G-5 and 10-16G-7 NMSA 1978. No technical scientific information was consulted in drafting these proposed rules.

Copies of all the proposed rules may be found at the Department of Finance and Administration’s website, www.nmdfa.state.nm.us, or, as of October 29, 2019, at the commission’s main office in Albuquerque: the New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 217, Albuquerque, NM, 87106.

Notice of Public Rule Hearing: The public rule hearing will occur on Wednesday, December 4, 2019 at 9:00 am in UNM’s Science and Technology Park’s Executive Board Room, 851 University Boulevard SE, Suite 200, Albuquerque, NM 87106. The public hearing will be conducted in a fair and equitable manner by the commission and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jeremy.Farris@state.nm.us. The commission will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at

least five calendar days before the scheduled hearing.

Notice of Acceptance of Written Public Comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public will be accepted until 5:00 p.m. on Monday, December 2, 2019 by submitting them via email to ethics.commission@state.nm.us with the subject line “SEC Rulemaking R19-01,” or via first class mail or by hand delivery to the commission’s Albuquerque office: New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 217, Albuquerque, NM, 87106.

Description of Proposed Rules: in compliance with Section 14-4-5.2 NMSA 1978, this notice includes the following summary of the proposed rule, a short explanation of the purpose of the rule, and specific legal authority authorizing the proposed rule. The method and manner of public comment and notice of public hearing on the proposed rules are listed above.

1.8.1.1 NMAC (“General Provisions”): This rule is being proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5, State Ethics Commission Act, NMSA (1978). The purpose of the proposed rule is to ensure that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission’s jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and effective.

1.8.2.1 NMAC (“Recusal of commissioners”): This rule is being

proposed pursuant to Subsection H of Section 10-16G-7, State Ethics Commission Act, NMSA (1978). The purpose of this proposed rule is to ensure that all decisions and actions taken by the state ethics commission are free of undue or unlawful influences of any kind, real or apparent. The rule requires commissioners to evaluate their personal interests and attitudes, to fairly and honestly consider such issues whether or not raised by parties, and withdraw from acting on any matter where a real or apparent conflict of interest could undermine the confidence of the public in the fairness of the commission.

1.8.3.1 NMAC (“Administrative Hearings”): This rule is being proposed pursuant to Subsection A of Section 10-16G-5 NMSA 1978, State Ethics Commission Act, NMSA (1978). The purpose of this proposed rule is to establish general rules of practice and procedure for administrative hearings conducted by the commission or its hearing officers, unless a more specific statute or regulation applies to the substantive hearing type at issue. In summary, the proposed rule establishes: how to file a complaint with the commission; how complaints are referred to the commission by other agencies or by the commission to other agencies; how the commission can initiate complaints; time limits for filing or initiation of complaints; the director’s duty to notify parties of the filing of complaints or commission actions, except in limited circumstances; deferral of commission action on certain types of complaints during pre-election periods; the review, processing and investigation of complaints by the director and the general counsel; procedures for setting hearings on supported complaints and dismissal of insufficient complaints; issuance of and obtaining compliance with subpoenas; how to request an administrative hearing before a hearing officer in a matter within the jurisdiction of commission; who may represent a party in a matter

before commission; permitted motions and other pleadings and how they may be filed in a matter before the commission; the requirements for notices of hearing; the location of hearings; the burden of proof, permissible intervention in proceedings; presentation of the case, and evidentiary rules of the hearings before commission; the qualifications, selection, powers and responsibilities of the hearing officer; procedures for facilitating and approving settlement agreements; the openness or confidentiality of all matters before the commission, including proceedings and exhibits; the rules for issuance of administrative subpoenas; the requirements for language interpreters; and procedures for appeals to the commission of hearing officer decisions. Information on the public hearing and on submitting written comments is described above in paragraph three and four respectively of this notice.

STATE ETHICS COMMISSION

NOTICE OF RULE MAKING AND PUBLIC RULE HEARING

Notice of Rulemaking: The State Ethics Commission [the commission] will hold a public hearing on the proposed adoption of certain rules, as detailed below in the description of Proposed Rules, governing the conduct and procedures for administrative hearings before the commission. These new rules are proposed pursuant to Section 10-16G-5 and 10-16G-7 NMSA 1978. No technical scientific information was consulted in drafting these proposed rules.

Copies of all the proposed rules may be found at the Department of Finance and Administration’s website, www.nmdfa.state.nm.us, or, as of October 29, 2019, at the commission’s main office in Albuquerque: the New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury

Drive SE, Suite 217, Albuquerque, NM, 87106.

Notice of Public Rule Hearing:

The public rule hearing will occur on Wednesday, December 4, 2019 at 9:00 am in UNM’s Science and Technology Park’s Executive Board Room, 851 University Boulevard SE, Suite 200, Albuquerque, NM 87106. The public hearing will be conducted in a fair and equitable manner by the commission and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jeremy.Farris@state.nm.us. The commission will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least five calendar days before the scheduled hearing.

Notice of Acceptance of Written

Public Comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public will be accepted until 5:00 p.m. on Monday, December 2, 2019 by submitting them via email to ethics.commission@state.nm.us with the subject line “SEC Rulemaking R19-01,” or via first class mail or by hand delivery to the commission’s Albuquerque office: New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 217, Albuquerque, NM, 87106.

Description of Proposed Rules: in compliance with Section 14-4-5.2 NMSA 1978, this notice includes the following summary of the proposed rule, a short explanation of the purpose of the rule, and specific legal authority authorizing the proposed rule. The method and manner of

public comment and notice of public hearing on the proposed rules are listed above.

1.8.1.1 NMAC (“General Provisions”): This rule is being proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5, State Ethics Commission Act, NMSA (1978). The purpose of the proposed rule is to ensure that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission’s jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and effective.

1.8.2.1 NMAC (“Recusal of commissioners”): This rule is being proposed pursuant to Subsection H of Section 10-16G-7, State Ethics Commission Act, NMSA (1978). The purpose of this proposed rule is to ensure that all decisions and actions taken by the state ethics commission are free of undue or unlawful influences of any kind, real or apparent. The rule requires commissioners to evaluate their personal interests and attitudes, to fairly and honestly consider such issues whether or not raised by parties, and withdraw from acting on any matter where a real or apparent conflict of interest could undermine the confidence of the public in the fairness of the commission.

1.8.3.1 NMAC (“Administrative Hearings”): This rule is being proposed pursuant to Subsection A of Section 10-16G-5 NMSA 1978, State Ethics Commission Act, NMSA (1978). The purpose of this proposed rule is to establish general rules of practice and procedure for administrative hearings conducted by the commission or its hearing officers, unless a more specific statute or

regulation applies to the substantive hearing type at issue. In summary, the proposed rule establishes: how to file a complaint with the commission; how complaints are referred to the commission by other agencies or by the commission to other agencies; how the commission can initiate complaints; time limits for filing or initiation of complaints; the director’s duty to notify parties of the filing of complaints or commission actions, except in limited circumstances; deferral of commission action on certain types of complaints during pre-election periods; the review, processing and investigation of complaints by the director and the general counsel; procedures for setting hearings on supported complaints and dismissal of insufficient complaints; issuance of and obtaining compliance with subpoenas; how to request an administrative hearing before a hearing officer in a matter within the jurisdiction of commission; who may represent a party in a matter before commission; permitted motions and other pleadings and how they may be filed in a matter before the commission; the requirements for notices of hearing; the location of hearings; the burden of proof, permissible intervention in proceedings; presentation of the case, and evidentiary rules of the hearings before commission; the qualifications, selection, powers and responsibilities of the hearing officer; procedures for facilitating and approving settlement agreements; the openness or confidentiality of all matters before the commission, including proceedings and exhibits; the rules for issuance of administrative subpoenas; the requirements for language interpreters; and procedures for appeals to the commission of hearing officer decisions. Information on the public hearing and on submitting written comments is described above in paragraph three and four respectively of this notice.

STATE PERSONNEL OFFICE

NOTICE OF PROPOSED RULEMAKING

Public Notice: The New Mexico State Personnel Office provides notice that it will conduct a public hearing in Santa Fe at the State Personnel Office Auditorium, Willie Ortiz Building, 2600 Cerrillos Rd, Santa Fe, New Mexico, Friday, December 6, 2019 at 9:00 a.m. The purpose of the public hearing is to receive public input on the proposed repeal and replace of 1.7.1 NMAC – General Provisions and amendments to 1.7.7 NMAC – Absence and Leave.

Authority: Personnel Act, NMSA 1978, Sections 10-9-10 and 10-9-12.

Purpose: The purposes of the repeal and replacement of 1.7.1 NMAC and the amendments to 1.7.7 NMAC are to add, clarify, and amend definitions used throughout the State Personnel Board rules and update procedures to reflect current practices and changes in law. 1.7.1 NMAC is being repealed and replaced to conform to current NMAC2 style and format.

Summary of Proposed Amendments to the Repeal and Replacement of 1.7.1 NMAC:

1.7.1.7 – Definitions

The proposed changes would add, delete, or amend the following definitions to reflect current meanings:

- Amend definition of “anniversary date” to correct a conflict with Subsection B of NMAC 1.7.9.8 and 1.7.3.10 NMAC and clarify that classification studies do not impact the anniversary date.
- Add definition of “appointment” because it used throughout the Rules.
- Add definition of “audit” because it is used throughout the Rules.
- Amend definition of “break in employment” to clarify that a break relates to “period of time”.

- Amend definition of “candidate” to distinguish “candidate” from “applicant.”
- Add definition of “disciplinary action” because it is used throughout the Rules but not defined.
- Amend definition of “dismissal” to clarify that an employee may be dismissed for reasons other than discipline (i.e. performance, inability to perform essential functions of job, etc.).
- Add definition of “domestic partner” because it is used throughout the Rules but not defined. The definition is consistent with General Services Department, Risk Management Division, Employee Benefits Bureau guidance from January 2015.
- Amend definition of “employment list” to reflect current practice.
- Add definition of “employment records” because there has been an issue regarding whether employment records include applicant records (i.e. ADA requests by applicants, information on applicant lists, resumes, etc.).
- Delete definition of “established requirements” because this term is not used. The term “minimum qualifications,” which are established by the Board, is used.
- Delete definition of “first-line supervisor” because these no longer exist. (See Interpretive Memorandum 2012-001, eliminating use of first-line supervisor pay allowances, and moving employees into new supervisory job classifications, approved by the Board).
- Amend “line authority” definition to make clear that line authority may be delegated by the director to State Personnel Office staff or an agency.
- Amend definition of “manager” to allow the classification to be used for management of people or activities.
- Amend definition of “midpoint” to clarify its meaning.

- Amend definition of “minimum qualifications” to clarify that these are established by the Board and not statute, and to clarify the meaning.
- Amend definition of “reduction” to delete removal of supervisory or lead worker responsibilities since those duties are discretionary on the part of the agency.
- Add definition of “signature” to address electronic signatures.
- Add definition of “supervisor,” because “supervisor” and “supervisory” appear throughout the Rules but are not defined.
- Amend definition of “without prejudice” to remove superfluous language.
- Amend definition of “writing” or “written” to include electronic records.

1.7.1.8 – Approval Authority

The proposed amendment would change the “quality assurance program” references in Subsection A to an “audit” function, which is more in line with current practice, and it clarified the consequences to an agency for violating the rules, policies, or State Personnel Office directives regarding administration of the collective bargaining agreements.

The proposed amendments to Subsection B would clarify what actions may be taken if an agency violates the Rules, Collective Bargaining Agreements, or agency policy.

The proposed amendments to Subsections C and D would conform this subsection with current practice. It should be noted that Board approval of the Director’s ability to grant or withdraw line authority to agencies was removed because it is within the Director’s statutory responsibility to supervise the administrative and technical personnel activities of the State of New Mexico.

1.7.1.12 – Employment Records

In accordance with current practice, the proposed amendments would clarify that agencies are to maintain personnel files for each of their employees, not the State Personnel Office. Also, the proposed amendments would clarify that employees may have access to “review” their personnel files and that “interview notes” are included as confidential records. The proposed changes would also add “subpoena” to Subsection B as agencies receive subpoenas that require disclosure of employment records.

1.7.1.13 – Settlement Agreements

In accordance with current practice, this proposed amendment would clarify that agencies must receive approval to make settlement offers that involve a personnel action that requires Director approval, before the offer is made. The reference to requiring joint approval by the Cabinet Secretary of the Department of Finance and Administration (“DFA”) also would be updated to be in line with current practices.

1.7.1.14 – Agency Human Resources Policies

This proposed amendment would provide agencies a deadline with which to submit copies of their policies, each year.

Summary of Proposed Amendments to 1.7.7 NMAC:

1.7.7.7 – Definitions

The proposed amendments to this Section would add a definition of “medical emergency,” because there has been some confusion regarding what constitutes a “medical emergency” for purposes of donation of annual and sick leave, *1.7.7.9 NMAC*, Donation of Annual and/or Sick Leave.

In addition, the proposed amendments to this section would add the

following definitions, based on the amendment to 1.7.7.14 NMAC, Administrative Leave, which allows for parent-teacher conference leave:

-
- “Child” or “Children”;
- “Eligible employee”;
- “Extra-curricular activities”;
- “Fall semester”;
- “School”;
- “Spring semester”.
-

The proposed amendments in this section also would add the following definitions to clarify terms used or proposed in NMAC 1.7.7.12, Sick Leave, and NMAC 1.7.7.14, Family Medical Leave:

- “Covered active duty or call to covered active duty status”;
- “Covered servicemember”;
- “Family member”;
- “Health care provider”;
- “Medical Emergency”;
- “Serious health condition”;
- “Serious illness or injury”;
- “Son” or “daughter”;
- “Spouse”.

1.7.7.12 – Sick Leave

The proposed amendments to Subsection A would change the sick leave accrual rate from 3.69 to 4.00 hours.

The proposed amendments to Subsection D expand the reason the use of sick leave to include illness or for medical treatment or illness of a family member in accordance with the recently enacted New Mexico Public Employee Caregiver Leave Act, Section 10-16H-1, *et seq.* NMSA 1978.

The proposed amendments in Subsections J and K also would update the Rules to comply the Public Employee Caregiver Leave Act by prohibiting disciplinary action against an employee because the employee requests or uses sick leave for medical treatment or illness of a family member in accordance with the agency’s sick leave policy and providing an appeal procedure

to the Director for denials of sick leave related to medical treatment or illness of a family member or other allegations that an agency has not complied with the Public Employee Caregiver Leave Act.

1.7.7.12 – Family and Medical Leave

The proposed amendments to Subsection B would clarify that Family Medical Leave may be used for baby bonding and any other qualifying exigency, in accordance with the Family Medical Leave Act (FMLA).

The proposed amendments to Subsection I would expressly permit agencies to require fitness for duty certifications when an employee returns to work from FMLA leave (some agencies do at present).

1.7.7.14 – Administrative Leave

The proposed amendments to Subsection C would clarify that administrative leave for voting may only be utilized for those elections listed in Sections 1-12-42 and 1-1-19, NMSA 1978, and that administrative leave may not be used for absentee or early voting, in accordance with current practice.

The proposed amendments to Subsection D clarify when administrative leave may be used to appear in court.

The proposed amendments to Subsection F would provide for parent-teacher conference leave, in accordance with Executive Order 2014-007.

1.7.7.15 – Educational Leave

The proposed amendments to Subsection A would define educational leave and when it can be used.

The proposed amendments to Subsection D would delete the requirement that an employee who uses educational leave in excess

of 100 hours stay employed with the agency for triple the amount of leave taken; and, proposes to add a requirement that employees who leave within a year of taking educational leave, reimburse the agency for any educational costs incurred on behalf of the employee. This proposed amendment would also require that employees who take educational leave and fail the coursework, reimburse the agency for any education costs incurred on behalf of the employee.

1.7.7.16 – Military Leave

The proposed amendments would allow for 30 days of leave, as opposed to 15. Frequently, the Governor provides an additional 15 days of leave every federal fiscal year. The proposed amendments also would clarify that the leave granted by the Governor may be used when an employee is ordered to military training, which is in line with current practice.

How to Comment on the Proposed Rules:

Interested individuals may provide comments at the public hearing and/or submit written or electronic comments to Annette Lopez, via email at Annette.lopez2@state.nm.us, fax (505) 476-7727, or mail to Attn: Annette Lopez– Rule Changes to 1.7.1 and 1.7.7 NMAC, State Personnel Office, 2600 Cerrillos Rd., Santa Fe, New Mexico.

Written comments must be received no later than 5:00 pm on December 5, 2019. However, the submission of written comments as soon as possible is encouraged. Persons may also submit written comments at the public hearing.

Copies of Proposed Rules:

Copies of the proposed rule are available for download on the State Personnel Office’s website at <http://www.spo.state.nm.us/> and available at the State Personnel Office located at 2600 Cerrillos Rd, Santa Fe, NM

87505. A copy of the proposed rule may also be requested by contacting Annette Lopez at (505) 476-7813.

Special Needs:

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Annette Lopez at (505) 476-7813 as soon as possible to provide requested special accommodations.

WORKFORCE SOLUTIONS, DEPARTMENT OF

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in conference room of the Human Rights Bureau located at 1596 Pacheco St Suite 103 in Santa Fe, New Mexico, 87505 on December 5, 2019 at 10:00 am. The purpose of the public hearing will be to obtain input and public comment on the amendments to 9.1.1 NMAC – Human Rights General Provisions – Administrative Procedures for the Human Rights Division/Commission.

Summary: The rule is being amended to update procedures for filing a complaint with the Human Rights Bureau, to align processes and procedures with EEOC regulations and processes, to clarify terms not currently defined under the regulation, to change how the HRB refers to individuals filing a complaint from “complainant” to “claimant”, and to remove language that is no longer applicable. The new proposed draft updates the processes the Human Rights Bureau follows for hearings before an administrative law judge or the human rights commission.

Under Sections 28-1-1 to 28-1-14 and Sections 28-23-1 through 28-23-6 NMSA 1978, the Department is the agency responsible for the Human Rights Bureau.

Interested individuals may testify at the public hearing or submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on December 4, 2019. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed at <http://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

WORKFORCE SOLUTIONS, DEPARTMENT OF

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the Leo Griego Auditorium at the State Personnel Office (Willie Ortiz Building) located at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on December 5, 2019 at 1:00 pm. The purpose of the public hearing will be to obtain input

and public comment on the addition of a new section of the Apprenticeship Manual (NMAC 11.2.3) as it applies to the Energy Transition Act.

Summary: The Department is proposing an additional section to the Apprenticeship manual, NMAC 11.2.3 to implement regulations governing the requirement of hiring apprentices for the construction of facilities that generate energy as required by the Energy Transition Act, NMSA 1978 Chapter 65 to include the methods the Department shall employ to monitor compliance and to encourage diversity among participants, participation by the underrepresented groups associated with certain apprenticeship programs and to facilitate participation from disadvantaged communities.

Under Sections 9-26-4, 13-4D-4, and 21-19A-6, NMSA 1978, the Department of Workforce Solutions Labor Relations Division has authority to adopt rules and regulations necessary to implement provisions of the Apprenticeship Assistance Act and the State Apprenticeship program.

Interested individuals may testify at the public hearing or submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on December 4, 2019. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed at <http://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an

alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**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.

HEALTH, DEPARTMENT OF

The New Mexico Department of Health, based on its 10/01/2019 public hearing has decided to repeal 7.2.2 NMAC, Vital Records and Statistics - filed 12/15/2010 and replace it with 7.2.2 NMAC, Vital Records and Statistics adopted 10/16/2019 and effective 10/29/2019.

HEALTH, DEPARTMENT OF

TITLE 7 HEALTH CHAPTER 2 VITAL STATISTICS PART 2 VITAL RECORDS AND STATISTICS

7.2.2.1 ISSUING AGENCY: Department of Health, Epidemiology and Response Division, Bureau of Vital Records and Health Statistics.
[7.2.2.1 NMAC - Rp, 7.2.2.1 NMAC, 10/29/2019]

7.2.2.2 SCOPE: These regulations govern the creation and maintenance of a system of vital records and health statistics in New Mexico and insure the integrity of all vital records and health statistics issued or maintained by the department of health.
[7.2.2.2 NMAC - Rp, 7.2.2.2 NMAC, 10/29/2019]

7.2.2.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated by the secretary of the department of health by the authority of Subsection F of Section 9-7-6 NMSA 1978 and implement the Vital Statistics Act, Sections 24-14-1 to 24-14-31 NMSA 1978, as amended. These regulations

also implement certain sections of the Uniform Parentage Act, 40-11-1 et seq., at Sections 40-11-5 and 40-11-6 NMSA 1978.

[7.2.2.3 NMAC - Rp, 7.2.2.3 NMAC, 10/29/2019]

7.2.2.4 DURATION:
Permanent.

[7.2.2.4 NMAC - Rp, 7.2.2.1 NMAC, 10/29/2019]

7.2.2.5 EFFECTIVE DATE: October 29, 2019, unless a later date is cited at the end of a section.

[7.2.2.5 NMAC - Rp, 7.2.2.5 NMAC, 10/29/2019]

7.2.2.6 OBJECTIVE:
These regulations are promulgated pursuant to statute for the purpose of installing, maintaining and operating a system of vital statistics throughout this state.

[7.2.2.6 NMAC - Rp, 7.2.2.6 NMAC, 10/29/2019]

7.2.2.7 DEFINITIONS:
As used in these regulations.

A. "Act" means the Vital Statistics Act, Sections 24-14-1 to 24-14-31, NMSA 1978 as amended.

B. "Bureau" means the vital records and health statistics bureau, epidemiology and response division) within the department of health, which was formerly and in the statute referred to as the vital statistics bureau. Vital Statistics Act 24-14-1, et seq., NMSA 1978.

C. "Certificate of still birth" means a certificate created by the BVRHS at the request of a parent named on a report of spontaneous fetal death which captures data from a report of a spontaneous fetal death reported in accordance with New Mexico law. The certificate is

intended to memorialize a stillbirth event, but cannot be used as proof of a live birth, for identification or other legal purposes.

D. "Certifier", for purposes of death records means a person authorized to certify cause of death pursuant to the laws of New Mexico.

E. "Court ordered custodian" means the New Mexico children youth and families department when that department has legal custody of the child pursuant to a court order issued by a court of competent jurisdiction in the state of New Mexico.

F. "Dead body"
means a human body or such parts thereof other than skeletal remains which cannot be classified as artifacts; dead within the meaning of Section 12-2-4 NMSA 1978.

G. "Department"
means the department of health.

H. "Fetal death"
means death prior to complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(1) "Induced termination of pregnancy" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus, and which does not result in a live birth; induced abortion.

(2) "Spontaneous fetal death" means the expulsion or extraction of a product of human conception resulting in other

than a live birth and which is not an induced termination of pregnancy; still birth.

I. “File” means to present a vital record for registration by the state registrar.

J. “Final disposition” means the burial, interment, cremation, removal from the state or other authorized disposition of a dead body or fetus.

K. “Forms” means all certificates, forms, electronic media, reports, and records, and any safety paper used in their production, which are vital records.

L. “Fraud manager” means an employee or representative of the bureau whose responsibilities include liaison with law enforcement, immigration, passport, embassy and consular officials, or other agencies, and who investigates or coordinates the investigation of any incidence or suspected incidence of fraud, or violation of statute or regulation, and who reports on these investigations to the state registrar.

M. “Gender” means a person’s internal sense of being male, female, some combination of male and female, or neither male nor female.

N. “Given name” means a name that precedes one’s surname.

O. “Immediate family” means any of the following: mother, father, grandmother, grandfather, grandchild, sibling, child or current spouse.

P. “Institution” means any establishment, public or private, which provides in-patient or out-patient medical or surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care, or to which persons are committed by law.

Q. “Minor Error” means transposition of letters in words of common knowledge, typographical errors, or omissions of letters and numbers.

R. “Live birth” means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the

duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

S. “OMI” means the office of the medical investigator.

T. “Physician” means a person authorized or licensed to practice medicine or osteopathy pursuant to the laws of New Mexico.

U. “Registration” means the acceptance by the state registrar and the incorporation into his or her official records of vital records provided for in the act.

V. “Sex” means the biological anatomy of an individual’s reproductive system, and secondary sex characteristics.

W. “State” means the state of New Mexico.

X. “State registrar” means the person appointed under the Vital Statistics Act, Section 24-14-14, et seq., NMSA 1978, and whose duties are described in the act at Section 24-14-4 NMSA 1978.

Y. “System of vital statistics” means the registration, collection, preservation, amendment and certification of vital records; the collection of other reports required by this act; and activities related thereto, including the tabulation, analysis and publication of vital statistics.

Z. “Vital records” means certificates, records, reports, or registration forms of birth and death, and supporting documentation.

AA. “Vital statistics” means the data derived from certificates and reports of birth, death, spontaneous fetal death, induced termination of pregnancy and related reports.

BB. “X” means a gender other than male or female, or an undesignated gender.
[7.2.2.7 NMAC - Rp, 7.2.2.7 NMAC, 10/29/2019]

7.2.2.8 BUREAU OF VITAL RECORDS FORMS: All forms used in the system of vital

statistics are the property of the department, and shall be returned to the state registrar upon demand. Only those forms prescribed, distributed and approved by the state registrar shall be used in the reporting of vital records and statistics or in making copies thereof. Such forms shall be used for official purposes only.

A. Requirements for the preparation of forms:

(1) All certificates, registration forms, reports and records relating to vital statistics must either be prepared in approved electronic form or on a typewriter or printer which prints in unfading ink. All signatures required shall be entered electronically, or in unfading ink, unless otherwise instructed in these or related regulations.

(2) Unless otherwise directed by the state registrar, no certificate, registration form, record or report shall be complete and acceptable for registration that:

(a) does not have the certifier’s name typed or printed legibly with his or her signature;

(b) does not supply all items of information called for thereon or satisfactorily account for their omission;

(c) does not contain handwritten or approved electronic signatures, as required;

(d) includes alterations, including all manner of erasures, the use of correction fluids, and other correction devices;

(e) is marked “copy” or that is a carbon or photo or other copy;

(f) is prepared on an improper form;

(g) contains improper or inconsistent data;

(h) contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;

(i) is not prepared in conformity with regulations or instructions issued by the state registrar.

B. Missing or unknown information: The state registrar shall request and be provided information from applicants, informants, or other interested parties if the registrar finds that information is missing, inconsistent, or listed as “unknown”.

C. Copies of vital records: It is unlawful pursuant to Section 24-14-27 NMSA 1978 to copy or issue a copy of all or part of any record except as authorized by law.
[7.2.2.8 NMAC - Rp, 7.2.2.8 NMAC, 10/29/2019]

7.2.2.9 REGISTRATION OF BIRTH: A certificate of birth registration form for each live birth which occurs in this state shall be filed with the bureau within 10 days after the birth and shall be registered if it has been completed and filed in accordance with the Vital Records Act and related regulations. Exceptions shall be only those noted in the Vital Records Act or related regulations, or upon written authorization of the state registrar.

A. Infants of unknown parentage: Foundling registration. The report for an infant of unknown parentage shall be registered on a foundling report, and:
(1) show the required facts as determined by approximation and show parentage information as “unknown”;
(2) show the signature and title of the custodian in lieu of the attendant.

B. Safe haven registration: If parentage information is known for a safe haven baby under the Safe Haven For Infants Act, Sections 24-22-1 to 24-22-8 NMSA 1978, (it shall be entered on the certificate of birth registration form for filing with the state registrar. If no parentage information is known, the certificate of birth registration form shall be completed as a foundling registration.

C. Birth registration - 11 days to one year: Birth registrations forms filed after 10 days, but within one year from the date of birth, shall be filed on the certificate of birth registration form in the manner prescribed in Section 24-14-13 NMSA 1978. Certificates issued pursuant to the section shall not be marked “delayed.”

(1) In any case where the certificate of birth registration form is signed by someone other than the licensed attendant or person in charge of the institution where the birth occurred, a notarized statement setting forth the reason therefore must be attached to the certificate. The state registrar may require additional evidence in support of facts of birth or an explanation why the certificate of birth registration form was not filed within the required 10 days.

(2) Out-of-hospital births not attended by a licensed medical attendant (physician, licensed certified nurse midwife, licensed midwife, emergency medical technician) must be signed by the mother as certifier, and sworn by any other person in attendance (if any other person was in attendance), and must be accompanied by notarized documents which prove both that a birth occurred and the New Mexico county in which the birth occurred. The state registrar will issue instructions containing a list of documents which will be acceptable as proof of birth, and as proof of residency.
[7.2.2.9 NMAC - Rp, 7.2.2.9 NMAC, 10/29/2019]

7.2.2.10 DELAYED CERTIFICATE OF BIRTH: All births presented for registration one year or more after the date of birth are to be filed on an application for delayed certificate of birth form or other format prescribed by the state registrar. No application for a delayed birth certificate shall be approved except by the state registrar or the deputy state registrar. No delayed certificate of birth shall be prepared for a person who is deceased.

A. Who may request the registration of and sign an application for a delayed birth certificate. Any person whose birth is not registered in this state, or his/her parent, or legal guardian, may request the registration of a delayed certificate of birth, subject to these regulations, evidentiary requirements and instructions issued by the state registrar. The application for each delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths, by the person whose birth is to be registered if such person is 18 years of age or over and is competent to sign and swear to the accuracy of facts stated therein; otherwise, the application shall be signed and sworn to by one of the following:

- (1) one of the parents of the applicant for registration; or
- (2) the legal guardian or court ordered custodian of the applicant for registration.

B. Facts to be established for a delayed registration of birth. The minimum facts which must be established by documentary evidence shall be the following:

- (1) the full name of the person at the time of birth;
- (2) the date of birth;
- (3) the place of birth;
- (4) the full maiden name of the mother; and
- (5) the full name of the father, if paternity has been established pursuant to the Vital Records Act and related regulations or the Uniform Parentage Act.

C. Delayed registration following a legal change of status. When evidence is presented and accepted reflecting a legal change of status by adoption, legitimation, paternity determination, denial of paternity, or acknowledgment of paternity; an amended, delayed certificate may be established to reflect such change. The existing certificate and the

evidence upon which the amended, delayed certificate was based shall be placed in a special file. Such file shall not be subject to inspection except upon order of a court or by the state registrar for purposes of properly administering the vital statistics program.

D. Documentary evidence requirements for delayed birth registration: To be acceptable for filing the following is needed to support a delayed registration of birth:

- (1) to establish the name of the registrant; at least two pieces of documentary evidence;
- (2) to establish the date of birth; at least two pieces of documentary evidence;
- (3) to establish the place of birth; at least two pieces of documentary evidence.
- (4) to establish facts of parentage; at least one piece of documentary evidence.

E. Documentary evidence - acceptability: The state registrar may establish a priority of the best evidence, and will determine the acceptability of any document submitted as evidence.

(1) Documents presented such as census, hospital, church and school records must be from independent sources and shall be in the form of the original record or a duly certified copy thereof.

(2) All documents submitted in evidence must have been established at least five years prior to the date of the first application for a delayed birth certificate, or have been established prior to the applicant's 10th birthday, and may not have been established for the purpose of obtaining a certificate.

(3) Affidavits of personal knowledge are not acceptable as evidence to establish a delayed certificate of birth.

(4) All documents submitted to support a delayed certificate of birth are subject to verification.

(5) If any fraudulent document is submitted in evidence, no delayed birth certificate shall be prepared, and the fraud

manager shall be notified of the attempt.

(6) Examples of acceptable documentary evidence include but are not limited to the following:

- (a) enrollment of service records;
- (b) tribal records from tribal authorities;
- (c) social security proof of application (NUMIDENT or SS 5 form);
- (d) first application for marriage;
- (e) first application for voter registration;
- (f) medical records from a licensed hospital for a child five years and younger if the child was born in that facility and no other documentation is available.

(g) documents mentioned in Paragraph (1) of Subsection E of this section.

(7) Children five years or younger born outside of a licensed hospital without a midwife may not use the delayed birth registration process and must obtain an order from a court of competent jurisdiction to establish facts of birth pursuant to Section 24-14-16 NMSA 1978.

F. Documentary evidence - retention of copies, abstracts:

The state registrar, or his or her designated representative, shall attach to the application for a delayed birth certificate, photo copies or an abstract and description of each document submitted to support the facts shown on the delayed birth certificate. All documents submitted in support of the delayed birth registration shall be returned to the applicant after review and use by the state registrar. The application and a copy of the documents submitted and accepted to support the delayed birth certificate shall be maintained in a permanent, confidential file.

If an abstract is used in lieu of photo copies it shall include the following information:

- (1) the title or description of the document;

(2) the name and address of the custodian, if the document is an original or certified copy of a record;

(3) the date of the original filing of the document being abstracted;

(4) the information regarding the birth facts contained in the document.

G. Certification by the state registrar: The state registrar shall, by signature, certify that:

(1) no prior birth certificate is on file for the person whose birth is to be recorded;

(2) he or she has reviewed and accepted the evidence submitted to establish the facts of birth;

(3) the list of documents accepted as evidence which is entered on the delayed certificate of birth accurately reflects the documents accepted as evidence.

H. Rejection of applications for a delayed birth registration: If an applicant for a delayed registration of birth fails to submit the minimum documentary evidence required for a delayed registration of birth or if the state registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence, the state registrar shall not register the delayed certificate and shall advise the applicant of the reason for such by final rejection letter, signed by the state registrar. The final rejection letter with notice of such will be deemed the rejection of the application and related certificate for purposes of Section 24-14-16 NMSA 1978. Applicants initially submitting evidence for a delayed certificate of birth may receive preliminary letters from the bureau requesting additional documentary evidence; such letters however shall not be considered the final rejection letter.

I. Court order for delayed certificates of birth. If an order from a court of competent jurisdiction to establish a delayed certificate of birth pursuant to Sections 24-14-15 and 24-14-16

NMSA 1978 is entered the state registrar shall require the applicant for the delayed certificate of birth to provide a duly certified copy of the court order and the related petition and supporting documents presented to the court to obtain such order, if the documents have not been previously received by the department. If the department was not given notice as required by statute of a hearing on a delayed birth certificate, the department and state registrar may seek legal redress.

J. Dismissal in six months: Applications for delayed certificates which have not been completed within six months from the date of initial application may be dismissed at the discretion of the state registrar. Upon dismissal, the state registrar shall so advise the applicant. A dismissal pursuant to this section shall not be considered a final rejection letter.
[7.2.2.10 NMAC - Rp, 7.2.2.10 NMAC, 10/29/2019]

7.2.2.11 THE CREATION OF AMENDED CERTIFICATES OF BIRTH FOLLOWING ADOPTION, LEGITIMATION, DENIALS OF PATERNITY AND ACKNOWLEDGEMENTS OF PATERNITY, AND OTHER LEGALLY RECOGNIZED DETERMINATIONS OF PARENTAGE:

A. Paternity: Upon receipt of a sworn acknowledgement of paternity signed by both parents, if no other person is shown as the father on the original certificate, a new certificate shall be prepared. A written request by both parents, if made within the 18 years of the child's birth, (unless acceptable proof is submitted that the mother is deceased, then by the father) that the minor child's surname be changed, and if no other person is shown as the father on the original certificate, a revised certificate shall be prepared. For a child aged 14 years or older, the child must give notarized consent to the change.

B. Court orders: If a person claims a change in paternity

but cannot provide acknowledgement or denial of paternity as prescribed in the Uniform Parentage Act Section 40-11A-3 NMSA 1978, the person will be advised to seek a court adjudication of paternity.

C. An new certificate of birth shall be prepared by the state registrar for a child born in this state upon receipt of a certified copy of a court determination of parentage or other acceptable evidence of parentage as required by the state registrar pursuant to the provisions of the Vital Records Act and related regulations and the Uniform Parentage Act.

D. Creation of new certificate:

(1) The new certificate of birth prepared after adoption, a denial of paternity, legitimation, a determination of parentage, or an acknowledgement of paternity shall be prepared on the form in use at the time of its presentation, and shall include the following items and such other information necessary to complete the certificate:

(a) the name of the child;

(b) the date and place of birth as transcribed from the original certificate;

(c) the names and required personal information about the adoptive parent(s), the natural parent(s) or other legally recognized parents, whichever is applicable; and

(d) the original filing date.

(2) The information necessary to locate the existing certificate and to complete the amended certificate shall be submitted to the state registrar on a form prescribed by 7.2.2.8 NMAC.

E. Existing certificate - special filing of: Upon preparation of the amended certificate, the existing certificate and the evidence upon which the amended certificate was based shall be placed in a sealed file. Such file shall not be subject to inspection except upon order of

a court of competent jurisdiction or by the state registrar for purposes of properly administering the vital statistics program.

[7.2.2.11 NMAC - Rp, 7.2.2.11 NMAC, 10/29/2019]

7.2.2.12 ADOPTION OF FOREIGN BORN:

A. Final Decree Requirements. On proof of adoption, a certificate of foreign birth shall be established by the state registrar for a person born in a foreign country who was not a citizen of the United States at the time of birth, provided the following conditions exist:

(1) the adopting parents are legal residents of New Mexico or members of the United States armed forces on active duty within the state of New Mexico;

(2) the child is adopted in New Mexico;

(3) a New Mexico court has issued an order recognizing the foreign adoption, if required;

(4) the department is provided a certified copy of the report of adoption and related court order;

(5) the final decree of adoption includes or is amended to include the following court findings:

(a) the probable country of birth;

(b) the year (and if known), the date and place of birth;

(c) a provision directing the state registrar to establish a certificate of birth.

B. Citizenship- limitations. The birth certificate form used by the state registrar in cases of foreign birth shall state on its face "this certificate is not evidence of United States citizenship."

C. Confidentiality. The evidence of adoption shall be sealed by the state registrar and shall not be subject to public inspection. The information shall be opened for inspection only upon court order, or upon the authorization of the state registrar in accordance with the Adoption Act.

D. Applicability. This section applies only to individuals born in foreign countries and who were neither born to U.S. citizens residing abroad nor naturalized as citizens prior to the adoption. [7.2.2.12 NMAC - Rp, 7.2.2.12 NMAC, 10/29/2019]

7.2.2.13 DEATH REGISTRATION:

A. Filing Deadlines.

A certificate of death for each death which occurs in this state shall be filed electronically within five days after the death and prior to final disposition. Exceptions to this period shall be only those afforded by statute or regulation.

(1) Cases referred to the office of the medical examiner will have up to 30 days after the receipt of medical records or autopsy, including toxicology results, to complete the medical certification section of the death certificate with a manner and cause of death other than "pending". If the office of medical examiner needs additional time to complete the medical certification with manner and cause of death, they shall contact the state registrar prior to the expiration of time to request an extension.

(2) Cases completed by tribal and federal entities will have up to 30 days after the receipt of medical records or autopsy, including toxicology results, to complete the medical certification section of the death certificate with manner and cause of death. If these entities need additional time to complete the medical certification, they must contact the registrar within 30 days of death to request an extension.

(3) An extension of the required filing time for a certificate of death may be granted at the discretion of the state registrar to prevent undue hardship in accordance with Section 24-14-24 NMSA 1978.

(4) In all cases the medical certification must be signed by the person responsible for such certification. If the cause of

death is unknown or undetermined, the cause and or manner of death shall be shown as such on the certificate.

B. Incomplete certificate of death. If all the information necessary to complete the certificate of death is not available within the time prescribed for filing of the certificate, the funeral service practitioner shall file the certificate completed with all information that is available, and attach a note explaining why the incomplete items cannot be completed at the time of submission.

(1) The affidavit providing the information missing from the original certificate shall be filed with the state registrar as soon as possible, but in all cases within 30 days of the date of the death occurred unless otherwise specifically approved by the state registrar.

(2) When the affidavit results in changes to the existing certificate of death, such affidavit shall be considered an amendment; the certificate of death shall be marked "amended," and the affidavit shall be attached to the original certificate which is retained by the bureau.

C. Amendment of a certificate of death. Unless otherwise provided for in these regulations, the certificate of death may be amended only in the following manner:

(1) Statistical items: non-medical statistical items, including but not limited to: ethnicity, education, race and occupation may be amended when new facts become available. The affidavit/change procedure described in Paragraphs (1) and (2) of Subsection B of 7.2.2.13 NMAC shall be used. Additional evidence may be required by the state registrar.

(2) Date of death, place of death, time of death, date pronounced, time pronounced, manner of death, and any portion of the cause of death may not be changed through the use of an amended certificate. These items shall only be changed by the preparation and filing of a medical affidavit signed by the certifier.

(3) The amendment of medically related items and items related to injury may only be submitted by the office of the medical investigator or equivalent military or tribal authorities and only on the form prescribed by the state registrar. Should the certificate of death be revised, resulting in changes of referenced material, the state registrar shall advise customary users of the certificate of the changes.

(4) An amendment of the marital status at time of death shall be made only if it is:

(a) requested by the person listed as informant on the certificate of death, upon completion of the prescribed form and presentation of acceptable documentation proving marital status at the time of death.

(b) accompanied by a notarized affidavit from the informant agreeing to the amendment; or

(c) requested by the funeral practitioner who provides an affidavit that the information as filed with the bureau was inconsistent with the information provided to such practitioner by the informant; or

(d) accompanied by a certified copy of a district court order directing the change in marital status, along with a copy of the petition for such order and evidence submitted to the court in support of the requested amendment, if such information was not previously supplied to the bureau.

D. Certificate of death occurring in a hospital or other institution and not under the jurisdiction of OMI. When a death occurs in a hospital or other institution, and the death is not under the jurisdiction of the office of the medical investigator, the person in charge of such institution, or his or her designated representative, may initiate the preparation of the certificate of death as follows.

(1) place the full name of the decedent and the date and place of death on the certificate

of death, and obtain information on the method and place of disposition and enter on the disposition part of the certificate, and obtain from the certifier the medical certification of cause of death and the certifier's signature;

(2) present the partially completed certificate of death to the funeral service practitioner or person acting as such and advise them that they need to complete the missing items on the certificate and file it with the bureau of vital records and health statistics.

(3) for all deaths in which OMI assumes jurisdiction, including but not limited to a death without medical attendance and presumptive death, see OMI administrative rules at OMI 86-1. [7.2.2.13 NMAC - Rp, 7.2.2.13 NMAC, 10/29/2019]

7.2.2.14 DELAYED REGISTRATION OF DEATH: The delayed registration of a death shall be registered in the manner prescribed below.

A. If the certifier, at the time of death and the attending funeral services practitioner or person who acted as such are available to complete and sign the certificate of death, it may be completed without additional evidence and filed with the state registrar. For those certificates of death filed one year or more after the date of death, the certifier or office of the medical investigator and the funeral service practitioner or person who acted as such must state in accompanying affidavits that the information on the certificate of death is based on records kept in their files.

B. In the absence of the certifier or office of the medical investigator and the funeral service practitioner or person who acted as such, the prescribed delayed certificate of death form may be filed by the immediate family of the decedent and shall be accompanied by:

(1) an affidavit of the person filing the certificate swearing to the accuracy of the information on the certificate;

(2) two documents which identify the decedent and his or her date and place of death, a summary of which shall be placed on the certificate.

C. The state registrar may reject a certificate of death or require additional documentary evidence to prove the facts of death, or in his or her discretion refer the case to the office of the medical investigator. [7.2.2.14 NMAC - Rp, 7.2.2.14 NMAC, 10/29/2019]

7.2.2.15 DISPOSITION OF REPORTS OF INDUCED TERMINATION OF PREGNANCY: Reports of induced termination of pregnancy are statistical reports only and are not to be incorporated into the official records of the vital records and health statistics bureau, nor to be issued in any manner. The state registrar is authorized to dispose of the reports when all statistical processing of the records has been accomplished. However, the state registrar may establish a file of the records so they will be available for future statistical and research projects provided the file is not made a part of the official records and the reports are not made available for the issuance of certified copies. The file shall be retained for as long as the state registrar deems necessary, but in no case shall any report of induced termination of pregnancy be retained for longer than 18 months, and it shall then be destroyed. The file may be maintained by photographic, electronic, or other means as determined by the state registrar, in which case the original report from which the photographic, electronic or other file was made shall be destroyed. The provisions of Section 15 shall also apply to all records of induced termination of pregnancy filed prior to the adoption of this part. [7.2.2.15 NMAC - Rp, 7.2.2.15 NMAC, 10/29/2019]

7.2.2.16 AUTHORIZATION FOR FINAL DISPOSITION:

A. Disposition of Body. Before final disposition of a dead body or a fetus, the funeral service practitioner or person acting as such shall.

(1) Obtain assurance from the certifier that death is from natural causes and that the certifier will assume responsibility for certifying the cause of death or fetal death.

(2) For any case which comes under the jurisdiction of the office of the medical investigator, notify the office of the medical investigator and obtain authorization for removal and final disposition of a dead body or fetus.

B. Disposition of a dead body not under the supervision of a licensed New Mexico funeral service practitioner, direct disposer. When a death occurs in a hospital or other institution, and the disposition is not under the supervision of a licensed New Mexico funeral service practitioner, or direct disposer, the person in charge of such an institution or his or her designated representative shall:

(1) initiate the certificate of death or burial as follows:

(a) place the full name of the decedent and the date of death on the certificate of death registration form;

(b) obtain the information from the person to whom the body is being released and complete on the disposition section of the form the method and place of disposition; and

(c) obtain the medical certification of the cause of death from the certifier and the certifier's signature;

(2) obtain and verify through identification the full name and address of the person to whom the dead body is being released for disposition, and the place of disposition; and

(3) advise the person taking charge of the dead body of the statutory requirements to file the certificate of death registration form within 5 days, and prior to final disposition;

(4) send a photocopy of the partially completed certificate of death along with the name and address of the person who is not a funeral service practitioner, but who is acting as such, to the bureau of vital records and health statistics within five days;

(5) the original, partially completed copy of the registration form shall be completed by the person who is not a funeral service practitioner, but who is acting as such, to file within five days with the bureau of vital records and health statistics.

C. Filing of fetal death report. For any fetal death in which the fetus has attained at least 20 week gestation or if gestational age is unknown, when the fetus weighs no less than 350 grams occurring in the state, a fetal death report shall be filed by the hospital, institution, physician, or, in the event the fetal death was unattended by any of the former, by the office of the medical investigator within 10 days and prior to final disposition. If a fetal death occurs with a midwife in attendance, the office of the medical investigator must be notified since New Mexico law limits pronouncement of death to a physician, certified nurse practitioner, or the office of the medical investigator. If a funeral service practitioner is aware that a fetal death occurred without medical attention, the funeral services provider shall notify the office of the medical investigator to initiate the report of fetal death. In all circumstances, a fetal death report must be initiated before the fetus is released for disposition.

D. Authorization for disinterment and reinterment. An authorization for disinterment and reinterment of a dead body shall be issued by the state registrar or state medical investigator on the form prescribed, upon receipt of a written request from the immediate family and the person who is in charge of the disinterment or upon receipt of an order of a court of competent jurisdiction directing the disinterment. A disinterment/reinterment permit can

only be issued to a licensed funeral service practitioner or direct disposer.

(1) Upon receipt of a court order or signed permission of the owner of the cemetery or burial ground, the state registrar or state medical investigator may issue one authorization to permit disinterment and reinterment of all remains in a mass disinterment. Insofar as possible, the remains of each body should be identified. The place of disinterment and reinterment shall be specified, including the cemetery name, the city, county and state of burial. The authorization shall be permission for disinterment, transportation and reinterment.

(2) Authorization shall be obtained from the state archaeologist for disinterment subject to the provisions of Section 18-6-11 NMSA 1978.

(3) A dead body properly prepared by an embalmer and deposited in a receiving vault shall not be considered a disinterment when removed from the vault for final disposition.

(4) No permit shall be issued for disinterment/reinterment of a dead body within the boundaries of a single cemetery, but notice of such should be provided to the immediate family of the decedent. [7.2.2.16 NMAC - Rp, 7.2.2.16 NMAC, 10/29/2019]

7.2.2.17 AMENDMENT OF LIVE BIRTH AND DEATH CERTIFICATES: This section is intended to supplement previous sections regarding the amendment of live birth and death records.

A. Who may apply to amend a certificate - birth and death.

(1) To amend a birth certificate, application may be made by both parents, the legal guardian or court ordered custodian, the registrant if 18 years of age or over, a legal representative for the registrant or parents, or the individual responsible for filing the original certificate. On any request not made by the registrant for a child age 14 years of age or older, the child must

sign the application or give notarized consent to the change unless an amendment has been issued by a court of competent jurisdiction, and Subsection D of 7.2.2.17 NMAC of these regulations applies. This excludes Subsection F of 7.2.2.17 NMAC.

(2) To amend a certificate of death, application may be made by the informant or the funeral service practitioner or person acting as such who signed the certificate of death. Applications to amend the medical certification of cause of death shall be made only by the certifier who signed the medical certification or the office of the medical investigator. Other requested amendments shall be in conformance with these regulations and the Vital Records Act.

B. Minor Errors.

(1) Correction of minor errors by the state registrar of a birth or death certificate: Correction of obvious minor errors, transposition of letters in words of common knowledge, or omissions may be made by the state registrar either upon his or her own observation or query.

(2) Correction of minor errors may be made upon request of the parents, legal guardian, or court ordered custodian of the registrant during the first year after birth. The certified certificate shall not be marked "amended."

C. Amendments of first or middle name. Unless otherwise provided for in these regulations or in statute, all applications for amendment to change the first or middle name on a vital record shall be supported by.

(1) An affidavit setting forth information to identify the certificate; the incorrect data as it is listed on the certificate; the correct data as it should appear, together with two or more items of acceptable documentary evidence which support the alleged facts and which were established at least five years prior to the date of the first application for amendment. For individuals five years or younger,

acceptable documentary evidence shall be at the discretion of the state registrar.

(2) When minor corrections are made by the state registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change shall be made on the computer file, but shall not become a part of any certificate issued.

(3) The state registrar shall evaluate the evidence submitted in support of any amendment, and when they find reason to doubt its validity or adequacy the amendment may be rejected and the applicant advised of the reasons for this action.

(4) The bureau may also amend a record upon receipt of a certified court order for a name change made pursuant to the provisions of Section 40-8-1 NMSA 1978.

D. Other Amendments.

(1) any application for amendment to change a last name on a vital record, except as otherwise provided in these regulations, shall be accompanied by a certified order from a court of competent jurisdiction;

(2) upon the receipt and acceptance of an acknowledgment of paternity affidavit, vital records will add the adjudicated father and if requested on the affidavit, the name of the child;

(3) amendment to the date of birth on a birth certificate shall be addressed as follows:

(a) the day of birth can be corrected with an affidavit upon proper submission of acceptable documentary evidence as long as the day of birth is not after the date the certificate is originally filed;

(b) changes to the month and year of birth shall be at the discretion of and in a manner prescribed by the state registrar; or

(c) as stated in a certified order by a court of competent jurisdiction.

(4) Any amendment to a vital record not addressed in these regulations shall be at the discretion of and in the manner prescribed by the state registrar.

E. Addition of given names - birth certificates. Given names, for a child whose birth was recorded without given names, may be added to the certificate upon written request of the registrant; or

(1) both parents; or

(2) the mother in the case of a child with no legally recognized father; or

(3) the father in the case of the death or incapacity of the mother; or

(4) the mother in the case of the death or incapacity of the father; or

(5) the guardian or agency having evidence of legal custody of the registrant; or

(6) any other legally recognized parent, legal guardian or court ordered custodian of a minor; or

(7) upon the receipt of an order by a court of competent jurisdiction.

F. Amendment of Gender.

(1) A registrant if 18 years of age or older, born in New Mexico, or a registrant's parent, guardian, or legal representative, may amend the birth certificate to indicate a designated gender by providing the following:

(a) a completed gender designation change form provided by the bureau, along with a birth search application form;

(b) the statutorily required fee for the revision of a vital record pursuant to the New Mexico Vital Statistics Act. This fee shall include one certified copy of the amended record;

(c) a certified copy of an order from a court of competent jurisdiction changing the name of the registrant if applicable.

(2) Upon receipt of the required documentation, the gender designation will be changed to indicate male, female, or X.

(3) On any request not made by the registrant for a child age fourteen years of age or older, the child must sign the application or give notarized consent to the change unless an amendment has been issued by a court of competent jurisdiction.

G. Amendment of the same item more than once. Once an amendment of an item is made on a vital record, that item shall not be amended again except upon receipt of a certified court order.

H. When an applicant or informant does not submit the minimum documentation required in the regulations for issuing or amending a vital record, or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence submitted, the state registrar shall not issue or amend the vital record and shall advise the applicant of the reason for the action.

[7.2.2.17 NMAC - Rp, 7.2.2.17 NMAC, 10/29/2019]

7.2.2.18 CERTIFICATES OF STILL BIRTH:

A. Form of Fetal Death Report: The state registrar shall prescribe the form and content of a spontaneous fetal death report.

B. Application: The state registrar shall prescribe the form and content of an application for a certificate of still birth which shall specify the information necessary to prepare the certificate.

C. Form of Certificate of Still Birth: The state registrar shall prescribe the form of a certificate of still birth and such form shall be distinct from the form for a certificate of live birth.

(1) A certificate of still birth shall include the state file number of the corresponding spontaneous fetal death report.

(2) The certificate of still birth shall contain the phrase “*This certificate of still birth cannot be used as proof of a live birth or for any other purpose*”.

D. Information on Certificate of Still Birth: If requested, the state registrar shall create a certificate of still birth based on the information contained in a report of spontaneous fetal death filed with the bureau in accordance with New Mexico law. The items listed in Section 24-14-22 1978 NMSA are not limited and may include the name of the father or second parent if the woman was married at the time of delivery or within 300 days. If the mother is not married, then the name of the biological father of the fetus can be added by completing an Acknowledgement of Paternity form.

E. Who may request a certificate of Still Birth: Only a person designated as a parent on a report of spontaneous fetal death may request and receive a certificate of still birth pertaining to that spontaneous fetal death.

F. Cost: Certificates of still birth will be issued upon receipt of the statutory fee to the requesting parent.

G. Amendments: The bureau will not accept or process requests for substantive amendments to a certificate of still birth. Minor or clerical errors may be remedied if information on the application for a certificate of still birth differs from the report of spontaneous fetal death filed with the bureau.

H. Retroactivity: The bureau shall create certificates of still birth for still birth events that occurred from January 1980 forward if a report of spontaneous fetal death was filed with the bureau. The bureau does not have information to create certificates of still birth for still birth events prior to January 1980. If data held by the bureau for the creation of retroactive certificates of still birth is incomplete, supplemental information may be provided by the mother at the time of application for a retroactive certificate and such information will be accepted at the discretion of the state registrar.

I. Retention of Fetal Death Reports: Spontaneous fetal death reports filed after the finalization of this rule Section 7.7.2.18 NMAC shall be maintained as permanent records of the bureau. Spontaneous fetal death reports filed prior to the finalization of this rule, 7.2.2.18 NMAC, but maintained by the bureau pursuant to 7.2.2.15 NMAC (prior to amendment) shall be permanently maintained by the bureau to support the creation of retroactive certificates of still birth.

[7.2.2.18 NMAC - Rp, 7.2.2.18 NMAC, 10/29/2019]

7.2.2.19 RECORD PRESERVATION AND DESTRUCTION:

When an authorized reproduction of a vital record has been properly prepared by the state registrar and when all steps have been taken to ensure the continued preservation of the information, the record from which the authorized reproduction was made may be disposed of by the state registrar. The record may not be disposed of, however, until the quality of the authorized reproduction has been tested to ensure that acceptable certified copies can be issued and until a security copy of the document has been placed in a secure location removed from the building where the authorized reproduction is housed. When no longer required for administrative use, the state registrar shall offer the original documents from which the authorized reproductions are made to the state records center and archives which shall be allowed to permanently retain the records pursuant to the restrictions in the vital statistics law and regulations related to access to such records. If the state records center and archives does not wish to place the records in its files the state registrar shall be authorized to destroy the documents upon receipt of written permission from state records and archives. The destruction shall be by approved methods for disposition of confidential or sensitive documents.

[7.2.2.19 NMAC - Rp, 7.2.2.19 NMAC, 10/29/2019]

7.2.2.20 DISCLOSURE OF RECORDS:

A. To protect the integrity of vital records the state registrar or other authorized custodian of vital records shall not permit inspection of, nor disclose information contained in vital statistics records, or copy or issue a copy of all or part of any vital record unless he or she is satisfied that the applicant has a direct and tangible interest in the record.

(1)

The registrant, a member of the registrant’s immediate family, the registrant’s legal guardian or court ordered custodian, or any of their respective legal representatives, or an official of a federal or state government or of a political subdivision of the state charged by law with detecting or prosecuting crime, shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest at the discretion of the registrar by providing certified documentary proof of such interest.

(2)

The term “legal representative” shall include an attorney, executor of the estate, physician, funeral service practitioner, trust officer or other corporate fiduciary or other authorized agent acting on behalf of the registrant or his or her family.

(3)

The natural parents of adopted children, when neither has custody, and business firms or other agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

B. The state registrar may permit the use of data from vital statistics records for statistical or research purposes, subject to those conditions the state registrar may impose. No data shall be furnished from records for research purposes until the state registrar has prepared or accepted, in writing, the conditions under which the records or data will be used, and the estimated or actual charges therefore and has received an agreement signed by a responsible agent of the agency or research

organization agreeing to meet with and conform to the conditions.

C. The state registrar in their discretion may disclose copies or data from vital statistics records in accordance with the Vital Records Act and to federal, state, county, or tribal governments, or municipal agencies of government which the request data in the conduct of their official duties, except that any costs incurred by the bureau shall be the responsibility of the receiving agency.

D. Information from vital statistics records indicating a birth occurred to an unmarried woman may be disclosed only if it can be shown that disclosure of the information will be of benefit to the registrant.

E. The state registrar or authorized local custodian shall not issue a certified copy of a record until a signed application has been received from the applicant. Whenever the state registrar shall deem it necessary to establish an applicant's right to information from a vital record, the state registrar or local custodian may also require acceptable identification of the applicant or a sworn statement.

F. Nothing in this part shall be construed to permit disclosure of information contained in the "information for medical and health use only" section of the birth certificate unless specifically authorized by the state registrar for statistical or research purposes.

G. When 100 years have elapsed after the date of birth, provided the registrant is deceased, or 50 years have elapsed after date of death, the records in the custody of the state registrar shall become public records and any person may obtain copies of the record upon submission of an application containing sufficient information to locate the record and the payment of the proper fee.

H. No person except the parent or parents designated on a report of spontaneous fetal death shall be considered to have direct and tangible interest concerning that record of spontaneous fetal death and any resulting certificate of still birth. [7.2.2.20 NMAC - Rp, 7.2.2.20 NMAC, 10/29/2019]

7.2.2.21 VITAL RECORDS: FORM AND REPRODUCTION OF RECORDS, VERIFICATION AND FRAUD:

A. Reproduction of Records. Copies of vital records may be made by mechanical, electronic, or other reproductive process, except that the information contained in the "information for medical and health use only" section of the birth certificate shall not be included, except as provided by statute or regulation.

B. Form of Records. The format of all certificates shall be at the discretion of the state registrar. Each non-memorial certificate to be authentic shall contain the seal of the state of New Mexico, the signature of the state registrar or authorized delegate, and a certification as prescribed.

C. Verification. Confidential verification of the facts contained in a vital record may be furnished by the state registrar to any federal, state, county or municipal government agency, or to any other agency representing the interest of the registrant, subject to and any limitations as provided for in these regulations. Verifications shall be on forms prescribed and furnished by the state registrar, or on forms furnished by the requesting agency and acceptable to the state registrar; or, the state registrar may authorize the verification in other ways when it shall prove in the best interests of his or her office. Costs incurred in the provision of the verification shall be the responsibility of the receiving agency.

D. Fraud. When the state registrar finds evidence that a certificate was requested or registered through misrepresentation or fraud, he or she shall have authority to withhold the issuance of the certificate. If any certificate has already been issued and cannot be recalled, the state registrar shall tag the record for non-issuance, and notify all concerned agencies of the presumption of fraud.

[7.2.2.21 NMAC - Rp, 7.2.2.21 NMAC, 10/29/2019]

7.2.2.22 MISSING CHILD REPORTING: Upon notification of the state registrar by a law enforcement agency that a child born in this state is missing, the record shall be flagged "M.C., do not issue" or electronically flagged.

A. Upon notification by a law enforcement agency that a child born outside this state is missing, the state registrar shall notify the corresponding officer in the state where the child was born that the child has been reported missing.

B. In response to any inquiry or request for a certificate, the state registrar or any appointed local registrar appointed by the state registrar shall not provide a copy of a birth certificate or information concerning the birth record of any missing child whose record is flagged, except following the notification of the law enforcement agency having jurisdiction over the investigation of the missing child.

C. Upon notification by a law enforcement agency that a missing child has been recovered, the state registrar shall remove the flag from the child's birth record. [7.2.2.22 NMAC - Rp, 7.2.2.22 NMAC, 10/29/2019]

7.2.2.23 FEES FOR COPIES, SEARCHES AND OTHER SERVICES: No copy of a birth certificate or certificate of death shall be issued until the fee for the copy is received unless specific approval has been obtained from the state registrar or otherwise provided for by statute or regulation.

A. Each search for a birth certificate, death certificate, or certificate of still birth will be conducted upon receipt of the statutorily required fee pursuant to Section 24-14-29 NMSA 1978. The fee shall include one certified copy of the record, if available, and if no record is found the fee shall be non-refundable.

B. Delayed birth or death registration. A delayed record will be created upon receipt of the statutorily required fee pursuant to Section 24-14-29 NMSA 1978, and

shall include one certified copy of the delayed record.

C. Amendments.

(1) Minor corrections. For the amendment of a record due to obvious errors, omissions on birth records (other than the name of the father), or transposition of letters in words of common knowledge, there shall be no charge.

(2) Major corrections.

For the amendment of a record requiring the creation of an affidavit of correction or the submission of documentary evidence to support a change or correction to a record, the amendment will be made upon receipt of the statutorily required fee pursuant to Section 24-14-29 NMSA 1978, and shall include one certified copy of the amended record.

D. Multiple Copies.

additional copies, after those provided for in Subsections A and B, and Paragraph (2) of Subsection C, of this section will be provided upon receipt of the statutorily required fee pursuant to Section 24-14-29 NMSA 1978.

E. Other. For any statistical research, other agency verification, data provision service or permit not specified in statute, the state registrar shall determine the fee for service on the basis of the costs of providing such services and determine the manner in which such costs must be paid.

F. Unnamed Birth Certificates:

Birth certificates that were registered without a given name for the registrant will not be issued until the registrant is named, except to a government agency for their administrative use for a pending adoption of the child.

[7.2.2.23 NMAC - Rp, 7.2.2.23 NMAC, 10/29/2019]

7.2.2.24 COURT ORDERS:

A. Court orders received by the bureau which order the amendment or creation of a vital records which are inconsistent with information known or maintained by the bureau may require the formal or other challenge of such if the bureau

was not given notice of the related hearing or otherwise made aware of the proceeding prior to receiving the court order or was not provided with supporting documentary evidence relied on by the court to support its findings. Such action is necessary to protect the integrity and accuracy of the vital records held by the state registrar pursuant to state law.

B. The bureau will work cooperatively with tribal courts and authorities to meet the requirements of state law and the needs of the tribes.

[7.2.2.24 NMAC - Rp, 7.2.2.25 NMAC, 10/29/2019]

HISTORY OF 7.2.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center:

HSSD 70-3, Amendment of Regulations Governing Preservation, Disposition, Transportation, Interment and Disinterment of Dead Human Bodies, filed 2/17/1970.

HSSD 77-7, Regulations Governing the Reporting, Transporting, Storing, Preserving and Disposing of Dead Human Bodies and Fetal Remains (Stillborns), filed 10/12/1977.

HED 79-HSD-3, Regulations Governing the Disposition of Human and Fetal Remains, filed 10/11/1979.

HSSD 77-5, Regulations Governing the New Mexico Vital Statistics Act, filed 7/26/1977.

HSSD 77-6, Regulations Governing the Reporting, Filing and Use of Reports of Induced Abortion, filed 8/9/77.

HED-82-5 (HSD), Vital Statistics Regulations, filed 7/28/1982.

HED 89-7 (PHD), Regulations Governing New Mexico Vital Records and Statistics, filed 8/21/1989.

History of Repealed Material:

7 NMAC 2.2, Vital Records and Statistics (filed 10/18/96) repealed 12/30/2010.

7.2.2 NMAC - Vital Records and Statistics (filed 12/15/2010) repealed 10/29/2019.

Other History:

HED 89-7 (PHD), Regulations Governing New Mexico Vital Records and Statistics (filed 8/21/89) was renumbered, reformatted, amended and replaced by 7 NMAC 2.2, Vital Records and Statistics, effective 10/31/1996.

7 NMAC 2.2, Vital Records and Statistics (filed 10/18/1996) was renumbered, reformatted and replaced by 7.2.2 NMAC, Vital Records and Statistics, effective 12/30/2010.

7.2.2 NMAC - Vital Records and Statistics (filed 12/15/2010) repealed 10/29/2019 and replaced by 7.2.2 NMAC - Vital Records and Statistics, effective repealed 10/29/2019.

HEALTH, DEPARTMENT OF

This is an emergency amendment to 7.34.4 NMAC, Section, 14, effective 10/4/2019.

7.34.4.14 LABELING OF USABLE CANNABIS: A non-profit producer shall not sell or otherwise distribute a usable cannabis product that has not been packaged and labeled in accordance with this rule.

A. The label shall identify:

[~~A.~~] **(1)** the name of the entity that produced the cannabis, and the name of the manufacturer of the cannabis-derived product (as applicable);

[~~B.~~] **(2)** a batch number or code;

[~~C.~~] **(3)** a production date or expiration date, including a "use by" or "freeze by" date for products capable of supporting the growth of infectious, toxigenic, or spoilage microorganisms;

[~~D.~~] **(4)** the number of units of usable cannabis or concentrated cannabis-derived product contained within the product, as identified in department rules for the enrollment of qualified patients;

[~~E.~~] **(5)** for dried, usable cannabis: the quantity of THC and CBD, which shall be expressed by weight;

~~[F:]~~ **(6)** for concentrated cannabis derived product: the quantity of THC and CBD, which shall be expressed by weight and by percentage of total weight;

~~[G:]~~ **(7)** pesticide(s) used in the production of the cannabis or cannabis-derived product;

~~[H:]~~ **(8)** instructions for use;

~~[I:]~~ **(9)** warnings for use;

~~[J:]~~ **(10)** instructions for appropriate storage;

~~[K:]~~ **(11)** approved laboratory analysis, including the results of strength and composition within ten percent (10%) of numbers shown on the package;

~~[L:]~~ **(12)** the name of the strain, product facts, or a nutrition fact panel, and a statement that the product is for medical use by qualified patients, to be kept away from children, and not for resale;

~~[M:]~~ **(13)** whether the batch from which the product was derived was sampled and tested by an approved laboratory; and

~~[N:]~~ **(14)** the name of the department approved testing facility used for active ingredient analysis, and quantity of THC and CBD (as applicable).

B. Vaporization products label: All cannabis-derived products that are intended to be consumed by vaporization must additionally include a plainly legible health warning on the label that states in bolded text, **“WARNING: Vaping cannabis-derived products containing tetrahydrocannabinol (THC) has been associated with cases of severe lung injury, leading to difficulty breathing, hospitalization, and even death.”** [7.34.4.14 NMAC - N, 2/27/2015; A, 2/29/2016; A/E, 10/4/2019]

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.120 NMAC, Sections 9, and 11 effective 11/1/2019.

8.102.120.9 ELIGIBILITY REVIEWS:

A. Follow-up reviews:

(1) A follow-up review shall be scheduled during a certification period whenever information becomes known to the county office indicating a possible change in a benefit group’s circumstances that may affect eligibility or payment amount.

(2) Review of a specific condition may be made by home visit, office visit, third party contacts or correspondence as needed.

(3) Circumstances which may require follow-up review include, but are not limited to:

(a) change in NMW participation work requirements;

(b) school attendance of children age six or older;

~~**(c)** any other anticipated change in circumstances which will require a change of grant during a certification period.~~

B. Recertification:

(1) Cash assistance shall be approved for a fixed certification period at the end of which the assistance shall be terminated.

(2) The recertification shall consist of a complete review of all conditions of eligibility; determination of eligibility for an additional period of time and redetermination of the amount of assistance payment. The recertification requires a redetermination of eligibility on those conditions that are subject to change. There shall be a prospective determination beginning the month following the month the certification expires.

(3) The caseworker shall ensure that CSED has been notified of all pertinent information regarding any non-custodial parent who has a child in the benefit group, including but not limited to the current address and work place of the non-custodial parent.

(4) Conditions not subject to change: ~~[The caseworker reviews documentation of conditions not subject to change. If the record does not contain satisfactory evidence, additional verification shall be obtained.]~~ Unchanged information shall not be re-verified unless it is incomplete, inaccurate, inconsistent, or outdated. Outdated is defined as unchanged verification that is more than 60 days old relative to the current month of participation.

(5) Work program: The caseworker shall give information to the NMW participants about earned income incentives, assistance through the transitional child care program, medicaid transitional benefits, and work program requirements, opportunities and services. Work program participation shall be reviewed.

(6) Need and payment determination: The caseworker shall obtain current information about family and benefit group: ~~[income, resources, and circumstances, to determine financial need and amount of payment.]~~

(a) **Income:** if the source has changed or the amount has changed by more than \$50; **(b)** **Resources:** if the total of all countable resources for the benefit group exceed the \$1500 liquid or \$2000 non-liquid resource limit; and **(c)** any other information which has changed or is questionable.

(7) Change reporting: The caseworker shall review with the client the possible changes in circumstances which must be reported if they occur.

(8) Providing verification: **(a)** If electronic verification is not available, the household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. **(b)** ISD shall assist a household in

obtaining verification, provided the household is cooperating in the application process.

(c)

A household or their authorized representative may supply documentary evidence in person, by mail, fax, electronic device or through the YES NM web portal.

(d)

A household shall not be required to supply verification in person at the ISD office or to schedule an appointment to provide such verification.

(e)

ISD shall accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

(9)

Recertification time standards:

(a)

Timely reapplication: Applications filed before the 15th of the expiration month will be considered timely. A household member or authorized representative that attends an interview and provides all necessary verification by the end of the household's current certification period, will have the opportunity to participate by the household's normal issuance cycle in the month following the end of the current certification period, if all eligibility factors have been met.

(b)

Reapplication after the 15th: If an application for recertification is submitted after the 15th but before the end of a household's certification period and the household is determined eligible for the first month following the end of the certification period, that month is not considered an initial month and benefits are not prorated.

(c)

Late applications: An application that is submitted to ISD after the certification period has expired can be accepted within 30 days after the certification period expires or the case has been closed for any reason. Initial month verification standards will be

used for all applications received during this time frame and the benefits for a late recertification will be prorated from the date of approval.

C. Certification scheduling:

(1) Each case

must have eligibility and payment reviewed at least once during the period specified for that category. Cash assistance cases, which also receive SNAP, shall be recertified at the same time the SNAP certification is completed.

(2) The

certification period shall not exceed the following standards:

(a)

Regular reporting benefit groups: A benefit group not subject to simplified reporting requirements shall be certified for:

(i)

[every] five months or less [for]: education works program;

(ii)

[every] 12 months [for]: state supplement for SSI recipients in residential care;

(iii)

[eight months for: refugee resettlement program] eight months from date of arrival: refugee resettlement program.

(b)

Simplified reporting benefit groups: Certification provisions that apply to a NMW benefit group subject to simplified reporting are set forth at Subsection A of 8.102.120.11 NMAC.

D. Interview:

(1) All

recertification interviews shall be in person at the local office or, when circumstances warrant, over the phone or at another place reasonably accessible and agreeable to both the recipient/relative or caretaker and the caseworker. The recipient may bring any individual to the interview.

(2) The

interview must be with the recipient, unless the recipient's physical or mental condition makes the interview impossible or inadvisable. See 8.100.130 NMAC for instructions on obtaining information.

(3) To help

a recipient report changes that may affect the recipient's eligibility or amount of payment, the caseworker shall make available a change report form upon request, which the client may use to notify the county office of changes in circumstance.

E. Scheduling

recertification reviews: The certification period end date shall be scheduled for the appropriate interval indicated in Subsection C of 8.102.120.9 NMAC, starting with the initial month of eligibility, or the month following the month in which previous certification expired.

F. Exchange of

information with SSA:

(1) If

information received during any eligibility review indicates that a participant in NMW or GA may be eligible for supplemental security income (SSI) benefits, (this includes children and adults who appear disabled, and needy adults over 65), the caseworker shall promptly refer the participant to the social security administration district office for application. An individual found eligible for SSI must participate in that program.

(2) During the

review process, ISD will sometimes learn information relevant to the eligibility of a family member who is a SSI recipient. If there is a clear indication that a SSI recipient's countable income exceeds the maximum allowable under the SSI program, the discrepancy shall be reported to the social security administration (SSA) district office. SSA shall also be notified when it appears that the resources of an SSI recipient exceed SSI program standards.

[8.102.120.9 NMAC - Rp 8.102.120.9 NMAC, 7/1/2001; A, 02/14/2002; A, 01/01/2004; A, 7/17/2006; A, 11/15/2007; A, 09/01/2017; A, 11/1/2019]

8.102.120.11 SIMPLIFIED

REPORTING: [Simplified reporting is a periodic reporting requirement for benefit groups that receive NMW-

cash assistance. A benefit group assigned to simplified reporting must file a report of changes in the sixth month of a 12-month certification period.] Simplified reporting (SR) is a periodic reporting requirement for benefit groups that receive NMW cash assistance. A benefit group assigned to SR must file an interim report form in the sixth month of a 12-month certification period.

A. Certification period:

(1) **Initial application:** A benefit group that is applying for both SNAP and NMW, shall be assigned a NMW certification period that ends in the same month as the SNAP certification period with the exception of those SNAP benefit groups assigned to a 24-month certification.

(2) An initial applicant for NMW that is already participating and assigned to simplified reporting in the SNAP program:

(a) if approved for NMW, shall be assigned a NMW certification period that will end the same month as the SNAP certification period; and

(b) must file an interim report form in the same month that one is due in the SNAP program;

(c) if NMW is approved in the same month an interim report form is due in the SNAP program, the requirement in Subparagraph (b), above, is waived for NMW.

(3) A benefit group that is approved for NMW, but does not receive SNAP shall be assigned a twelve-month certification period:

(a) beginning the first month of eligibility; and

(b) shall have an interim report form due in the sixth month of the NMW certification period.

(4) A benefit group that is receiving NMW and applies for SNAP shall have NMW eligibility re-determined at the same

time that the SNAP eligibility is determined.

(a) If NMW benefits increase, the increase shall be effective the month following the first month of approval for SNAP and NMW shall be assigned a certification period that ends in the month the simplified reporting SNAP certification ends.

(b) If approved for SNAP and the NMW benefit decreases, the decrease shall be effective the month following the month the NOAA expires, and the NMW benefit group shall be assigned a certification period that ends in the same month the SNAP certification ends.

(c) If approved for SNAP and the NMW benefit is terminated, the termination shall be effective the month following the month the NOAA expires, and the SNAP case shall be transitioned to TFS.

(5) **Recertification:** A benefit group that is recertifying and is approved and assigned to simplified reporting shall be assigned a certification period that:

(a) is 12 months long;

(b) begins the month after the current certification ends; or

(c) is set to end in the same month as a SNAP case with a common member.

B. Excluded from simplified reporting: The simplified reporting requirement shall be assigned to all NMW benefit groups except programs listed in Paragraph (2) of Subsection C of 8.102.120.9 NMAC.

C. Simplified reporting requirements: A benefit group assigned to simplified reporting shall be required to file an interim report form no later than the tenth day of the sixth month of the 12-month certification period, or in compliance with the SNAP simplified report, whichever is appropriate. The benefit group must include the following information along with necessary verification, as required at 8.100.130 NMAC:

(1) any change in benefit group composition, whether a member has moved in or out of the home along with the date, the change took place;

(2) [the amount of money received from employment by each benefit group member] a change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;

(3) [the amount of unearned income received by each benefit group member;] changes in either:

(a) the wage rate or salary or a change in full-time or part-time employment status as defined in Subsection C of 8.102.461.11 NMAC, provided the household is certified for no more than six months;

(b) a change if earned income of more than one hundred dollars (\$100) a month from the amount last used to calculate the household's allotment, provided the household is certified for no more than six months.

(4) [changes in countable resources if the total of all countable resources for the benefit group exceed the \$1500 liquid or \$2000 non-liquid resource limit, such as but not limited to:

(a) the account number and balance for a new checking or savings account belonging to any household member; or

(b) the amount of any new stocks or bonds or other financial instruments belonging to any household member.

(5) dependent care expenses;

(6) verification for residence, only if, there has been a change in residence since the last certification;

(7) changes in child support receipt; and

(8) changes in alien status for a benefit group member.] a change of more than one hundred dollars (\$100) in the amount of unearned income;

(5) changes in countable resources if the total of all countable resources for the benefit group exceed the \$1500 liquid or \$2000 non-liquid resource limit; [such as but not limited to:

(6) dependent care expenses;

(7) [verification for] changes in residence, only if, there has been a change in residence since the last certification;

(8) changes in child support receipt; and

(9) changes in immigration status for a benefit group member.

D. Budgeting methodology for simplified reporting at initial application and recertification:

(1) Prospective budgeting shall be used for an applicant benefit group at initial application and at recertification as set forth at 8.102.500.9 NMAC.

(2) At initial application, eligibility and amount of payment for the applicant benefit group shall be determined prospectively for the each of the first six months of the certification.

(3) At recertification, eligibility and amount of payment shall be determined prospectively for six months following last month benefit group's certification period.

E. Budgeting methodology for simplified reporting:

(1) At processing the interim report form, eligibility and amount of payment shall be determined prospectively for the six months following the month the interim report form is due.

(2) In determining a benefit group's eligibility and payment amount, the income already received shall be used to prospectively anticipate income the benefit group expects to receive during the certification period according to the following schedule:

(a) **Weekly:** [For income received weekly the participant benefit group

must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 30 days prior to the month the report is due and the month the report is due.] For income received weekly the participant benefit group must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 60 days prior to the month the interim report form is due.

(b) **Bi-weekly:** [For income received bi-weekly the participant benefit group must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 30 days prior to the month the report is due and the month the report is due.] For income received bi-weekly the participant benefit group must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 60 days prior to the month the interim report form is due.

(c) **Semi-monthly:** [For income received semi-monthly the participant benefit group must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 30 days prior to the month the report is due and the month the report is due.] For income received semi-monthly the participant benefit group must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 60 days prior to the month the interim report form is due.

(d) **Monthly:** [For income received monthly the participant benefit group must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 30 days prior to the month the report is due and the month the report is due.] For income received monthly the participant benefit group must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 60 days prior to the month the interim report form is due.

(e) **Income received more frequently than weekly:** [For benefit groups with income received more frequently than weekly, exact income, rather than averaged and converted income shall be used to determine benefits. For income received more frequently than weekly the participant benefit group must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 30 days prior to the month the interim report form and the month the report is due.] For benefit groups with income received more frequently than weekly, exact income, rather than averaged and converted income shall be used to determine benefits. For income received more frequently than weekly the participant benefit group must submit and ISD shall accept as verification income received from any consecutive past 30-day period that includes 60 days prior to the month the interim report form is due.

(f) If a determination is made that the use of the pay data for the methods described in (a) through (e), above, does not give the most accurate estimate of monthly earnings due to unique circumstances; the caseworker shall use whatever method gives the most accurate estimate of earnings.

(g) **Income received less frequently than monthly:** The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It also includes contract income and income for a tenured teacher who may not have a contract.

(3) **Self-employment:**

(a) Requirements for determination of self-employment income are set forth at Subsection E of 8.139.520.10 NMAC, and the verification standards for business and self-employment income are set forth at 8.100.130.25 NMAC.

(b) A benefit group assigned simplified reporting that has had self-employment income annualized by ISD shall be required to report changes in self-employment income only if the benefit group has filed a tax return subsequent to its last approval or recertification for NMW.

(c) A benefit group assigned simplified reporting that does not have the self-employment income annualized must report self-employment income on the interim report form. The income reported on the simplified report form will be calculated in the following manner.

(i) If a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the duration of the certification period.

(ii) **Seasonal income:** Self-employment income that is intended to meet a benefit group's needs for only part of the year shall be averaged over the time the income is intended to cover.

(d) A benefit group required to report simplified self-employment income that fails to provide verification of an allowable deduction at the interim or during the month the interim report form is due shall not be allowed the deduction. ISD shall process the report if all other mandatory verification has been provided.

(4) **Use of conversion factors:** Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(a) income received on a weekly basis is averaged and multiplied by four;

(b) income received on a biweekly basis is averaged and multiplied by two;

(c) averaged income shall be rounded

to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

F. Time limits for submission and processing an interim report form:

(1) An interim report form shall be mailed to a benefit group in the month prior to the month the report is due.

(2) A benefit group assigned to simplified reporting shall be required to submit an interim report form by the tenth calendar day of the month the interim report form is due in order to receive uninterrupted benefits.

(3) The interim report form shall be reviewed for completeness within ten days of receipt.

(a) If the form is complete and all verifications are provided, ISD shall complete the processing of the form within 10 days of receipt.

(b) If the form is complete and all verifications are provided except for verification of an allowable deduction, the report shall be processed without the deduction. The household shall be:

(i) notified that verification is lacking; and

(ii) shall be given 10 days to provide verification of an allowable deduction;

(iii) a deduction that is verified within the month the interim report form is due shall be processed as part of the interim report;

(iv) a deduction that is verified in the month after the interim report form is due shall be processed as a change reported by the household;

(v) a deduction that does not have the required verification shall not be allowed until verification of the expense is provided.

(4) ~~[An interim report form that is incomplete-~~

~~or not signed shall be returned to the benefit group for completion.] Incomplete interim report form is received:~~

(a) An interim report form that is not signed shall be returned to the household for a signature. The household:

(i) shall be notified that the form is incomplete;

(ii) what needs to be completed for the interim report form; and

(iii) shall be given 10 calendar days to provide the signed interim report form to be reviewed for completeness.

(b) An interim report form that is incomplete because required verification is not provided shall not be returned to the household. The household:

(i) shall be notified that the form is incomplete;

(ii) what information must be provided to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the verification to process the interim report form.

(5) The benefit group must return the completed interim report form and all required verification within 10 calendar days to avoid a break in benefits. A benefit group that fails to submit an interim report form by the end of the month in which it is due, shall be issued ~~[an adequate notice of closure]~~ a notice of case action.

G. ~~[Information requirements for simplified reporting:]~~ Information requirements for the interim report form:

The interim report form shall specify:

(1) the date by which a benefit group must submit the form for uninterrupted benefits;

(2) the consequences of submitting a late or incomplete form;

(3) that verification must be submitted with the interim report form;

(4) where to call for help in completing the form;

(5) the consequences of providing incorrect information; and

(6) notice of rights.

H. Requirement to report certain changes between reporting periods: A benefit group must report changes within 10 days of the date a change becomes known to the benefit group:

(1) a benefit group reports income in excess of eighty-five percent of federal poverty guidelines for size of the benefit group;

(2) ~~the benefit group must report when a social security number is assigned to a benefit group member;~~

~~(3)~~ (3) a parent must report when a dependent child, age six years or older, drops out of school or has three unexcused absences from school within 14 days of occurrence;

~~(4)~~ (3) a mandatory adult who is participating in NMW Program has moved in or out of the home;

~~(5)~~ (4) a mandatory child who has moved in or out of the home;

~~(6)~~ (5) a household member has passed away;

~~(7)~~ (6) a mandatory member has moved from New Mexico;

~~(8)~~ (7) unearned income in excess of the maximum monthly benefit for the size of the benefit group;

~~(9)~~ (8) changes in countable resources if the total of all countable resources for the benefit group exceed the \$1500 liquid or \$2000 non-liquid resource limit;

~~(10)~~ (9) in the absence of a written report, a 13-day notice of adverse action is required if the change will result in a reduction or termination of benefits.

I. Action on changes reported between reporting periods for benefit groups assigned to simplified reporting: In addition to changes that must be reported in accordance with Subsection H of 8.102.120.11 NMAC, ISD must act on changes in between interim report forms, if it would increase the household's benefits. ISD shall not act on changes that would result in a decrease in the household's benefits unless:

(1) ~~[ISD shall act on all reported changes.]~~ The household has voluntarily requested that its case be closed;

(2) ISD has information about the household's circumstances considered verified upon receipt. Verified upon receipt is defined as:

(a) information is not questionable; and

(b) the provider of the information is the primary source of information;

(c) the trusted data sources must be pulling their own data not from third party information; or

(d) the recipient's attestation exactly matches the information received from a third party.

(3) A newborn shall be added to the benefit group effective the month following the month the report is received.

(4) The loss of earned income shall be considered for eligibility in the second month after the loss and ongoing until the next scheduled interim report or end of certification whichever is first, provided that:

(a) the loss of income was reported to the agency, and verified by the benefit group; and

(b) the loss of income was not due to voluntary quit.

(5) The loss of unearned income shall be considered for eligibility in the month after the loss and ongoing until the next scheduled interim report or end

of certification whichever is first, provided that the loss of income was reported to the agency, and verified by the benefit group.

(6) A household member has been identified as a fleeing felon or probation violator in accordance with 8.102.410.15 NMAC.

J. Responsibilities on reported changes outside of the interim report: When a household reports a change, ISD shall take action to determine the household's eligibility or TANF benefit amount within 10 working days of the date the change is reported.

(1) Decreased or termination of benefits: For changes that result in a decrease or termination of household benefits, ISD shall act on the change as follows:

(a) if the household's benefit level decreases or the household becomes ineligible as a result of the change, ISD shall issue a notice of adverse action within 10 calendar days of the date the change was reported unless one of the exemptions to the notice of adverse action in 7 CFR 273.13 (a)(3) or (b) applies.

(b) when a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.

(c) when a notice of adverse action is not used due to one of the exemptions in 7 CFR 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by 7 CFR 273.2(f) must be obtained prior to recertification.

(2) Increased benefits: For changes that result in an increase of household benefits, ISD shall act on the change as follows:

(a) for changes which result in an

increase in a household's benefits, other than changes described in Paragraph (b) of this section, ISD shall make the change effective no later than the first allotment issued 10 calendar days after the date the change was reported to ISD.

(b) for changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of \$50 or more in the household's gross monthly income, ISD shall make the change effective not later than the first allotment issued 10 calendar days after the date the change was reported.

(i) in no event shall these changes take effect any later than the month following the month in which the change is reported.

(ii) if the change is reported after the last day to make changes and it is too late for ISD to adjust the following month's allotment, ISD shall issue a supplement or otherwise provide an opportunity for the household to obtain the increase in benefits by the 10th calendar day of the following month, or the household's normal issuance cycle in that month, whichever is later.

(3) **No change in TANF benefit amount:** When a reported change has no effect on the TANF benefit amount, ISD shall document the change in the case file and notify the household of the receipt of the report.

(4) **Providing verification:** The household shall be allowed 10 calendar days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (2)(a) and (2)(b) above. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided.

If the household fails to provide necessary verification, its SNAP benefit amount shall revert to the original benefit amount.

K. Resolving unclear information:

(1) During the certification period, ISD may obtain information about changes in a household's circumstances from which ISD cannot readily determine the effect of the change on the household's benefit amount. The information may be received from a third party or from the household itself. ISD must pursue clarification and verification of household circumstances using the following procedure if unclear information received outside the periodic report is:

(a) information fewer than 60 days old relative to the current month of participation; and,

(b) if accurate, would have been required to be reported under simplified reporting rules, in accordance with 8.102.120.11 NMAC.

(c) ISD must pursue clarification and verification of household circumstances in accordance with the process outlined in Subsection B of 8.100.130.12 NMAC, for any unclear information that appears to present significantly conflicting information from that used by ISD, at the time of certification.

(2) **Unclear information resulting from certain data matches:**

(a) if the department receives match information from a trusted data source as described in 7 CFR 272.13 or 7 CFR 272.14, ISD shall send a notice in accordance with Subsection B of 8.100.130.12 NMAC in accordance with 7 CFR 272.13(b)(4) and 7 CFR 272.14 (c)(4). The notices must clearly explain what information is needed from the household and the consequences of failing to respond to the notice.

(b) if the household fails to respond to the notice or does respond but refuses

to provide sufficient information to clarify its circumstances, ISD shall remove the individual and the individual's income from the household and adjust benefits accordingly. As appropriate, ISD shall issue a notice of adverse action.

L. Failure to report changes: If ISD discovers that the household failed to report a change as required, ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled or if the household is entitled to an increased benefit amount.

(1) **Decreased benefit amount:** After verifying the change, ISD shall initiate a claim against the household for any month in which the household was over issued TANF benefits. The first month of the over issuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced.

(2) **Increased benefit amount:** When a household fails to timely report a change which will result in an increased TANF benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 calendar days after the date the change was reported.

M. Non-reporting sanctions: A benefit group assigned to simplified reporting shall be subject to a non-reporting sanction in accordance with regulations at 8.102.620.11 NMAC for failure to provide accurate change information on the interim report form or for failure to report by the tenth calendar day of the month following the month that household income exceeds eighty-five percent of federal poverty guidelines for the size of the benefit group.

[8.102.120.11 NMAC - N, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 11/14/2008; A, 04/01/2010; A, 09/01/2017; A, 11/1/2019]

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.106.120 NMAC, Section 12 effective 11/1/2019.

**8.106.120.12
RECERTIFICATION TIME
STANDARDS:**

A. GA benefits shall not continue beyond the certification period if eligibility requirements in Section 10 above have not been met; regardless of disability review.

B. Reapplication:

(1) Timely

reapplication: Applications submitted before the 15th of the expiration month will be considered timely.

(2) Untimely

reapplication: An application received after the 15th but before the end of a benefit group's certification period expires has lost its right to interrupted benefits.

(a)

If the benefit group is determined eligible, without regard to disability, the benefit group is entitled to ongoing benefits that are not prorated.

(b)

Initial month verification standards will be used for all applications received more than one calendar month after the certification period expires or the case has been closed for any reason.

(3) Late

applications: An application that is submitted to ISD within 30 days after the certification period has expired or the case has been closed for any reason can be accepted and recertification standards outlined in 8.102.120.9 NMAC will be followed. If approved, the benefits will be prorated from the date of approval. Any applications received more than

30 days after the certification period expires or closes for any reason will follow the initial month verification standards.

C. Verification: A

benefit group that has reapplied timely, completed an interview and provided required verification, specific to eligibility, will be given 10 days to provide the verification or until the certification period expires, whichever is longer. If the certification period expires before the 10-day deadline for submitting the required verification, the benefit group will be entitled to a full month's benefits, if eligible, within five days after verification is submitted.

D. Agency failure to

act: A benefit group that has made a timely application for recertification, but due to agency error, is not determined eligible in sufficient time to provide for issuance by the benefit group's normal issuance date in the following month, will be entitled to restoration of lost benefits.

[8.106.120.12 NMAC - N, 12/01/2009; A, 11/1/2019]

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.110 NMAC, Section 12, effective 11/1/2019.

**8.139.110.12 PROCESSING
APPLICATIONS:**

A. HSD is responsible for timely and accurate issuance of benefits to eligible households. All applications for assistance will be processed as soon as possible. Applicants who complete the

application process will have their eligibility determined and be given an opportunity to participate within the time limits mandated for expedited or normal application processing. ISD will explain the time limits to the applicant and inform them of the date by which the application will be processed. With the exception of those manual provisions that specify "working days," time limits begin on

the first calendar day following the action that triggered the time limit.

B. Household

cooperation: To determine eligibility an application form must be completed and signed, a household or its authorized representative interviewed, and certain information on the application verified.

(1) At

application: If a household refuses to cooperate in completing the process, the application will be denied at the time of refusal. For a determination of refusal to be made, a household must be able to cooperate, but clearly demonstrates that it will not take action that it can take and that is required to complete the application process. If there is any question that a household has failed to cooperate as opposed to refused to cooperate, it will not be denied. Once denied for refusal to cooperate, a household may reapply but will not be determined eligible until it cooperates with ISD.

(2)

Subsequent reviews: A household will be determined ineligible if it refuses to cooperate in a subsequent review of eligibility. Such reviews include those because of reported changes and at application for recertification. Once terminated for refusal to cooperate, a household may reapply, but will not be determined eligible until it cooperates with ISD.

(3) Outside

sources: A household will not be determined ineligible when an individual outside the household fails to cooperate with a request for verification. Individuals identified as ineligible household members in 8.139.400.12 NMAC will not be considered as individuals outside the household.

(4)

Cooperation with quality control (QC): A household will be determined ineligible if it fails or refuses to cooperate in a QC review of eligibility and benefit amount.

(a)

Period of ineligibility:

(i)

A household that refuses to cooperate with a state QC review will be

determined ineligible effective the month following the month the adverse action notice time limit expires. Ineligibility will continue until 95 days from the end of the annual QC review period (January 5) during which non-cooperation is found. The annual QC review period begins October 1 and ends September 30.

(ii) A household that refuses to cooperate with a federal QC review will be ineligible effective the month following the month the adverse action notice time limit expires. Ineligibility will continue until seven months from the end of the annual review period (May 1) during which non-cooperation is found. The annual QC review period begins October 1 and ends September 30.

Re-establishing eligibility:

(i) A household may reapply during the period of ineligibility, but will not be determined eligible until it cooperates with the QC review, and is otherwise eligible.

(ii) A household which reapplies at the end of the period of ineligibility will not be determined ineligible because of its failure or refusal to cooperate with a state or federal QC review. The household must provide verification necessary to determine eligibility at reapplication in accordance with Subsection H of 8.139.110.11 NMAC.

C. Verification standards: Verification is use of third-party information or documentation to establish the accuracy of statements on the application, or information provided by the applicant or recipient.

(1) **Initial certification:** Verification is mandatory for the following information prior to initial certification for both new and reopened cases.

(a) Financial information:
gross nonexempt income, and

- (ii) resources.
- (b) Any of the following if the expense would result in a deduction:
 - (i) utility expenses;
 - (ii) continuing shelter expenses;
 - (iii) dependent care expenses;
 - (iv) deductible medical expenses including the amount of reimbursements;
 - (v) legally obligated child support expenses, and amount actually paid;
 - (vi) if any of the above expenses will not result in a deduction, verification shall not be required (for example, less than \$35 in medical expenses, or shelter expenses that do not exceed fifty percent of income after all other deductions).
- (c) Nonfinancial information:
 - (i) residence;
 - (ii) citizenship, if questionable, and alien status of household members who are individually applying for benefits only;
 - (iii) identity of the applicant and authorized representative, if designated;
 - (iv) household size and composition;
 - (v) disability, if necessary;
 - (vi) social security numbers, except that eligibility or issuance of benefits shall not be delayed solely to verify the social security number of a household member, and
 - (vii) any questionable information that must be verified to determine eligibility.

(2) **Verification subsequent to initial certification: Verification of the following is mandatory [in accordance with the individual's reporting requirements found at**

- (ii) **8.139.120.9 through 12 NMAC:] at recertification:**
 - (a) a change in income if the source has changed or the amount has changed by more than \$50;
 - (b) a change in utility expenses if the source has changed;
 - (c) previously unreported medical expenses, and total recurring medical expenses which have changed by more than \$25;
 - (d) new social security numbers, for individuals who are applying for benefits, that shall be verified as detailed in 8.139.410.8 NMAC;
 - (e) any other information which has changed or is questionable;
 - (f) unchanged information shall not be re-verified unless it is incomplete, inaccurate, inconsistent, or outdated. Outdated is defined as unchanged verification that is more than sixty days old relative to the current month of participation.
 - (g) satisfactory compliance with time limits for individuals subject to the time limit in accordance with 8.139.410.14 NMAC.
- (3) **Providing verification:**
 - (a) If electronic verification is not available, the household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.
 - (b) ISD shall assist a household in obtaining verification, provided the household is cooperating in the application process.
 - (c) A household or their authorized representative may supply documentary evidence in person, by mail, fax, electronic device or through the YES NM web portal.
 - (d) A household shall not be required to supply verification in person

at the ISD office or to schedule an appointment to provide such verification.

(e)

ISD shall accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

(4)

Documentation: A case file shall be documented to support eligibility, ineligibility, and benefit amount determination. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.
[2/1/1995, 6/1/1995, 6/15/1996; 8.139.110.12 NMAC - Rn, 8 NMAC 3.FSP.114, 5/15/2001; A, 3/1/2017; A, 11/1/2019]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.410 NMAC, Section 14, effective 11/1/2019.

8.139.410.14 REQUIREMENTS FOR ABLE BODIED ADULTS:

ISD will administer this program in accordance with 7 Code of Federal Regulation (CFR) 273.24. This program is referred to as the time limit rule or the able bodied adults without dependents ("ABAWD") program. The program is mandatory at all times unless there is a federally approved statewide waiver in place in accordance with 7 CFR 273.24(f). A statewide waiver makes the program non-mandatory for all ABAWDs who would otherwise be subject to the three month time limit requirement. When a statewide waiver is not in place, ABAWDs are mandatory for all requirements as detailed below. ISD will inform all potential ABAWD households of the ABAWD time limit prior to the expiration of a statewide waiver. ISD will use a fixed 36 month period for measurement and tracking purposes beginning June 1, 2017

through May 31, 2020, and every subsequent fixed three year period.

A. Able bodied adults

can comply by: working 20 hours per week, averaged monthly; for purposes of this provision, 20 hours per week averaged monthly means 80 hours per month; work is defined as:

(1) work in

exchange for money;

(2) work in

exchange for goods or services ("in kind" work); or

(3) unpaid

work, which includes work without compensation that gives a person experience in a job or industry, tests a person's job skills, or involves volunteer time and effort to a not-for-profit organization.

B. Good cause: As determined by ISD, if an individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirement if the absence from work is temporary and the individual retains their job. Good cause shall include circumstances beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation.

C. Waived from

the time limit requirements: ISD will waive the three month time limit requirement for the following individuals in accordance with 7 CFR 273.24(f):

(1) any

individual residing in or relocating to a county that has an unemployment rate twenty percent above the national average as defined by ISD;

(2) any

individual residing in or relocating to pueblos, tribes, and nations, with an estimated employment to population ratio as a measure for insufficient job availability as determined by ISD.

D. Able bodied adults who are determined to be ineligible for SNAP benefits because of non-compliance with the time limit requirements can regain eligibility in accordance with 7 CFR 273.24(d)(i), (d)(ii), (d)(iii), or (d)(v).

E. Exceptions to the three month time limit:

(1) Exceptions to the three month time limit required participation are found at 7 CFR 273.24(c).

(2) Physical

and mental unfitness for the three month time limit requirements exception is defined as an individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves.

(a)

unfitness can be obvious to ISD and documented in the case file; or

(b)

not obvious, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist or social worker as being unfit to work; this claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

**F. ISD will administer the [fifteen] twelve percent exemptions, as allowed by the food and nutrition service (FNS) and as determined by ISD, in accordance with 7 CFR 273.24(g).
[8.139.410.14 NMAC - N, 04/01/2010; A, 10/01/2014; A, 2/13/2015; A, 01/01/2016; A, 01/01/2016; A, 09/01/2017; A, 11/1/2019]**

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 7/26/2019 hearing, to repeal its rule 6.65.3 NMAC, Educator Preparation Program Accountability (filed 7/1/2018) and replace it with 6.65.3 NMAC, Educator Preparation Program Accountability (adopted on 10/4/2019), and effective 10/29/2019.

**PUBLIC EDUCATION
DEPARTMENT**

**TITLE 6 PRIMARY AND
SECONDARY EDUCATION
CHAPTER 65 SCHOOL
PERSONNEL EDUCATOR
PREPARATION
PART 3 EDUCATOR
PREPARATION PROGRAM
ACCOUNTABILITY**

6.65.3.1 ISSUING

AGENCY: Public Education Department, hereinafter the department.

[6.65.3.1 NMAC - Rp, 6.65.3.1 NMAC, 10/29/2019]

6.65.3.2 SCOPE: All EPPs serving candidates in New Mexico.

[6.65.3.2 NMAC - Rp, 6.65.3.2 NMAC, 10/29/2019]

6.65.3.3 STATUTORY

AUTHORITY: Sections 22-2-1, 22-2-2, and 22-10A-19.2 NMSA 1978.

[6.65.3.3 NMAC - Rp, 6.65.3.3 NMAC, 10/29/2019]

6.65.3.4 DURATION:

Permanent.

[6.65.3.4 NMAC - Rp, 6.65.3.4 NMAC, 10/29/2019]

6.65.3.5 EFFECTIVE

DATE: October 29, 2019, unless a later date is cited at the end of a section.

[6.65.3.5 NMAC - Rp, 6.65.3.5 NMAC, 10/29/2019]

6.65.3.6 OBJECTIVE: To improve the preparation of day-one ready educators through streamlined evaluation, review, and approval of educator preparation programs in the state.

[6.65.3.6 NMAC - Rp, 6.65.3.6 NMAC, 10/29/2019]

6.65.3.7 DEFINITIONS:

A. "Candidate"

means an individual enrolled in an EPP for licensure offered through a department-approved EPP provider.

B. "Certified review team" means the team trained by the

department to conduct comprehensive state EPP approvals. Members of the certified review team may serve in multiple roles. The following shall be represented:

- (1) a representative of the department;
- (2) a dean or director from another department-approved EPP;
- (3) a faculty member from another department-approved EPP;
- (4) a member of a LEA administrative team; and
- (5) a principal or eligible cooperating teacher from a local public school.

C. "Clinical experience" means the guided, hands-on application of knowledge and theory to actual practice through collaborative and facilitated learning activities taking place in field-based assignments.

D. "Completer" means a candidate who earns a certificate or diploma from an EPP approved by the department.

E. "Comprehensive state approval" means the process conducted by the certified review team to evaluate and approve EPPs.

F. "Comprehensive state approval site visit" means the visit conducted by a certified review team to evaluate EPP performance for certification.

G. "Cooperating teacher" means an educator who meets the following qualifications:

- (1) is employed by a LEA;
- (2) is mutually selected by the LEA and the EPP;
- (3) has at least three years of experience under the appropriate license;
- (4) is the primary evaluator of the candidate during their clinical experience; and
- (5) either meets the necessary performance level as defined by the department on their educator effectiveness report or for an educator who recently relocated to New Mexico and does not yet have an educator effectiveness report

to have met one of the following requirements:

- (a) the teacher is a level three-A teacher with a minimum of six years teaching experience; or
- (b) the teacher is a nationally board certified teacher.

H. "Day-one ready educator" means a teacher who positively impacts measurable student success from the first day the educator begins teaching by demonstrating deep content knowledge, the ability to motivate and actively engage students, the ability to personalize learning based on students' needs, and a willingness to engage in continuous efforts to improve teaching abilities.

I. "Disposition" means the professionalism demonstrated by a candidate indicating capacity to be a day-one ready educator.

J. "EAR" means educator accountability report required annually and designed to create a uniform statewide educator accountability reporting system to measure and track teacher and administrator education candidates from pre-entry to post-graduation in order to benchmark the productivity and accountability of New Mexico's educator workforce.

K. "EPP" means an educational preparation program offered by an educational preparation provider that is intended to lead to teacher licensure upon candidates' successful completion of the program.

L. "EPP advisory board" means the group of individuals appointed by the EPP who have unique knowledge regarding the educational needs of the local community.

M. "EPP application" means a written request on a department-approved form, to the PPSC to be a department-approved EPP.

N. "EPP provider" means any individual, private or public education association, corporation, or institution of higher education offering an EPP.

O. “EES” means the department-approved educator evaluation system.

P. “Initial approval” means the first time an EPP provider seeks and is granted approval from the PPSC to create a new EPP in the state of New Mexico.

Q. “LEA” means a local educational agency. A LEA may be a public school district, a state-chartered charter school, or a state-educational agency.

R. “New Mexico teacher assessments” means the tests required for individuals seeking initial New Mexico licensure.

S. “PPSC” means the professional practices and standards council, which approves EPPs as defined in 6.2.8 NMAC.

T. “Program revision” means the addition of new licensure programming or modifications made to an existing department-approved EPP, including changes to standards.

U. “Quality review rubric” means the department-approved tool used by the certified review team during a comprehensive state approval site visit.

V. “Revocation” means a department decision to no longer recognize an EPP as approved by the department nor to license candidates completing coursework at the revoked EPP provider within three semesters of revocation.

6.65.3.8 APPLICATION PROCESS FOR APPROVAL:

A. EPP providers seeking a program revision for an existing department-approved EPP and EPP providers seeking initial approval of an EPP shall submit an EPP application to the department.

B. Applications shall provide the information outlined in the PPSC manual and meet the general requirements of 6.65.3.9 NMAC.

[6.65.3.8 NMAC - Rp, 6.65.3.8 NMAC, 10/29/2019]

6.65.3.9 EDUCATOR PREPARATION PROGRAM GENERAL REQUIREMENTS:

EPPs shall meet requirements as stated in state statute, regulation, and the following additional requirements.

A. EPPs shall establish rigorous entry requirements, including a successful completion of the department’s required background check and approval process.

B. EPPs shall ensure that opportunities for clinical experiences are provided to candidates continuously throughout their enrollment.

(1) Clinical experiences shall begin upon the candidate’s entrance into an EPP.

(2) The majority of clinical experiences shall align with the area, subject, or category of certification or license being sought by the candidate.

(3) During at least one of the candidate’s multiple clinical experiences, candidates shall serve as a teacher in a school under the supervision of a cooperating teacher and plan and deliver independent instruction to students on a regularly scheduled basis.

C. EPPs shall ensure that candidates embrace and execute their responsibility as educators to develop the skills and capacities to implement meaningful practices for parent and family engagement, notably keeping families fully informed of their child’s progress towards college-and-career readiness, on a regular basis, using objective measures in all subject areas.

D. EPPs shall establish partnerships with stakeholder groups to fulfill requirements related to clinical experiences and meet the needs of LEAs. At a minimum, partners shall include:

(1) classroom teachers;

(2) principals;

(3) superintendents;

(4) human resource directors;

(5) curriculum directors; and

(6) the EPP advisory board.

E. Programs for all teachers shall include instruction in pedagogy that is aligned with department standards pursuant to 6.61.2 NMAC through 6.61.12 NMAC.

F. EPPs shall conduct a minimum of three formally documented observations that include verbal and written feedback on the candidate’s practice.

(1) Observations and evaluations of candidates shall be aligned with the four domains of EES:

(a) planning and preparation;

(b) creating an environment for learning;

(c) teaching for learning; and

(d) professionalism.

(2) Results of evaluations and observations shall inform program interaction with the candidate including feedback, placement, remediation, and support.

(3) Documentation of observations shall be stored by the EPP for a minimum of five years after candidate completion and shall be available to the completer and the department upon request.

G. EPP providers shall establish rigorous exit requirements in alignment with those required to seek licensure from the department. These exit requirements shall, at a minimum, include:

(1) successful demonstration of competency in all relevant areas, subjects, or categories of the New Mexico teacher assessments; and

(2) a written recommendation from the EPP that the candidate demonstrates the dispositions necessary for success in the classroom and other learning environments.

H. EPP providers shall detail in the EPP application how the EPP provider plans to provide support to the candidates’ completion

of all teaching licensure requirements and department processes, including passage of all necessary assessments.

I. In a form approved by the department and no later than September 1, all EPPs shall annually submit candidate-level data required by the EAR. Failure to comply with data reporting and collection requests may result in revocation of the EPP's approval.

J. EPPs shall fully comply, in a timely manner, with all requirements that allow the department to generate the EAR and the comprehensive state approval. [6.65.3.9 NMAC - Rp, 6.65.3.9 NMAC, 10/29/2019]

6.65.3.10 EDUCATOR ACCOUNTABILITY REPORT:

A. Each EPP's annual EAR shall include the following information on teacher and administrator education candidates and indicators of program success:

- (1) the standards for entering and exiting the program;
- (2) the number of hours required for clinical experience, including student teaching and administrator internship;
- (3) the number and percentage of candidates needing developmental course work upon entering the program;
- (4) the number and percentage of completers for each program;
- (5) the number and types of degrees received by completers;
- (6) the number and percentage of completers who pass the New Mexico teacher or administrator assessments for initial licensure on the first attempt;
- (7) a description of each program's placement practices;
- (8) the number and percentage of completers hired by New Mexico school districts; and
- (9) the demographics of an EPP's candidates and completers.

B. The EAR shall include an evaluation plan that includes high performance objectives. The plan shall include objectives and measures for increasing the following:

- (1) student achievement for all students;
- (2) teacher and administrator retention, particularly in the first three years of a teacher's or administrator's career;
- (3) the percentage of candidates who pass the New Mexico teacher assessments for initial licensure on the first attempt;
- (4) the percentage of secondary school classes taught in core academic subject areas by teachers who demonstrate by means of rigorous content area assessments a high level of subject area mastery and a thorough knowledge of the state's academic content and performance standards;
- (5) the percentage of elementary school classes taught by teachers who demonstrate by means of a high level of performance in core academic subject areas their mastery of the state academic content and performance standards;
- (6) the number of teachers trained in math, science, and technology;
- (7) the number of teachers trained in special education;
- (8) the number of teachers teaching in low socioeconomic schools; and
- (9) the number of teachers retained in teaching in New Mexico.

C. EPPs shall administer a completer survey within six months of completion that measures the completer's perception of their own readiness and individual effectiveness in the classroom.

D. EPPs shall initiate all necessary data requests to fill EAR requirements and shall be responsible for collecting, analyzing, and reporting data.

[6.65.3.10 NMAC - Rp, 6.65.3.10 NMAC, 10/29/2019]

6.65.3.11

COMPREHENSIVE STATE

APPROVAL SITE VISITS: EPPs shall fully cooperate with the comprehensive state approval process. The department shall develop and publish on the department website an EPP manual outlining the comprehensive site visit process that shall include all documents necessary for the state approval. Site visits shall occur every three years on a calendar determined by the department unless the status of a program, as outlined in 6.65.3.12 NMAC, changes in a way that merits more frequent visits.

A. The comprehensive state approval process shall assess the performance of the EPP on the four components of the quality review rubric:

- (1) curriculum design and delivery;
- (2) clinical experience;
- (3) candidate quality; and
- (4) continuous improvement.

B. The comprehensive state approval site visit shall include the following three elements:

- (1) Self-evaluation. EPPs shall complete the self-evaluation documents in the EPP manual prior to the site visit. Documents shall be submitted to the department at least four weeks prior to the site visit. Documents shall include:
 - (a) quality review rubric;
 - (b) quality review worksheets for each of the four key components on the quality review rubric; and
 - (c) data and other documentation listed as supplemental evidence in the EPP manual accompanied by any releases for such information, if necessary.

(2) Comprehensive state approval site visit. The certified review team shall conduct the site visit and review the EPP using the quality review rubric.

(3) Summative conference. The certified review team

shall debrief the site visit with the EPP and present their initial findings.

C. At the end of the comprehensive state approval site visit, the EPP shall be assessed on its overall performance and shall be rated with one of following site visit classifications defined in the EPP manual:

- (1) industry leader;
- (2) well-developed;
- (3) proficient;
- (4) developing; or
- (5) underdeveloped.

D. The certified review team shall release a final written report to the EPP containing the EPP's scores on each component of the quality review rubric and their overall performance no later than 90 calendar days after the comprehensive state approval site visit.

E. EPPs shall have 30 calendar days after receiving the report to submit a response, in writing, to the department to indicate any alleged factual errors and to provide any documentation deemed necessary to support the allegations. If, after review of the EPP's response, the department determines the error to be valid, the report shall be amended within 20 calendar days.
[6.65.3.11 NMAC - Rp, 6.65.3.11 NMAC, 10/29/2019]

6.65.3.12

COMPREHENSIVE STATE APPROVAL PROCESS: The comprehensive state approval process shall determine whether an EPP earns approval for continued operation, is placed on probation, or has its approval revoked. The EPP status shall determine the frequency of comprehensive state approval site visits and the scope of EPP responsibilities. EPPs shall be notified of their status by the department no later than November 30 annually.

A. Level one probation. EPPs shall be placed on level one probation if the EPP fails to

demonstrate progress toward meeting objectives included in its EAR or if the certified review team identifies an issue during the comprehensive state approval site visit resulting in an underdeveloped classification outlined in Subsection C of 6.65.3.11 NMAC. The secretary shall notify the EPP of level one probation status in writing no later than 30 calendar days after the EPP is placed on level one probation. Responsibilities of EPPs on level one probation shall include the following:

(1) participation in professional development and technical assistance prescribed by the department;

(2) development of an improvement plan that addresses program deficiencies that shall be submitted to the certified review team for approval within 90 calendar days of notification of level one probation status; and

(3) participation in department monitoring to ensure implementation and progress as outlined in the approved improvement plan.

(4) An EPP may exit level one probation after one academic year and upon fulfillment of its probationary responsibilities and demonstration of progress toward EAR objectives.

(5) Within two academic years, an EPP shall fulfill its level one probationary responsibilities and demonstration of progress toward EAR objectives. An EPP shall not be allowed to remain on level one probation for more than two academic years after initial level one probation status placement.

B. Level two probation. EPPs shall be placed on level two probation if the EPP fails to demonstrate substantial progress outlined in the improvement plan. The secretary shall notify the EPP of level two probation status in writing no later than 30 calendar days after the EPP is placed on level two probation. Responsibilities of EPPs on level two probation shall include the following:

(1) participation in professional development and technical assistance prescribed by the department;

(2) development or amendment of an improvement plan that addresses program deficiencies that shall be submitted to the certified review team for approval within 90 calendar days of notification of level two probation status;

(3) participation in department monitoring to ensure implementation and progress as outlined in the approved improvement plan; and

(4) participation in an annual state approval site visit until the EPP exits level two probation.

(5) An EPP may exit level two probation to level one probation after one academic year and upon fulfillment of its probationary responsibilities and demonstration of progress toward EAR objectives.

(6) Within two academic years, an EPP shall fulfill its level two probationary responsibilities and demonstration of progress toward EAR objectives. An EPP shall not be allowed to remain on level two probation for more than two academic years after initial level two probation status placement.

C. Revocation.

(1) The department may revoke an EPP's approval for any of the following reasons:

(a) not exiting level one or level two probation status within two academic years; or

(b) failing to meet reporting or compliance requirements as set forth by statute, department regulation, or guidance provided in department manuals.

(2) The department shall notify EPP providers of revocation in writing no later than 30 calendar days after the EPP's approval is revoked. Immediately upon receipt of a notice of revocation, the EPP provider shall:

(a) cease recruitment and acceptance of new candidates;

(b) allow candidates currently enrolled in the EPP to complete the licensure program, provided they complete the program within three semesters of the notice of revocation; and

(c) work with candidates unable to complete the licensure program within three semesters by providing options for transfer to another EPP.

(3) An EPP provider that has received a notice of revocation may file a request for reconsideration by the department no later than 30 calendar days after the notice of revocation has been received.

(a) The department shall review the materials submitted by the EPP provider for reconsideration including written statements of position, documents, and comments supporting the claim.

(b) The department, after considering the request, shall make a decision and inform the EPP provider in writing of its decision within 60 calendar days of receipt of the request for reconsideration.

(c) The decision of the department shall be final.

(4) An EPP with revoked approval shall wait two years following the date of revocation before reapplying via the application process defined in 6.65.3.8 NMAC. [6.65.3.12 NMAC - Rp, 6.65.3.12 NMAC, 10/29/2019]

History of 6.65.3 NMAC:
6.65.3 NMAC, Educator Preparation Program Accountability, filed 7/1/2018 - was repealed and replaced by 6.65.3 NMAC, Educator Preparation Program Accountability, effective 10/29/2019.

REGULATION AND LICENSING DEPARTMENT FUNERAL SERVICES, BOARD OF

This is an amendment to 16.64.1 NMAC, Sections 7, 10 and 11, effective 11/1/2019.

16.64.1.7 DEFINITIONS:

A. “board” means the board of funeral services;

B. “committal service” means a service at a place of interment or entombment that follows a funeral conducted at another location;

C. “conspicuously displayed” means certificate of licensure and inspection results notice are collectively posted in a location where a member of the general public within the licensee’s place of business will be able to observe and read the certificate of licensure and inspection results notice.

D. “custody” means the right to make all decisions, consistent with applicable laws, regarding the handling of a dead body, including, but not limited to, possession, at-need funeral arrangements, final disposition and disinterment.

~~[D:] E.~~ **“cremains”** “cremated remains” means [cremated remains] the remains of a dead human body which has been reduced by direct flame to a residue, which includes bone fragments;

~~[E:] E.~~ **“cremation”** means the reduction of a dead human body by direct flame to a residue, which includes bone fragments;

~~[F:] G.~~ **“crematory”** means every place or premises that is devoted to or used for cremation and pulverization of the [cremains] cremated remains;

~~[G:] H.~~ **“crematory authority”** means the individual who is ultimately responsible for the operation of a crematory;

~~[H:] I.~~ **“department”** means the regulation and licensing department;

~~[I:] J.~~ **“direct disposer”** means a person licensed to engage

solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Funeral Services Act, as provided in that act;

~~[J:] K.~~ **“direct disposition”** means only the disposition of a dead human body as quickly as possible, without a direct disposer performing or arranging a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

~~[K:] L.~~ **“direct supervision”** means that the supervising funeral service practitioner is physically present with and in direct control of the person being trained;

~~[L:] M.~~ **“disposition”** means the final disposal of a dead human body, whether it be by earth interment, aboveground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study;

~~[M:] N.~~ **“embalmer”** means a person licensed to engage in embalming and preparing a dead human for funeral service at a funeral establishment that is licenses pursuant to the funeral service act;

~~[N:] O.~~ **“embalming”** means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;

~~[O:] P.~~ **“ennichement”** means interment of [cremains] cremated remains in a niche in a columbarium, whether in an urn or not;

~~[P:] Q.~~ **“entombment”** means interment of a casketed body or [cremains] cremated remains in a crypt in a mausoleum;

~~[Q:] R.~~ **“establishment”** means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being

conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments or a school of medicine;

[~~Q~~] **S.** “**funeral**” means a period following death in which there is an organized, purposeful, time-limited, group centered ceremony or rite, whether religious or not, with the body of the deceased present;

T. “**funeral arranger**” means a person licensed to engage in arrangements and directing of funeral services at a funeral establishment that is licensed pursuant to the Funeral Services Act;

[~~R~~] **U.** “**funeral merchandise**” means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is or [remains] cremated remains are directly placed, and excluding mausoleum crypts, interment enclosures preset in a cemetery and columbarium niches;

[~~S~~] **V.** “**funeral service intern**” means a person licensed to be in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

W. “**funeral service intern – direct supervision**” means a licensed funeral service intern who is under direct supervision and instruction of a licensed funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

X. “**funeral service intern – general supervision**” means a licensed funeral service intern who is under general supervision and instruction of a licensed funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

[~~F~~] **Y.** “**funeral service practitioner**” means a person

licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment that is licensed pursuant to the Funeral Services Act;

[~~U~~] **Z.** “**funeral services**” means those immediate post-death activities related to a dead human body and its care and disposition, whether with or without rites or ceremonies; but ‘funeral services’ does not include disposition of the body by a school of medicine following medical study;

[~~V~~] **AA.** “**general supervision**” means that the supervising funeral service practitioner is not necessarily physically present in the establishment with the person being trained but is available for advice and assistance;

[~~W~~] **BB.** “**graveside service**” means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

[~~X~~] **CC.** “**jurisprudence examination**” means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Funeral Services Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act;

[~~Y~~] **DD.** “**licensee in charge**” means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees; or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

[~~Z~~] **EE.** “**make arrangements**” means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

[~~AA~~] **FF.** “**memorial service**” means a gathering of persons for recognition of a death without the presence of the body of the deceased;

[~~BB~~] **GG.** “**practice of funeral service**” means those

activities allowed under the Funeral Services Act by the funeral service practitioner or funeral service intern; and

[~~CC~~] **HH.** “**pulverization**” means the process that reduces [remains] cremated remains to a granular substance.

II. “**retort**” means a vessel or chamber in which substances are distilled or decomposed by heat.
[6/15/1996; 16.64.1.7 NMAC - Rn & A, 16 NMAC 64.1.7, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

[16.64.1.10 — INSPECTION OF BOARD RECORDS: The board operates in compliance with the Inspection of Public Records Act

A. The board administrator will be the custodian of the board’s records.

B. Except as otherwise provided by law, all records kept by the board shall be available for public inspection pursuant to the Inspection of Public Records Act, except as provided herein:

(1) the contents of any examination used to examine an applicant’s knowledge or competence;

(2) letters of reference;

(3) matters of opinion;

(4) complaints, and investigative files obtained during the course of an investigation or processing of a complaint, and before the vote of the board as to whether to dismiss the complaint or to issue a notice of contemplated action as provided in the Uniform Licensing Act, NMSA 1978, Section 61-1-1 et seq., and in order to preserve the integrity of the investigation of the complaints, records and documents that reveal confidential sources, methods, information or licensees accused, but not yet charged with a violation, such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the board by any investigating agent

or agency; upon the completion of the investigation or processing of the complaint, AND upon the decision of the board to dismiss the complaint or to issue a notice of contemplated action, the confidentiality privilege shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection; and ~~(5) any other records excepted from disclosure pursuant to the Inspection of Public Records Act.~~

~~C. Only board members and employees may access non-public records unless approved by the board chairman AND the board attorney.~~

~~D. Anyone may examine all public records in the board's custody, provided the person gives notice to the board administrator in accordance with the Inspection of Public Records Act.~~

~~E. The board may charge a reasonable fee to defray copying and mailing charges for copies of public records, lists and labels, pursuant to the Inspection of Public Records Act. The board administrator is not obligated to create lists, labels or any other materials which are not already in existence.~~

~~F. No person shall be permitted to remove original documents from the board's office, except those in the possession of the board administrator that are needed at a meeting of the board.]~~

16.64.1.10 ADVERTISING:
All advertising including but not limited to: signs, newspaper listings, business cards, television, radio and internet advertisements are controlled by an entity licensed by the New Mexico Board of Funeral Services and must operate as follows:

A. The licensed name of the entity must appear on the advertisement;

B. All advertising entities must be licensed by the New Mexico Board of Funeral Services and the establishment license number must appear on the contact information;

C. The entities physical address and phone number must be displayed on the contact information;

D. Irrespective of the name on the website, provisions must be made on an establishments website so the individual who wishes to enter into a funeral-related contract or transaction, must not be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the New Mexico Board of Funeral Services;

E. No funeral establishment, commercial establishment, crematory, or direct disposer shall advertise in a manner that is false, misleading, or deceptive;

F. A website belonging to a crematory society or funeral service society shall be linked with a licensed funeral establishment. The licensed funeral establishment and its location shall be provided on the website or advertising;

[9/27/1990...9/26/1993, 1/22/1999; 16.64.1.10 NMAC - Rn & A, 16 NMAC 64.1.10, 9/15/2001; A, 11/1/2019]

16.64.1.11 DOCUMENTS AND CONTRACTS:

A. All official documents and contracts of any establishment shall bear the signature of the [arranger(s), where applicable, and the] licensee signing the document or contract as the representative of the establishment, together with the licensee's license classification and license number, and the date the document or contract was signed by the [arranger(s) and licensee] licensees. The following classification abbreviations shall be allowed:

- (1) FSP - funeral service practitioner;
- (2) FSI - funeral service intern (- general);
- (3) Arranger;
- (4) Embalmer;
- [~~(3)~~] (5) DD - direct disposer.

B. Each establishment and crematory shall maintain copies of all official documents and contracts for funeral, direct disposition, cremation, and any other services rendered for services that fall within the scope of the license held pursuant to Section 61-32-1 et seq NMSA 1978., documents shall include, but are not limited to:

- (1) contracts;
- (2) authorizations; which shall include names, dates and times of authorization as required by the authorizing agents;
- (3) permits;
- (4) death certificates;
- (5) embalming case reports; and
- (6) cremations.

C. Each establishment shall maintain documentation with dates and times of all services rendered by the establishment, or on behalf of the establishment by the crematory or other subcontractors, up to and including final disposition.

D. Each establishment shall maintain copies of all official documents and contracts outlined in 16.16.1.11 NMAC at the establishment for a period of not less than seven years, and shall make such documents and contracts available for inspection by the board or it's designee.

[5/15/1992...9/26/1993; 16.64.1.11 NMAC - Rn & A, 16 NMAC 64.1.11, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

History of 16.64.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation No. 1, Meeting Dates, 8/15/1988. Regulation 1, Meeting Dates, 4/15/1991. Reg. 1, Board Meetings, 8/27/1993. Regulation No. 2, Forms of Certificates of Qualifications and Licenses, 8/15/1988. Regulation 2, Forms of Certificates of Qualifications and Licenses, 4/15/1991.

Reg. 8, Certificates of Licensure, 8/27/1993.
 Regulation No. 14, Inspection of Board Records, 8/28/1990.
 Regulation 14, Inspection of Board Records, 4/15/1991.
 Reg. 2, Inspection of Board Records, 8/27/1993.
 Regulation 21, Documents and Contracts, 4/15/1992.
 Reg. 19, Documents and Contracts, 8/27/1993.

History of Repealed Material:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT FUNERAL SERVICES, BOARD OF

This is an amendment to 16.64.2 NMAC, Section 8, effective 11/1/2019.

16.64.2.8 FEE SCHEDULE:

The following schedule shall be applicable for fees collected by the board under the Funeral Services Act:

A. Funeral service practitioner license:	
(1)	application \$50.00
(2)	licensure \$150.00
(3)	examination (jurisprudence) \$100.00
(4) (3)	renewal \$150.00
(5) (4)	penalty for late renewal \$75.00
B. Embalmer:	
(1)	application \$50.00
(2)	licensure \$150.00
(3)	renewal \$150.00
(4)	penalty for late renewal \$75.00
C. Funeral Arranger:	
(1)	application \$50.00
(2)	licensure \$150.00

(3)	renewal \$150.00
(4)	penalty for late renewal \$75.00
[B:] D. Funeral service intern license - direct supervision:	
(1)	Directing and arranging category:
(a)	application \$50.00
(b)	licensure \$150.00
(c)	renewal \$150.00
(d)	penalty for late renewal \$75.00
(2)	Preparation/embalming category:
(a)	application \$50.00
(b)	licensure \$150.00
(c)	renewal \$150.00
(d)	penalty for late renewal \$75.00
[C:] E. Funeral service intern license - general supervision:	
(1)	Directing and arranging category:
(a)	application \$50.00
(b)	licensure \$150.00
(c)	examination (jurisprudence) \$100.00
(d) (c)	renewal [\$75.00] \$150.00
(e) (d)	penalty for late renewal \$75.00
(2)	Preparation/embalming category:
(a)	application \$50.00
(b)	licensure \$150.00
(c)	renewal [\$75.00] \$150.00
(d)	penalty for late renewal \$75.00
[D:] E. Direct disposer license:	
(1)	application \$50.00
(2)	licensure \$150.00

(3)	examination (jurisprudence) \$100.00
(4) (3)	renewal \$150.00
(5) (4)	penalty for late renewal \$75.00
[E:] G. Establishment license:	
(1)	application \$50.00
(2)	licensure \$350.00
(3)	renewal \$400.00
(4)	penalty for late renewal \$75.00
[F:] H. Crematory license:	
(1)	application \$50.00
(2)	licensure \$350.00
(3)	renewal \$400.00
(4)	penalty for late renewal \$75.00
[G:] I. Establishments and crematories - re-inspection:	
(1)	re-inspection actuals not to exceed \$500.00
(2)	first non-compliance penalty \$300.00
(3)	Second non-compliance penalty (resulting from the first non-compliance. Third non-compliance, resulting from the second non-compliance, will be referred to the board with a recommendation for the issuance of a notice of contemplated action) \$500.00
[H:] J. Administrative fees:	
(1)	copying costs \$0.50/page
(2)	lists of licensees \$75.00
(3)	mailing labels of licensees \$25.00
(4)	return check \$100.00
(5)	reinstatement from inactive status (in addition to the renewal fee) \$175.00
(6)	Duplicate/replacement \$25.00

(7) other (at the discretion of the board or its designee).

[F:] **K.** Criminal background fee fees as currently charged by department of public safety.

[F:] **L.** The only fee that may be refunded is the licensure fee, as subscribed in each subsection of 16.64.2 NMAC, only if a temporary license, if applicable, has not been issued. The board office will refund any amount due through the state of New Mexico refund process.

[11/21/1986...9/26/1993; 1/22/1999; 16.64.2.8 NMAC - Rn & A, 16 NMAC 64.2.8, 9/15/2001; A, 4/2/2010; A, 8/8/2012; A, 11/1/2019]

History of 16.64.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation No. 12, Thanatopractice Fees, 8/7/1989. Regulation No. 12, Fee Schedule, 8/28/1990. Regulation No. 12, Fee Schedule, 4/15/1991. Reg. 4, Fee Schedule, 8/27/1993.

History of Repealed Material:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT FUNERAL SERVICES, BOARD OF

This is an amendment to 16.64.3 NMAC, Section 8, effective 11/1/2019.

16.64.3.8 APPLICATIONS:

A. An applicant applying for a funeral service intern license must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has graduated from high school or the equivalent;

(5) submit satisfactory proof of employment and proof of supervision;

(6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

(7) submit a release of information form directly to the Department of Public Safety with fees as required by the Department of Public Safety.

B. An applicant applying for a direct disposer license in the state of New Mexico must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

(6) submit a release of information form directly to the Department of Public Safety with fees as required by the Department of Public Safety.

C. An applicant applying for an embalming license in the state of New Mexico must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than 12 months, under the supervision of a licensed funeral service practitioner.

During this training period, the applicant shall have assisted in making of at least 50 funeral arrangements, and the directing of at least 50 funerals;

(5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

(6) submit satisfactory evidence that the applicant has passed the science section of the national board examination;

(7) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(8) submit a release of information form directly to the Department of Public Safety with fees as required by the Department of Public Safety.

D. An Applicant applying for a funeral arranger license in the state of New Mexico must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has served as a licensed

funeral service intern for not less than 12 months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in making of at least 50 funeral arrangements, and the directing of at least 50 funerals;

(5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

(6) submit satisfactory evidence that the applicant has passed the arts section of the national board examination;

(7) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(8) submit a release of information form directly to the Department of Public Safety with fees as required by the Department of Public Safety.

[~~C~~] **E.** An applicant applying for a funeral service practitioner license must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than 12 months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in embalming at least 50 bodies, making of at least 50 funeral arrangements, and the directing of at least 50 funerals;

[~~6~~] (5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

[~~7~~] (6) submit satisfactory evidence that the applicant has passed both sections of the national board examination;

[~~8~~] (7) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(8) submit a release of information form directly to the Department of Public Safety with fees as required by the Department of Public Safety.

F.

[~~9~~] an applicant applying for an embalmer, funeral arranger or funeral practitioner license based on credentials from another state must:

[~~a~~] (1) submit a completed application form supplied by the board office;

[~~b~~] (2) pay applicable fees as set forth in 16.64.2.8 NMAC;

[~~c~~] (3) submit a verification of licensure and good standing;

[~~d~~] (4) [~~submit proof of five continuous years of experience/employment as a funeral service practitioner;~~] submit satisfactory evidence that the applicant has obtained an embalmer, funeral arranger or funeral practitioner license or one of the license equivalents, in a state or jurisdiction with equal or greater requirements than initial licensure in New Mexico.

[~~e~~] (5) submit satisfactory evidence that the applicant has passed the national board examination;

[~~f~~] (6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

(7) submit a release of information form directly to the Department of Public Safety with fees as required by the Department of Public Safety.

[~~D~~] **G.** The board, in its sole discretion, may require an applicant for licensure to present whatever evidence or affidavits as it deems necessary to establish that the applicant is qualified for licensure.

[~~E~~] **H.** The board may require applicants for licensure to personally appear before the board at the time the application is scheduled to be considered.

[~~F~~] **I.** The burden of knowing and complying with the requirements necessary for licensure rests entirely on the applicant.

[~~G~~] **J.** Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of:

(1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five years prior to application; and

(2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five years.

[~~H~~] **K.** If the application for licensure is deemed to be incomplete when 12 months has elapsed from the date stamped on the application or document the application and documents will be deemed null and void and any fees paid will be forfeited. Application and documents for licensure submitted to the board will be considered filed as of the date stamped on the application or documents by the board office, which

shall be the date received by the board.
[2/7/1976...6/15/1996, 1/22/1999; 16.64.3.8 NMAC - Rn & A, 16 NMAC 64.3.8, 9/15/2001; A, 04/02/2010; A, 10/6/2012; A, 11/1/2019]

History of 16.64.3 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation 19, Academic Requirements for Licensure, 4/15/1992.
Reg. 7, Academic Requirements for Licensure, 8/27/1993.

History of Repealed Material:
[RESERVED]

**REGULATION AND LICENSING DEPARTMENT
FUNERAL SERVICES, BOARD OF**

This is an amendment to 16.64.4 NMAC, Sections 8, 9, and 11, effective 11/1/2019.

16.64.4.8 GENERAL PROVISIONS:

The following requirements pertain to all establishments and crematories:

A. The building in which an establishment or crematory is located shall be in conformity with the requirements of the applicable federal, state and local statutes, rules, ordinances and zoning provisions, of good appearance and devoted primarily to the purpose for which it is licensed; provided, however, that a crematory may be located at any establishment if allowed by local ordinances and zoning provisions.

B. The site and any rooms or areas within the structure thereon, and the use thereof, shall conform to all applicable state and local statutes, rules, ordinances and zoning provisions, and shall be in clean condition and good repair at all times.

C. There shall be some identification visible from the street identifying the name of the establishment as licensed by the board; provided, however, that crematories shall not be required to have visible identification.

D. Within this state there may be presently licensed establishments which were lawful before 16.64 NMAC was effective in its original form on September 14, 1988, but which would not conform to the provisions of 16.64.4 NMAC, or future amendment. It is the intent of 16.64 NMAC to permit these physical structure nonconformities in accordance with the Funeral Services Act. To effectuate this intent, the application of 16.64 NMAC shall be prospective only from and after its effective date in its original form on September 14, 1988 and any existing physical structure nonconformity in a presently licensed establishment shall not be deemed grounds for revocation, suspension, denial or non-renewal of an establishment license for facilities existing and approved under the statutes and 16.64 NMAC in force at the date of the adoption hereof. Any such establishment whose license is revoked or not renewed, or any establishment which has any change in ownership as outlined in 16.64.4.11 NMAC shall be subject to the requirements of the board at the time such establishment applies to again become licensed. The provisions of 16.64.4 NMAC shall be deemed severable.

[2/7/1976...6/15/1996; 16.64.4.8 NMAC - Rn & A, 16 NMAC 64.4.8, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

16.64.4.9 MINIMUM REQUIREMENTS OF ESTABLISHMENTS:

A. To be licensed by the board, each funeral services establishment shall have and maintain the following minimum requirements:

(1) [a- chapel in which funeral services may be conducted;] a chapel/room specifically used for gatherings, rituals and ceremonies, which shall be

at least 600 square feet (inside-wall-to-inside-wall) in size, and shall:

(a) have the capacity for seating not less than 60 persons and for the proper display of a casket containing the deceased;

(b) have good ventilation;

(c) be entirely and completely separated from both the preparation room and the casket display room, except for entrances and exits having doors; and

(2) a casket display room which shall be not less than 450 square feet (inside-wall-to-inside-wall) in size and shall:

(a) contain burial caskets or a range of models and prices with not less than 12 different adult burial caskets or models normally displayed, and if models are displayed then the burial caskets shall be available and warehoused within 50 miles of the establishment; and

(b) be adequately illuminated; and

(c) any rental casket considered for interment or cremation services shall have written disclosure as previously used merchandise; consent form shall be provided and signed by the surviving spouse or next of kin; and

(3) a preparation room which shall be not less than 150 square feet (inside-wall-to-inside-wall) in size and shall:

(a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

(b) be equipped with necessary drainage, lighting and ventilation;

(c) be equipped with the equipment and supplies necessary to embalm and otherwise prepare the human dead for final disposition and transportation including running hot and cold water, embalming table, head/arm/foot block, embalming machine, aspirator, arterial tubes, trocar with hose, cavity fluid injector, metal drain tubes or spring forceps, aneurysm needles/

hooks, scissors, vascular clamps/locking forceps, hypo treatment needle, nasal aspirator, scalpel with sufficient blades, suture needles and suture thread, cotton, sufficient trocar buttons with applicator, razor, cosmetics, sealing powder, hardening compound, arterial and cavity fluid;
and

(d)

be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors.

B. To be licensed by the board, each commercial establishment shall have and maintain the following minimum requirements:

(1) a

preparation room as outlined in Paragraph (3) of Subsection A of 16.64.4.9 NMAC; and

(2) an office

which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors, and which is totally separate from the preparation room except for entrances and exits having doors; and

(3)

commercial establishments shall be exempt from the requirements of Paragraphs (1) and (2) of Subsection A of 16.64.4.9 NMAC, provided the licensee in charge certifies to the board that the commercial establishment will not exceed the provisions allowed for commercial establishments in the Funeral Services Act.

C. To be licensed by the board, each direct disposition establishment shall have and maintain the following minimum requirements:

(1) a room for

sheltering dead human bodies which shall:

(a) be

equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

(b)

be equipped with necessary drainage, lighting and ventilation;

(c)

have a refrigeration unit thermostatically controlled with a

minimum storage area of 12 and one-half cubic feet per body;

(d)

be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors;

(2) an office

which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and for entrances and exits having doors, and which is totally separate from the room where bodies are sheltered except for entrances and exits having doors; and

(3) if the

establishment contains burial caskets or a range of models the establishment shall comply with the requirements of Paragraph (2) of Subsection A of 16.64.4.9 NMAC.

D. To be licensed by the board, each funeral establishment shall:

~~(1)~~ entirely

complete a body tracking sheet [~~as provided by regulation and licensing~~] which shall be kept in the deceased file; and

~~(2)~~ obtain and

maintain body transport record log at the time of which the deceased is transported to the establishment which shall be kept in the deceased file; the log shall include:

~~(a)~~ (1)

name of deceased;

~~(b)~~ (2)

date of death;

~~(3)~~

time of death:

~~(c)~~ (4)

date and time placed in refrigeration;

~~(d)~~ (5)

date and time removed from refrigeration;

~~(e)~~ (6)

condition of body prior to transport;

~~(f)~~ (7)

condition of body at the time of delivery; and

~~(g)~~ (8)

weather conditions during time of transport.

[2/7/1976...9/26/1993, 1/22/1999;

16.64.4.9 NMAC - Rn & A, 16

NMAC 64.4.9, 9/15/2001; A,

4/2/2010; A, 8/8/2012; A, 11/1/2019]

16.64.4.11 CHANGES OF ESTABLISHMENT AND CREMATORY LICENSES:

A. An establishment or crematory license is an authority granted to the person, firm partnership, corporation, association, joint venture, or other organization, or any combination thereof, and is not transferable. A change in business designation of an establishment or crematory or of a licensee in charge of an establishment may have the legal effect of attempting to transfer the license and of operating without a license. Therefore, all such changes shall be filed with the board on an application form prescribed by the board, accompanied by the required fees, within 30 days following any such change.

(1)

Incorporation creates a new legal entity which requires a new license even though one or more stockholders, officers or directors have been previously issued a license. A license to practice funeral service or direct disposition held by a stockholder, officer or director is not authority to the corporation to operate as a funeral or direct disposition establishment.

(2) The

organization of a partnership or joint venture creates a new legal entity which requires a new license, even though one or more of the partners have previously been issued a license.

(3) The

dissolution of a corporation or partnership which has been issued a license, operates to terminate the license and no individual or firm may operate under such a terminated license.

(4) The change

of members of a general partnership, or in the general partner membership of a limited partnership, either the addition or withdrawal of a partner or partners, establishes a new legal entity which requires a new license and such partnership cannot operate on a license of the former partnership.

(5) The

change of ownership of fifty percent or more of the stock in a corporation

or shares in a partnership operates to terminate the license and a new license is required, even if the licensee in charge does not change.

(6) A change in the licensee in charge operates to terminate the establishment license and the establishment can continue to operate only under a new license granted by the board and designating the new licensee in charge. The revocation, suspension, lapse or other loss of the license of the licensee in charge shall likewise cause a termination of the existing establishment license.

(7) A change in location of an establishment or crematory shall require a new establishment or crematory license.

(8) A change in the name of an establishment or crematory shall require a new establishment or crematory license.

(a) Any change in name shall not be announced, used, or in any way conveyed to the public until the new license is issued by the board.

(b) All advertising, signs, listings, newspaper notices, as well as all stationery, business cards, etc., as well as those on the internet, of an establishment or crematory licensed by the board shall include the name, license number and address of the establishment or crematory, exactly as licensed by the board, and all references to the new name shall be changed within 30 days following the board meeting at which the new license was issued.

B. Prior to the issuance of a new license under Subsection A of 16.64.4.11 NMAC the board may require an inspection of the establishment or crematory, however an inspection of the establishment or crematory shall be required for a change under Paragraph (7) of Subsection A of 16.64.4.11 NMAC prior to the issuance of a new license.

C. Failure to file for a change of an establishment or crematory license within the 30 day period shall be grounds for termination of licenses of the

establishment and the licensee in charge, or of the crematory license.

D. Upon filing for any change, the establishment or crematory shall continue to operate under its current license until the next board meeting, provided all other provisions of the Funeral Services Act are followed.

E. Re-inspections.
(1) The requirement for a re-inspection is based on the following:

(a) the inspector has attempted on two occasions to inspect the establishment or crematory to no avail, and would include the situation where the establishment or crematory is closed during normal business hours and that the licensee in charge is not available within one hour of contact made or attempted by the inspector; or
(b) the establishment or crematory is found to be in non-compliance with the board's inspection requirements.

(2) A re-inspection and penalty fee will be imposed on any establishment or crematory if a re-inspection is required. The licensee in charge of an establishment or a crematory authority will be informed that a re-inspection and penalty fee is being assessed and the reason for the re-inspection.

(3) If the board has good reason to believe that the Funeral Services Act or 16.64 NMAC, governing the inspection requirements have been violated, a re-inspection and penalty fee will be assessed only if a violation exists. [2/7/1976...9/26/1993; 1/22/1999; 16.64.4.11 NMAC - Rn & A, 16 NMAC 64.4.11, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

History of 16.64.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation No. 10, Necessary Drainage, Ventilation, Sanitary Flooring and Necessary and Suitable Instruments, Supplies and Merchandise in a Funeral

Establishment, 8/15/1988.

Regulation 10, Minimum Requirements of Funeral Establishments, Commercial Embalming Establishments, Direct Disposition Establishments and Crematories, 4/15/1991.

Reg. 11, Minimum Requirements of Establishments and Crematories, 8/27/1993.

Regulation No. 7, Transfer of Funeral Establishment License, 8/28/1990.

Regulation 7, Changes of Establishment and Crematory Licenses, 4/15/1991.

Reg. 13, Changes of Establishment and Crematory Licenses, 8/27/1993.

Regulation No. 8, Separate Establishment, 8/15/1988.

Regulation 8, Separate Funeral Establishment, 4/15/1991.

Regulation 8, Separate Funeral and Direct Disposition Establishments, 4/15/1992.

Reg. 12, Separate Establishments, 8/27/1993.

Regulation No. 22, Embalming, 1/7/1981.

Regulation No. 11, Embalming, 8/15/1988.

Regulation 11, Embalming, 4/15/1991.

Reg. 14, Refrigeration, 8/27/1993.

Section 5, Direct Disposition Rules and Regulations - Establishment, 12/9/1988.

Section 7, Crematory Rules and Regulations - Crematories - Inspections, 12/9/1988.

History of Repealed Material: [RESERVED]

**REGULATION AND
LICENSING DEPARTMENT
FUNERAL SERVICES, BOARD
OF**

This is an amendment to 16.64.6 NMAC, Sections 8 and 10, effective 11/1/2019.

16.64.6.8 GENERAL PROVISIONS:

A. Requests for approval of continuing education activities shall be submitted to the board on a form prescribed by the board. No license renewal shall be issued without board action if there exists any question by the board administrator as to the acceptance of a particular continuing education activity. The burden shall be on the licensee to ascertain from the board if a continuing education activity is acceptable, and to provide proof of completion of the continuing education activity for the renewal period.

B. 10 hours of continuing education, including two hours of ethics, shall equal one continuing education unit {CEU}.

C. Regardless of what part of the year a person becomes licensed, there shall be no reduction or pro-rating of continuing education hours required for the next renewal period; provided however, that any person who was first licensed during the same renewal period as he or she graduated from an accredited school of funeral service education shall not be required to earn continuing education for the next renewal.

D. Any person who holds more than one license issued by the board may use the same continuing education hours for renewal of both licenses without having to earn separate continuing education hours for each license renewal.

[9/14/1988...9/26/1993; 16.64.6.8 NMAC - Rn & A, 16 NMAC 64.6.8, 9/15/2001; A, 4/2/2010; A, 11/1/2019]

16.64.6.10 LIMITATIONS:

A. The amount of continuing education credit the

board will recognize for any activity will be at the sole discretion of the board, provided however, that the board will grant credit for activities offered by any approved provider of continuing education subject to the limitation imposed in Subsection B of 16.64.6.10 NMAC.

B. No more than four hours {4 CEU} of continuing education credit shall be granted in any renewal period for activities as outlined in Subsection C of 16.64.6.9 NMAC.

C. Upon application for renewal of a license, the applicant shall furnish evidence of having completed continuing education hours to the following extent.

(1) Funeral service practitioners shall be required to complete 10 hours, two of which must be in ethics for a total of {1.0 CEU}.

(2) Funeral service interns who are allowed to practice under the general supervision of a funeral service practitioner in any category shall be required to complete 10 hours, two of which must be in ethics for a total of {1.0 CEU}.

(3) Direct disposers shall be required to complete 10 hours, two of which must be in ethics for a total of {1.0 CEU}. [11/21/1986...9/26/1993; 16.64.6.10 NMAC - Rn & A, 16 NMAC 64.6.10, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

HISTORY OF 16.64.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation No. 6, Continuing Education, 8/15/1988. Regulation No. 6, Continuing Education, 8/28/1990. Regulation 6, Continuing Education, 4/15/1991. Reg. 10, Continuing Education, 8/27/1993.

**History of Repealed Material:
[RESERVED]**

**REGULATION AND
LICENSING DEPARTMENT
FUNERAL SERVICES, BOARD
OF**

This is an amendment to 16.64.8 NMAC, Section 8, effective 11/1/2019.

16.64.8.8 GENERAL PROVISIONS:

A. Each funeral service intern shall inform the board, on quarterly reports prescribed by the board, of the work completed by the funeral service intern, and the name(s) of the funeral service practitioner(s) who supervised each activity, and shall be for the periods as follows, until such time as the minimum requirements are met, as determined by the board:

(1) July 1 thru September 30, inclusive;

(2) October 1 thru December 31, inclusive;

(3) January 1 thru March 31, inclusive;

(4) April 1 thru June 30, inclusive.

B. Original quarterly reports shall be due at the office of the board within 30 days of the close of the quarter (faxed reports will not be accepted). Any quarter for which a report is not received by the date due shall not count as time toward the internship.

C. A funeral service intern may be employed by, or receive training at, more than one funeral or commercial establishment concurrently provided that:

(1) the establishments are part of the same company;

(2) the establishments are within 50 miles by road travel of each other; and

(3) application is made, together with the application fee for each license held, 30 days prior to employment or training.

D. A funeral service intern shall make it known that he or she is a funeral service intern under the supervision of a funeral service practitioner, and that he or she is

not licensed as a funeral service practitioner nor the licensee in charge.

E. A funeral service intern shall not use the title funeral director and shall use the title funeral service [~~director~~] intern. The titles funeral practitioner, funeral director or mortician are reserved for fully licensed practitioners and licensed arrangers in order to prevent the general public from misunderstanding the terms.

F. A funeral service intern shall practice funeral service only under the supervision of a funeral service practitioner, provided:

(1) when a funeral service intern has made arrangements for 50 funerals under direct supervision, he or she may request approval from the board to make arrangements under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (3) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required; and

(2) when a funeral service intern has assisted in embalming of 50 bodies under direct supervision, he or she may request approval from the board to embalm under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees; and

(3) when a funeral service intern has assisted in the directing of 50 funerals, committal services, grave side services or memorial services under direct supervision, he or she may request approval from the board to direct such services under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (1) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required.

G. A funeral service intern shall not practice funeral service in any category under general

supervision until application is made, together with the required fees, and approval has been granted by the board.

H. A funeral service intern shall be required to make arrangements during his or her internship in order to qualify for a license as a funeral service practitioner.

I. A funeral service intern shall not be required to practice funeral service under general supervision in any category regardless of the amount of time served or work completed as a funeral service intern.

J. A funeral service intern who is practicing funeral service under general supervision in any category shall be subject to the continuing education requirements of 16.64.6 NMAC.

K. A funeral service intern may receive training under more than one licensed funeral service practitioner, provided the board is notified, in writing, of any changes within 30 days following a change.

L. Any time served, and properly reported to the board, as a resident trainee under prior law will be considered the same as time served as a funeral service intern.

M. A funeral service intern who is practicing funeral service under direct supervision in any category is required to have the licensed funeral service practitioner review and co-sign all contracts prepared by the funeral service intern.

N. A funeral service intern who has a change of employment shall:

(1) return the old license; and

(2) make application for each license held, together with the application fee for each license held as outlined in Subsection D or E of 16.64.2.8 NMAC, within 30 days of the change. [9/14/1988...9/26/1993, 6/15/1996, 1/22/1999; 16.64.8.8 NMAC - Rn & A, 16 NMAC 64.8.8, 9/15/2001; A, 4/2/2010; A, 8/8/2012; A, 11/1/2019]

HISTORY OF 16.64.8 NMAC:

Pre-NMAC History: The material

in this part was derived from that previously filed with the State Records Center and Archives: Regulation No. 4, Resident Trainees, 8/15/1988. Regulation 4, Resident Trainees, 4/15/1991. Reg. 16, Funeral Service Interns, 8/27/1993.

History of Repealed Material:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT FUNERAL SERVICES, BOARD OF

This is an amendment to 16.64.9 NMAC, Section 8, effective 11/1/2019.

16.64.9.8 DIRECT DISPOSITION PRACTICES:

A. Every direct disposer in this state shall give or cause to be given to the person or persons arranging for a direct disposition, prior to the time of direct disposition, in addition to any other disclosure required by any statute or regulations, a written statement disclosing:

(1) that prior to interment, entombment, or final disposition of a dead human body or [~~cremains~~] cremated remains, the direct disposer cannot participate in any rites or ceremonies in connection with the final disposition of the remains;

(2) that prior to interment, entombment, or final disposition of a dead human body or [~~cremains~~] cremated remains, the direct disposer cannot provide facilities for rites or ceremonies in connection with the final disposition of the remains;

(3) that a body cannot be embalmed unless embalming is required by the place of disposition, and then only by a person licensed to embalm;

(4) that there can be no viewing of the body except for the purpose of identification;

(5) that the purchase of any funeral merchandise, and the price thereof, from the direct disposer, does not include any rites or ceremonies or other use of facilities not inherent to the direct disposition; and

(6) that a direct disposer may transport, or cause transportation of, a body to a place where services will be conducted with the body present, provided the direct disposer or his agent obtains a signed release from the person accepting the body, which person shall be the person having the right to control the disposition of the body, that person's agent, and the direct disposer or his agent cannot thereafter transport, or cause transportation of, the body to any place; such signed release shall be kept on file at the direct disposition establishment for a period of not less than five years.

B. A direct disposer or direct disposition establishment shall not be listed in any listing, advertisement or newspaper notice which may give the impression to the public that the direct disposer or direct disposition establishment is, in any way, engaged in the practice of funeral service.

C. No direct disposer shall allow or cause his or her name or the name of the direct disposition establishment to be used in any obituary or death notice in which a ceremony or rite for the deceased is announced, unless such obituary or death notice makes it specifically clear that the direct disposer and direct disposition establishment are not connected in any way to the ceremony or rite.
[11/21/1986...6/15/1996; 16.64.9.8 NMAC - Rn, 16 NMAC 64.9.8, 9/15/2001; A, 11/1/2019]

HISTORY OF 16.64.9 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation 16, Direct Disposers Practices, 4/15/1991.
Reg. 17, Direct Disposition Practices, 8/27/1993.

Reg. 17, Direct Disposition Practices, 5/5/1995.

Section 3, Direct Disposition Rules and Regulations - Disclosure, 12/9/1988.

Section 7, Direct Disposition Rules and Regulations - Advertising, 12/9/1988.

History of Repealed Material:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT FUNERAL SERVICES, BOARD OF

This is an amendment to 16.64.10 NMAC, Sections 6, 7 and 8, effective 11/1/2019.

16.64.10.6 OBJECTIVE:

16.64.10 NMAC is to establish the scope of practice for crematories, cremation requirements and requirement of crematories and establishments for maintaining records and disposing of [cremains] cremated remains.
[6/15/1996; 16.64.10.6 NMAC - Rn & A, 16 NMAC 64.10.6, 9/15/2001; A, 11/1/2019]

16.64.10.7 DEFINITIONS:

A. "Cremation" and "calcination" are considered synonymous, and means the final disposition of the dead human body to a residue of [cremains] cremated remains.

B. "Authorizing agent(s)" means the person(s) legally entitled to order the cremation.

C. "[cremains] Cremated remains container" means any container in which cremated remains may be enclosed which will avoid leakage and prevent the entrance of foreign substances.

D. "Cremation container" means an enclosure in which a dead human body is placed for delivery to a crematory and subsequently cremated with the body.

E. "Crematory authority" means an authorized representative of a crematory.

F. "Urn" means a [cremains] cremated remains container considered to be decorative, that varies in size, styling and composition.
[11/21/1986...9/26/1993; 16.64.10.7 NMAC - Rn & A, 16 NMAC 64.10.7, 9/15/2001; A, 11/1/2019]

16.64.10.8 CREMATION PRACTICES:

A. No cremation shall take place until all necessary documentation is obtained or a court order has been issued authorizing the cremation; such documentation shall include:

(1) signed authorization by the authorizing agent(s);

(2) signed permit from the office of the medical investigator of the state, or its equivalent if the death occurred outside this state; provided no such permit shall be required for the cremation of fetal deaths; and

(3) any other form(s) which may be required by the crematory in order for the cremation to take place.

B. For acceptance by the crematory, a dead human body must be enclosed in an acceptable cremation container and identification of the dead body must be noted on the outside of the cremation container.

(1) A cremation container is considered acceptable if it meets or exceeds the following minimum standards:

(a) is composed of a suitable combustible material;

(b) is rigid and secure for handling with ease, which includes a rigid bottom and full dome enclosure;

(c) provides for complete covering of the enclosed dead human body; and

(2) A cremation container is considered unacceptable if it is composed of any explosive material or such other material as fiberglass, plastic resin compound, or other synthetic material not suitable for combustion in a cremation retort.

(3) Any crematory may make its own requirements as to the acceptability of a cremation container, provided they are not less than outlined in 16.64.10 NMAC, and are not otherwise in any way in violation of any statute, ordinance or rule.

C. The crematory authority may require that all pacemakers, radium implants and all explosive devices implanted in the body, or attached thereto, be removed, at the expense of the authorizing agent(s), prior to the cremation.

D. The unauthorized simultaneous cremation of more than one dead human body within the same cremation retort is specifically prohibited.

E. A crematory may simultaneously cremate more than one dead human body in the same cremation retort upon receipt of written authorization to do so from the authorizing agent(s) of each dead human body. Such written authorization shall also exempt the crematory authority from all liability in commingling the [eremains] cremated remains of simultaneous cremation.

F. No crematory authority shall be required to simultaneously cremate more than one dead human body even if authorized by the authorizing agent(s).

G. Immediately prior to placing a dead human body into the cremation retort, the identification of the cremation container shall be verified and identification of the body shall be placed on the cremation retort panel, where it shall remain in place until the cremation is completed.

H. To the extent that is reasonably practical, all residue of each cremation shall be removed from the cremation retort, and shall not be commingled with any other [eremains] cremated remains unless directed by the authorizing agent(s) and agreed to by the crematory authority.

I. All body prosthetics, dental work or similar items separated from any [eremains] cremated remains shall be disposed

of by the crematory authority, unless otherwise ordered by the authorizing agent(s) at the time the cremation authorization is executed.

J. Properly identified [eremains] cremated remains shall be placed in a [eremains] cremated remains container as directed by the authorizing agent(s) or crematory authority. The crematory authority is required to provide [a-eremains] cremated remains of adequate size to accommodate all the [eremains] cremated remains from each cremation unless a [eremains] cremated remains container is furnished by the authorizing agent(s). In either case, the crematory authority shall have a written agreement with the authorizing agent(s) if the [eremains] cremated remains container is not of sufficient size to enclose the [eremains] cremated remains.

K. [eremains] Cremated remains may be disposed in any lawful manner by any establishment, crematory authority, cemetery or person having the right to control the disposition of the [eremains] cremated remains, or that person's agent.

L. Establishments and crematories shall keep an accurate record of all cremations performed, and the place of disposition of the [eremains] cremated remains, for a period of not less than seven years.

M. Any legal forms for cremation authorization shall contain wording that will hold harmless a crematory authority, or establishment from disposing of unclaimed [eremains] cremated remains in any lawful manner after a period of one year.

[11/21/1986...9/26/1993; 16.64.10.8 NMAC - Rn & A, 16 NMAC 64.10.8, 9/15/2001; A, 11/1/2019]

HISTORY OF 16.64.10 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation 17, Cremation, 4/15/1991. Reg. 18, Cremation Practices, 8/27/1993.

TB 86-2, Crematory Rules and Regulations, 10/22/1986.

Section 1, Crematory Rules and Regulations - Terminology (Definitions), 12/9/1988.

Section 3, Crematory Rules and Regulations - Cremation Requirements, 12/9/1988.

Section 4, Crematory Rules and Regulations - Cremation of Human Remains, 12/9/1988.

Section 5, Crematory Rules and Regulations - Processing of Cremated Remains, 12/9/1988.

Section 6, Crematory Rules and Regulations - Disposition of Cremated Remains, 12/9/1988.

History of Repealed Material:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT MESSAGE BOARD

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 8/27/2019 hearing, 16.7.1 NMAC, Massage Therapists - General Provisions filed 5/29/2001. The Board has decided to repeal 16.7.1 NMAC, Massage Therapists - General Provisions filed 5/29/2001 and replace it with 16.7.1 NMAC, Massage Therapists - General Provisions, adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 8/27/2019 hearing, 16.7.2 NMAC - Massage Therapists - Professional Conduct filed 5/29/2001. The Board has decided to repeal 16.7.2 NMAC - Massage Therapists - Professional Conduct filed 5/29/2001 and replace it with 16.7.2 NMAC - Massage Therapists - Professional Conduct, adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 8/27/2019 hearing, 16.7.3 NMAC, Massage Therapists - Fees filed 5/29/2001. The Board has decided to repeal 16.7.3 NMAC,

Massage Therapists - Fees filed 5/29/2001 and replace it with 16.7.3 NMAC, Massage Therapists - Fees, adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 8/27/2019 hearing, 16.7.4 NMAC, Requirements for Licensure filed 6/28/2005. The Board has decided to repeal 16.7.4 NMAC, Requirements for Licensure filed 6/28/2005 and replace it with 16.7.4 NMAC, Requirements for Licensure, adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 8/27/2019 hearing, 16.7.5 NMAC, Requirements for Schools filed 5/29/2001. The Board has decided to repeal 16.7.5 NMAC, Requirements for Schools filed 5/29/2001 and replace it with 16.7.5 NMAC, Requirements for Schools, adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 8/27/2019 hearing, 16.7.6 NMAC, Requirements for Instructors filed 5/29/2001. The Board has decided to repeal and reserve 16.7.6 NMAC, Requirements for Instructors filed 5/29/2001. Adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 8/27/2019 hearing, 16.7.7 NMAC, Students filed 5/29/2001. The Board has decided to repeal 16.7.7 NMAC, Students filed 5/29/2001 and replace it with 16.7.7 NMAC, Students, adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 8/27/2019 hearing, 16.7.10 NMAC - Massage Therapists - Examinations filed 5/29/2001. The Board has decided to repeal 16.7.10 NMAC - Massage Therapists -

Examinations filed 5/29/2001 and replace it with 16.7.10 NMAC - Massage Therapists - Examinations, adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 8/27/2019 hearing, 16.7.11 NMAC - Massage Therapists - Continuing of Education filed 5/29/2001. The Board has decided to repeal 16.7.11 NMAC - Massage Therapists - Continuing of Education filed 5/29/2001 and replace it with 16.7.11 NMAC - Massage Therapists - Continuing of Education, adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 08/27/2019 hearing, 16.7.12 NMAC - Massage Therapists - License/Registration Renewal filed 5/23/2005. The Board has decided to repeal 16.7.12 NMAC - Massage Therapists - License/Registration Renewal filed 5/23/2005 and replace it with 16.7.12 NMAC - Massage Therapists - License/Registration Renewal, adopted 10/17/2019 and effective 11/16/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 08/27/2019 hearing, 16.7.14 NMAC - Massage Therapists - Complaints filed 5/29/2001. The Board has decided to repeal 16.7.14 NMAC - Massage Therapists - Complaints filed 5/29/2001 and replace it with 16.7.14 NMAC - Massage Therapists - Complaints, adopted 10/16/2019 and effective 11/15/2019.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 08/27/2019 hearing, 16.7.16 NMAC - Massage Therapists - Parental Responsibility Act Compliance filed 5/29/2001. The Board has decided to repeal 16.7.16 NMAC - Massage Therapists - Parental Responsibility Act Compliance filed 5/29/2001 and replace it with 16.7.16 NMAC - Massage Therapists - Parental

Responsibility Act Compliance, adopted 10/16/2019 and effective 11/15/2019.

REGULATION AND LICENSING DEPARTMENT MESSAGE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 1 GENERAL PROVISIONS

16.7.1.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board. [16.7.1.1 NMAC - Rp, 16.7.1.1 NMAC, 11/15/2019]

16.7.1.2 SCOPE: This part applies to the board, licensees, registrants, applicants, and the general public. [16.7.1.2 NMAC - Rp, 16.7.1.2 NMAC, 11/15/2019]

16.7.1.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Subsections E and F of Section 61-12C-7, Subsection A of Section 61-12C-8 and Section 61-12C-11 NMSA 1978. [16.7.1.3 NMAC - Rp, 16.7.1.3 NMAC, 11/15/2019]

16.7.1.4 DURATION: Permanent. [16.7.1.4 NMAC - Rp, 16.7.1.4 NMAC, 11/15/2019]

16.7.1.5 EFFECTIVE DATE: November 15, 2019, unless a later date is cited at the end of a section. [16.7.1.5 NMAC - Rp, 16.7.1.5 NMAC, 11/15/2019]

16.7.1.6 OBJECTIVE: This part is to establish the requirements for display of licenses and certificates, name change, address change, verification of licensure procedures, board meetings, and

inspection of public records.
[16.7.1.6 NMAC - Rp, 16.7.1.6 NMAC, 11/15/2019]

16.7.1.7 DEFINITIONS:

A. "Academic hour"
means a credit hour or semester hour taken in an academic setting that is equivalent to 15 class or contact hours.

B. "Active status"
means a license that is current and authorized the licensee or registrant to perform the practice or service authorized by the license or registration.

C. "Board" means the New Mexico board of massage therapy, hereinafter referred to as the board.

D. "Board administrator" or "administrator"
means the staff person assigned certain express or implied executive and administrative function of the board as defined by board regulations or as required to carry out the provisions of the act.

E. "Class hour" or "contact hour" means no less than 50 minutes of any one-clock hour during which the student/massage therapist participates in a learning activity in the physical presence and under the tutelage of an instructor.

F. "Client" means a recipient of "professional services" or a massage therapy student. In the case of individuals not able to give legal consent their legal guardian shall be the client for decision making purposes.

G. "Clinical practicum" means that a student is providing hands-on massage therapy to members of the public under the supervision of a massage therapy instructor. That instructor must be physically present on the premises for advice and assistance. The student must be enrolled at a registered massage therapy school or being trained by a massage therapy instructor. Clinical practicum does not include classroom practice.

H. "Compensation"
means a gain, whether monetary, trade or barter, for massage therapy services.

I. "Complainant"
means the complaining party of a complaint filed against a licensee(s), registrant(s), or applicant(s) for licensure or registration.

J. "Complaint"
means a sworn written complaint.

K. "Confidential information" means personally identifiable information revealed by a client.

L. "Continuing Education Provider" means:

(1) an individual who was an active New Mexico registered independent massage therapy instructor on February 4, 2019;

(2) a massage therapy school regulated by the requisite regulatory agency where the massage therapy school is located;

(3) a national or international professional association for massage therapists;

(4) an individual or an organization approved by a national or international massage therapy continuing education approval agency;

(5) a health care professional organization; or

(6) an accredited post-secondary educational institution.

M. "Curriculum"
means the subject that will be taught, including the knowledge, skills, and abilities, as required in the course syllabus, that students will acquire from the course.

N. "Examining agency" means the national certification board for therapeutic massage and bodywork (NCBTMB) or the federation of state massage therapy boards (FSMTB), or other examination or certification agency approved by the board.

O. "Expired status"
means a license that has not been reactivated from inactive status and can no longer be reactivated.

P. "Grace period"
refers to the 60 day period following the renewal date when a massage therapist, licensee, or massage school

registrant may renew a license or registration (that was not renewed timely) with a penalty fee. A licensee or registrant may still practice or provide the services authorized by the license or registration during those 60 days.

Q. "Grace period status" refers to the license or registration that has not been renewed by the renewal date assigned to it, but has not yet been placed on inactive status.

R. "Hands-On" refers to a massage modality or technique that involves palpation or soft tissue manipulation.

S. "Inactive status"
occurs when a massage therapist's license is not renewed by the end of the grace period allowed for in the licensee's renewal cycle.

A license can also be placed on inactive status for a period of two years. If the inactive license is not reactivated within those two years, it automatically expires, lapses and becomes null and void.

T. "Inactive status period" refers to a period not to exceed two years and only applies to massage therapists. Massage therapists may not practice during their inactive status period.

U. "Jurisprudence"
means an examination covering the Massage Therapy Practice Act and the board's rules and regulations, 16.7 NMAC.

V. "Lapsed status"
means the license or registration is null and void, is no longer valid and cannot be reactivated.

W. "Licensee" means a person whose professional conduct is subject to regulation by the board.

X. "Manual" means by use of hands or body.

Y. "Massage therapist" means a person licensed to practice massage therapy pursuant to the New Mexico Massage Therapy Practice Act, Subsection E of Section 61-12C-E NMSA 1978.

Z. "Massage therapy" means the treatment of soft tissues for therapeutic purposes, primarily comfort and relief of

pain; it is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, bodywork, body rub or any derivation of those terms. "Massage therapy" does not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic, physical therapy, occupational therapy, acupuncture or podiatry is required by law.

AA. "Massage Therapy Practice Act" refers to Sections 61-12C-1 NMSA 1978 et seq. (as amended through 2019).

BB. "Massage therapy school" means a facility providing an educational program in massage therapy.

CC. "MBLEx" means the massage and bodywork licensing examination, as offered by the federation of state massage therapy boards "FSMTB".

DD. "Mechanical" means any tool or device that mimics or enhances the actions possible by the hands.

EE. "National certification examination" means the national certification examination for therapeutic massage and bodywork (NCETMB) or the national certification examination for therapeutic massage (NCETM).

FF. "Notice of contemplated action" means the administrative process used by the board for a licensee, registrant or applicant for licensure or registration to be afforded notice and an opportunity to be heard in a formal hearing before the board, before the board has authority to take any action which would result in denial, suspension, revocation, restriction, probation, monitoring, censuring, etc., of a license, registration, application or licensure or registration.

GG. "Null and void status" means the license or registration is no longer valid and cannot be reactivated.

HH. "Official examination results" means official pass/fail reports that the applicant has made arrangements to be sent directly to the board by the national certification board for therapeutic massage and bodywork or the federation of state massage therapy boards.

II. "Official transcripts" means those transcripts provided to the board office by the massage therapy school where the applicant received training.

JJ. "Permanent license" means a license issued once the applicant has met all the requirements for licensure as set forth in this regulation, but which must be kept updated by meeting the board's renewal and continuing education requirements, and which is subject to disciplinary action by the board for violations of the board's statute or regulations, up to an including revocation.

KK. "Professional massage therapy experience" means lawful massage therapy services performed for compensation.

LL. "Professional relationship" means a business relationship between a licensee and a client for the purpose of the client obtaining the licensee's "professional services.

MM. "Professional services" means all actions of the licensee in the context of a "professional relationship" with a client.

NN. "Related hands-on modalities" means manual therapies, not directly defined as massage therapy.

OO. "Renew" means to begin again after an interval of time; to make valid again for a further period.

PP. "Renewal date" means the deadline date upon which the license or registration must be made valid again for another period of time.

QQ. "Respondent" means a licensee, registrant or applicant for licensure or registration who is governed under the Massage Therapy Practice Act, and who is the subject of a complaint.

RR. "Sexual conduct" includes, but is not limited to, sexual intercourse, indecent exposure, sexual assault, non-therapeutic anogenital contact or any offer or agreement to engage in any such activities.

SS. "Soft tissue" includes skin, adipose, muscle and myofascial tissues.

TT. "Student" means an individual currently enrolled in or attending class(es) in a massage therapy program under the jurisdiction of the New Mexico state board of massage therapy.

UU. "Syllabus" means a detailed outline of a course including at least: the name of the course, course description, goals and objectives, required prerequisites, number of educational hours, detailed timeline, provisions for make-up work, required text, and reading resources, instructional materials and handouts, requirements for successful completion and method of evaluation.

VV. "Teaching assistant" means an individual who assists an instructor in class. Any instruction to students must be performed while under the direct supervision of the instructor.

WW. "Temporary license" means a license issued one-time only for a maximum period of three months to practice massage therapy while the application for permanent license is in process, and which may only be issued to applicants who have never sat for a licensing examination.

XX. "Treatment of soft tissues" is the repetitive manipulation of soft tissues from more than one anatomical point by manual or mechanical means to accomplish homeostasis or pain relief in the tissues being deformed.

YY. "Uniform Licensing Act" refers to Sections 61-1-1 NMSA 1978 et seq. (as amended through 2003).

[16.7.1.7 NMAC - Rp, 16.7.1.7 NMAC, 11/15/2019]

16.7.1.8 SCOPE OF PRACTICE: As defined by the Massage Therapy Practice Act, the practice of massage therapy consists of the assessment of the soft tissue structures of the body; the treatment and prevention of physical dysfunction and pain of soft tissue; and joint movement within normal physiologic range of motion to relieve pain or to develop, maintain, rehabilitate or augment physical function.

[16.7.1.8 NMAC - Rp, 16.7.1.8 NMAC, 11/15/2019]

16.7.1.9 MASSAGE THERAPY LICENSE AND REGISTRATION:

A. License/ registration display:

(1) A current license/registration must be displayed and must be visible to the public in the principal place of employment or business of the massage therapist or registrant;

(2) A licensee/registrant must practice massage therapy or provide massage therapy training under the name inscribed on the license or registration;

B. Duplicate/ replacement license or wall certificate:

(1) The board will issue a duplicate/replacement license or upon receipt of a written request which states the reason for such duplication or replacement (for example: it was lost, stolen, destroyed; or name was legally changed). A replacement license is available for a fee as defined in Subsection D 16.7.3.8 NMAC; and

(2) The records of the board are to reflect that a duplicate/replacement license or wall certificate was issued.

C. Name change:

(1) Any name change requires that a replacement license or registration be issued. The board will issue a replacement license or registration upon receipt of a copy

of the legal document (*only* marriage certificate, divorce decree or court order accepted). A change of name form is available from the board's website or from the board office; and

(2) A licensee or registrant not wishing to request a replacement license or registration must continue to use the name as initially issued on the license or registration, until the requirements of Paragraph 1 of Subsection C of 16.7.1.8 NMAC, above have been met.

D. Address change:

Licenses and registrations are mailed to the license or registration holder's last mailing address as noted in the records of the board. Therefore, licensees and registrants shall maintain a current mailing address with the board by immediately notifying the board office in writing whenever a change of an address has occurred. A change of address form is available from the board's website or from the board office.

E. License and registration property of the board:

All licenses and registrations are the property of the board and will immediately be returned to the board upon request.

[16.7.1.9 NMAC - Rp, 16.7.1.9 NMAC, 11/15/2019]

16.7.1.10 INSPECTION OF BOARD RECORDS:

A. The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-16 NMSA 1978.

B. The board administrator is the custodian of the board's records.

C. Any one may examine all public records in the board's custody, provided the person gives advance notice to the board administrator in accordance with the Inspection of Public Records Act.

D. The board may provide copies of public records upon request and upon payment of a copying fee in accordance with Subsection D of 16.7.3.8 NMAC, or as may be ordered by a court of competent jurisdiction.

E. Only the board's staff is authorized to remove original board documents from the board's office for the purpose of attending board or committee meetings or other board business.

F. The board office is not obligated to create lists, labels or any other materials that are not already in existence.

[16.7.1.10 NMAC - Rp, 16.7.1.10 NMAC, 11/15/2019]

16.7.1.11 PUBLIC

RECORDS: Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions, motions, exhibits, decisions and orders entered following formal disciplinary proceedings conducted pursuant to the Uniform Licensing Act are matters of a public record as of the time of filing with or by the board.

[16.7.1.11 NMAC - Rp, 16.7.1.11 NMAC, 11/15/2019]

16.7.1.12 NON-PUBLIC RECORDS:

A. Except as provided herein and except as otherwise provided by law, the following records will be considered confidential and are not subject to public inspection:

- (1) letters of reference;
- (2) medical reports or records of chemical dependency, physical or mental examinations or treatment;
- (3) examination scores; the contents of any examination used to test for an individual's knowledge or competence;
- (4) investigative files; and
- (5) matters of opinion.

B. Only board members and board staff may have access to non-public records, unless approved by the board attorney or ordered by a court of competent jurisdiction.

[16.7.1.12 NMAC - Rp, 16.7.1.12 NMAC, 11/15/2019]

16.7.1.13 TELEPHONE CONFERENCES: If it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate through telephone conference. Each member participating by telephone conference must be identified when speaking; all participants must be able to hear each other at the same time; and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[16.7.1.13 NMAC - Rp, 16.7.1.13 NMAC, 11/15/2019]

HISTORY OF 16.7.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under: Rule 92-1, Definitions, 1/17/1992. Rule 92-1, Definitions, 9/9/1992. Regulation 1, Definitions, 1/5/1994.

History of Repealed Material:

16.7.1 NMAC - Massage Therapists - General Provisions filed 5/29/2001, Repealed effective 11/15/2019.

Other History:

16.7.1 NMAC, Massage Therapists - General Provisions filed 5/29/2001 was replaced by 16.4.1 NMAC, 16.7.1 NMAC, Massage Therapists - General Provisions effective 11/15/2019.

REGULATION AND LICENSING DEPARTMENT MASSAGE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 2 PROFESSIONAL CONDUCT

16.7.2.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board. [16.7.2.1 NMAC - Rp 16.7.2.1 NMAC, 11/15/2019]

16.7.2.2 SCOPE: This part applies to the conduct of licensees and applicants.

[16.7.2.2 NMAC - Rp 16.7.2.2 NMAC, 11/15/2019]

16.7.2.3 STATUTORY

AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Subsection J of Section 61-12C-8 NMSA 1978.

[16.7.2.3 NMAC - Rp 16.7.2.3 NMAC, 11/15/2019]

16.7.2.4 DURATION:

Permanent.

[16.7.2.4 NMAC - Rp 16.7.2.4 NMAC, 11/15/2019]

16.7.2.5 EFFECTIVE

DATE: November 15, 2019, unless a different date is cited at the end of a section.

[16.7.2.5 NMAC - Rp 16.7.2.5 NMAC, 11/15/2019]

16.7.2.6 OBJECTIVE:

This part is to establish the standards against which the required professional conduct of a massage therapist is measured. Each licensee will be governed by this part whenever providing massage therapy services in a professional context. A violation of this part is sufficient reason for disciplinary action pursuant to the Massage Therapy Practice Act under the Uniform Licensing Act.

[16.7.2.6 NMAC - Rp 16.7.2.6 NMAC, 11/15/2019]

16.7.2.7 DEFINITIONS:

(Refer to 16.7.17 NMAC).

[16.7.2.7 NMAC - Rp 16.7.2.7 NMAC, 11/15/2019]

16.7.2.8 CODE OF PROFESSIONAL CONDUCT:

A. Competence: Each licensee and applicant shall:

(1) limit practice and instruction to the areas of competence in which proficiency has been gained through education, training, and experience and refer clients to other health professionals when appropriate;

(2) acknowledge the limitations of and contraindications to massage therapy and will not encourage unnecessary or unjustified treatment; and

(3) not delegate professional responsibilities to a person who is not qualified or licensed to perform them;

B. Dual relationship:

It is presumed that a power imbalance exists in professional relationships between licensees and clients.

Therefore each licensee, in interacting with a client or former client to whom the licensee has at anytime within the previous three months rendered massage therapy or instruction, shall not engage in romantic or sexual conduct.

C. Client welfare:

Each licensee and applicant shall:

(1) conduct their business and professional activities with honesty and integrity;

(2) obtain

prior informed consent of the client regarding draping and treatment to ensure the safety, comfort and privacy of the client;

(3) provide privacy for the client while the client is dressing or undressing;

(4) modify or terminate treatment at the client's request, regardless of prior consent;

(5) refuse to treat any person or part of the body for just and reasonable cause;

(6) not undertake or continue treatment with a client when the licensee is impaired due to mental, emotional or physiologic conditions including substance or alcohol abuse;

(7) maintain clean equipment, linens, clothing and work areas;

(8) not engage in any verbally or physically abusive behavior; or

(9) take unfair advantage of the client for financial gain.

D. Confidentiality of clients: Each licensee shall safeguard confidential information of the client, unless disclosure is required by

law, court order, authorized by the client or absolutely necessary for the protection of the public.

E. Representation of services: Each licensee and applicant shall:

- (1) disclose to the client the schedule of fees for services prior to treatment;
- (2) not misrepresent directly or by implication of his professional qualifications such as type of licensure, education, experience, or areas of competence;
- (3) not falsify professional records;
- (4) include in any advertisement for massage;
 - (a) his full name as licensed with the board and license number; and
 - (b) the designation or abbreviation as a "licensed massage therapist" or "LMT and "registered massage therapy school" or "RMTS".
- (5) When offering gratuitous services or discounts in connection with professional services, each licensee must clearly and conspicuously state whether or not additional charges may be incurred by related services and the possible range of such additional charges; and
- (6) not advertise massage therapy services or instruction, which contains:
 - (a) a false, fraudulent, misleading, deceptive statement; or
 - (b) suggestion of sexual stimulation.

F. Violation of the law: Each licensee and applicant shall *not*:

- (1) violate any applicable statute or administrative regulation governing the practice of massage therapy;
- (2) use fraud, misrepresentation, or deception in obtaining a massage therapy license or renewal, in passing a massage therapy licensing examination, in assisting another to obtain a massage therapy license or to pass a massage

therapy licensing examination, in providing massage therapy services, or in conducting any other activity related to the practice of massage therapy; or

- (3) be convicted of any crime that substantially relates to the qualifications, functions, or duties of a massage therapist.

G. Resolving professional conduct issues: Each licensee and applicant shall:

- (1) have an obligation to be familiar with this part. Lack of knowledge of professional conduct standard is not itself a defense to a charge of unethical conduct;
- (2) cooperate with investigations, proceedings, and resulting requirements of this part. Failure to cooperate is itself an ethics violation.

[16.7.2.8 NMAC - Rp 16.7.2.8 NMAC, 11/15/2019]

HISTORY OF 16.7.2 NMAC:
[RESERVED]

History of Repealed Material:
16.7.2 NMAC - Massage Therapists - Professional Conduct filed 5/29/2001, Repealed effective 11/15/2019.

Other History:
16.7.2 NMAC - Massage Therapists - Professional Conduct filed 5/29/2001 was replaced by 16.7.2 NMAC - Massage Therapists - Professional Conduct filed 5/29/2001 effective 11/15/2019.

**REGULATION AND LICENSING DEPARTMENT
MESSAGE BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 7 MASSAGE THERAPISTS
PART 3 FEES**

16.7.3.1 ISSUING AGENCY: Regulation and Licensing Department, Massage Therapy Board.

[16.7.3.1 NMAC - Rp 16.7.3.1 NMAC, 11/15/2019]

16.7.3.2 SCOPE: This part applies to licensees, registrants, and applicants for licensure and registration.

[16.7.3.2 NMAC - Rp 16.7.3.2 NMAC, 11/15/2019]

16.7.3.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Section 61-12C-20 NMSA 1978.

[16.7.3.3 NMAC - Rp 16.7.3.3 NMAC, 11/15/2019]

16.7.3.4 DURATION: Permanent.

[16.7.3.4 NMAC - Rp 16.7.3.4 NMAC, 11/15/2019]

16.7.3.5 EFFECTIVE DATE: November 15, 2019, unless a later date is cited at the end of a section.

[16.7.3.5 NMAC - Rp 16.7.3.5 NMAC, 11/15/2019]

16.7.3.6 OBJECTIVE: This part is to establish the required fees for application, examination, licensure, registration, renewal, reactivation of a license, duplicate/ replacement license or certificate, verification of licensure or registration, and such other fees as determined by the board.

[16.7.3.6 NMAC - Rp 16.7.3.6 NMAC, 11/15/2019]

16.7.3.7 DEFINITIONS: (Refer to 16.7.1.7 NMAC).

[16.7.3.7 NMAC - Rp 16.7.3.7 NMAC, 11/15/2019]

16.7.3.8 FEE SCHEDULE:
A. Massage therapist:

- (1) Application: \$75.00.
- (2) Initial license: Pro-rated \$5.00/mo.
- (3) Temporary license: \$25.00.
- (4) Biennial renewal: \$125.00.

(5) Late renewal penalty: \$75.00.
 (6) Renewal during the grace period: \$125.00 plus late renewal penalty fee.
 (7) Reactivation from inactive status: \$125.00 plus late renewal penalty fee.
 (8) Review fee for "other" elective courses as provided in 16.7.4.14 NMAC: \$50.00.

B. Massage therapy school:

(1) Registration: \$50.00.
 (2) Annual renewal: \$50.00.
 (3) Late renewal penalty: \$75.00.
 (4) Application review: \$400.00.
 (5) Curriculum change review: \$50.00.

C. Administrative fees:

(1) Paper lists: \$50.00.
 (2) Labels: \$75.00.
 (3) Electronic list: \$125.00.
 (4) Replacement license: \$25.00.
 (5) Verification of license \$15.00.
 (6) Other administrative fees (at the discretion of the board or board administrator) not to exceed \$500.00.

D. Continuing education fees:

(1) One-time fee for course taught by a continuing education provider who was an active New Mexico registered independent massage therapy instructor on February 4, 2019: \$50.00.
 (2) One-time application fee for a course taught by an individual or other entity who is not a continuing education provider, per each new course: \$50.00.

E. *All fees collected by the board are non-refundable.*
 [16.7.3.8 NMAC - Rp 16.7.3.8 NMAC, 11/15/2019]

HISTORY OF 16.7.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:
 Rule 92-6, Fees, 1/7/1992.
 Rule 92-6, Fees, 9/9/1992.
 Rule 92-6, Fees, 11/19/1992.
 Rule 6, Fees, 9/3/1993.
 Regulation 6, Fees, 1/5/1994.

History of Repealed Material:

16.7.3 NMAC - Massage Therapists - Fees filed 5/29/2001, Repealed effective 11/15/2019.

Other History:

16.7.3 NMAC - Massage Therapists - Fees filed 5/29/2001 was replaced by 16.7.3 NMAC - Massage Therapists - Professional Conduct filed 5/29/2001 effective 11/15/2019.

REGULATION AND LICENSING DEPARTMENT MASSAGE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 4 REQUIREMENTS FOR LICENSURE

16.7.4.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board.
 [16.7.4.1 NMAC - Rp, 16.7.4.1 NMAC, 11/15/2019]

16.7.4.2 SCOPE: This part applies to applicants for licensure.
 [16.7.4.2 NMAC - Rp, 16.7.4.2 NMAC, 11/15/2019]

16.7.4.3 STATUTORY AUTHORITY:

This part is adopted pursuant to the Massage Therapy Practice Act, Subsections B and C of Section 61-12C-8, Section 61-12C-9, and Section 61-12C-16 NMSA 1978 (1999).
 [16.7.4.3 NMAC - Rp, 16.7.4.3 NMAC, 11/15/2019]

16.7.4.4 DURATION:

Permanent.
 [16.7.4.4 NMAC - Rp, 16.7.4.4 NMAC, 11/15/2019]

16.7.4.5 EFFECTIVE DATE:

November 15, 2019, unless a later date is cited at the end of a section.
 [16.7.4.5 NMAC - Rp, 16.7.4.5 NMAC, 11/15/2019]

16.7.4.6 OBJECTIVE:

This part is to establish the minimum requirements for applicants applying for licensure by examination, temporary licensure and licensure by credentials, and to establish the licensure procedures.
 [16.7.4.6 NMAC - Rp, 16.7.4.6 NMAC, 7/28/2005]

16.7.4.7 DEFINITIONS:

(Refer to 16.7.1.7 NMAC).
 [16.7.4.7 NMAC - Rp, 16.7.4.7 NMAC, 11/15/2019]

16.7.4.8 LICENSE OR REGISTRATION REQUIRED:

A. Massage therapists: A person must be licensed by the board in order to legally provide or offer to provide massage therapy as defined in 16.7.1.7 NMAC; or to use the title or represent themselves to be a massage therapist; or to use any other title, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist.

B. Massage therapy schools:

Massage therapy schools must be registered by the board, as set forth in 16.7.5 NMAC, before they can legally operate and offer education, instruction or training in massage therapy.
 [16.7.4.8 NMAC - Rp, 16.7.4.8 NMAC, 11/15/2019]

16.7.4.9 LICENSURE EXEMPTIONS

A. The following are exempted from licensure by the board pursuant to the Massage Therapy Practice Act:

(1) qualified members of other recognized

professions that are licensed or regulated under New Mexico law when rendering services within the scope of their licenses or regulations, provided that they do not represent themselves as massage therapists;

(2) students within the course of study of a registered massage therapy school; and

(3) sobadores; Hispanic traditional healers; Native American healers; reflexologists whose practices are limited to hands, feet and ears; practitioners of polarity, Trager approach, Feldenkrais method, craniosacral therapy, Rolfing structural integration, reiki, orthobionomy or ch'i gung; or practitioners of healing modalities not listed in this subsection who do not manipulate the soft tissues for therapeutic purposes.

B. An exempt practitioner who applies for a license pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of the act and rules of the board.

[16.7.4.9 NMAC - Rp, 16.7.4.9 NMAC, 11/15/2019]

16.7.4.10 GENERAL PROVISIONS FOR LICENSURE:

A. Age: The applicant must be 18 years of age or older on the date the application is submitted.

B. Pre-requisite education to massage therapy training: The applicant must have completed high school or its equivalent.

C. Photograph: The applicant must provide a 2"x 2" passport photo taken of the applicant within the six months prior to making application for licensure.

D. Application fee: The applicant must pay the required application-processing fee as set forth in Subsection D of 16.7.3.8 NMAC of the board's regulations.

E. Board-approved application form: The applicant must provide a completed, legible board-approved application form that must either be typed or printed in black ink, along with any other documents required in the board's application process.

(1) incomplete application for licensure forms will be returned to the applicant for completion;

(2) faxed application for licensure forms will not be accepted.

F. First Aid and Cardiopulmonary Resuscitation (CPR):

The applicant must have completed four (4) contact course hours of cardiopulmonary resuscitation (CPR) to include automatic external defibrillator (CPR/AED) and four contact course hours of first aid and must provide proof, with the application, of current certification in basic life support accepted by EMS safety services, the American heart association, pro-training, LLC, or the American red cross. *No* on-line courses will be accepted. Courses must be maintained in current standing. [16.7.4.10 NMAC - Rp, 16.7.4.10 NMAC, 11/15/2019]

16.7.4.11 MASSAGE SCHOOL REQUIREMENT: The applicant for licensure as a massage therapist must have graduated from a massage therapy school approved to operate as a private post-secondary educational institution or its equivalent.

A. Out-of-state or multiple schools: The applicant who has graduated from an out-of-state massage therapy school or who has attended more than one massage therapy school must make arrangements for the school to provide the following items.

(1) the board's form "A" completed and submitted directly to the board by the massage therapy school(s) that the applicant attended as provided in 16.7.4.13 NMAC;

(2) an official transcript submitted directly to the board by the school(s) that meets the requirements in Subsection B of 16.7.4.11 NMAC;

(3) proof that the school is approved to operate as a private post-secondary educational institution or its equivalent. The

respective state's department of higher education usually grants this approval. The name of the agency or entity may vary from state to state.

B. Official transcripts of massage therapy training: The applicant shall make arrangements for official transcript(s) to be sent directly to the board by the educational institution documenting that the applicant has completed the minimum curricula of 650 hours of massage therapy training as provided in 16.7.4.12 NMAC.

(1) if more than one massage therapy school was attended, at least one official transcript must document a minimum of 300 class hours of training in massage therapy as defined in 16.7.4.7 NMAC above;

(2) continuing education (CE) or continuing education units (CEU) may be accepted toward the educational requirements for licensure;

(3) if official transcripts are not available due to unusual circumstances (example: school closure, destroyed records), the applicant will be responsible to provide satisfactory evidence to the board of completion of the required massage therapy training. The board shall consider such documentation on a case-by-case basis.

[16.7.4.11 NMAC - Rp, 16.7.4.11 NMAC 11/15/2019]

16.7.4.12 MINIMUM CURRICULA OF MASSAGE THERAPY TRAINING: The applicant must have completed at least the 650 hour minimum curricula of massage therapy training. The massage therapy training must meet the following minimum curriculum requirements:

A. one hundred sixty five (165) hours minimum of anatomy and physiology, to include:

- (1) physiology;
- (2) anatomy;
- (3) kinesiology; and
- (4) 40 hours minimum of pathology.

B. one hundred fifty (150) hours minimum of training in massage therapy as defined in 16.7.1.7 NMAC.

(1) the massage therapy training shall include contraindications of massage therapy;

(2) a minimum of 100 hours of hands on training must be completed before the student is allowed to begin a clinical practicum as defined in 16.7.1.7 NMAC.

C. seventy-five hours minimum of general instruction to include.

(1) business; effective October 31, 2021, minimum of 20 hours;

(2) hydrotherapy; effective October 31, 2021, minimum of eight hours;

(3) 30 hours minimum of professional ethics;

(4) four hours of first aid; and

(5) four hours of cardiopulmonary resuscitation to include automatic external defibrillation (CPR/AED).

D. Electives may include:

(1) additional massage therapy;

(2) related hands-on modalities;

(3) additional anatomy and physiology;

(4) clinical practicum (not to exceed 150 hours);

(5) counseling;

(6) herbology;

(7) homeopathy;

(8) nutrition;

(9) breathing

and stretching techniques;

(10) theory; and

(11) other

courses with prior board approval. See 16.7.4.14 NMAC for instructions.

E. The total number of hours in the massage therapy program is a minimum of 650 hours.

F. If an applicant is missing a core curriculum course or is missing a small portion of the core curriculum to complete the 650

hour requirement, the applicant may obtain the training course(s) from a continuing education provider, or from a massage therapy school that meets the requirements in 16.7.4.13 NMAC.

G. The board will accept professional work experience (not to exceed 150 hours) from applicants with documented proof accounting for all hours by completing Form C. These hours must have been performed legally and the applicant must provide proof of licensure or registration during the time the work was performed. [16.7.4.12 NMAC - Rp, 16.7.4.12 NMAC, 11/15/2019]

16.7.4.13 FORM "A" FROM MASSAGE SCHOOL REQUIREMENT:

A. The following circumstances require that the applicant's massage school(s) submit a completed "form A for massage school" to the board office along with an official transcript and proof that the massage therapy school(s) is/was approved to operate as a private post-secondary educational institution or its equivalent at the time the applicant attended the school(s):

(1) if the applicant attended a massage school that is located out-of-state; or

(2) if the applicant has attended more than one massage therapy school whether in-state or out-of-state; or

(3) if the applicant graduated from a massage therapy school more than two years ago.

B. The "form A for massage school" contains four sections corresponding to Subsections A, B, C, and D of 16.7.4.12 NMAC, and each section must be completed correctly to prevent delays in the applicant's licensure process.

(1) an hourly breakdown must be provided for each course/category/subject listed that the school provided in the curriculum that the applicant completed. If a subject is taught within another subject, the school should provide a written

explanation on school letterhead and attached to the form "A";

(2) If there are no hours specified next to a course/category/subject, it will be an indication to the board that the course/category/subject was NOT part of the school's curriculum.

[16.7.4.13 NMAC - Rp, 16.7.4.13 NMAC, 11/15/2019]

16.7.4.14 ELECTIVE COURSES IN THE "OTHER" CATEGORY:

If an applicant has attended a massage therapy training program that is not a registered massage therapy school or provides proof of completion of elective courses that falls under the "other" category in Paragraph (11) of Subsection D of 16.7.4.12 NMAC, the course(s) will be reviewed on a case-by-case basis and may be accepted by the board. The applicant must provide the following.

A. A separate written request for consideration of the course(s).

B. An official transcript that clearly names the course(s) to be considered.

C. A copy of the school catalog that clearly describes the course(s) to be considered. In accordance with Paragraph (2) of Subsection B of 16.7.4.11 NMAC, continuing education will *NOT* be accepted.

D. An administrative review fee as set forth in Paragraph 7 of Subsection A of 16.7.3.8 NMAC. [16.7.4.14 NMAC - Rp, 16.7.4.14 NMAC, 11/15/2019]

16.7.4.15 DOCUMENTS IN A FOREIGN LANGUAGE:

Any document submitted in a foreign language must be accompanied by an accurate translation in English.

A. each translated document must bear the affidavit of the certified translator attesting to it being a true and complete translation of the original document;

B. the affidavit must also contain the translator's contact information, including name, address and phone number of the organization

that granted the translator certification;

C. each translated document must bear a notary seal and signature swearing that the document is that of the applicants; and

D. translation of any document relevant to a person's application will be at the expense of the applicant.

[16.7.4.15 NMAC - Rp, 16.7.4.15 NMAC, 11/15/2019]

16.7.4.16 SPECIFIC PROVISIONS FOR A

TEMPORARY LICENSE: A license issued one time only for a maximum period of three months to practice massage therapy while the application for permanent license is in process, and which may only be issued to applicants who have never sat for a licensing examination.

A. Qualifications for temporary license:

(1) the applicant for temporary license must meet all the requirements set forth in Sections 16.7.4.10 through 16.7.4.15 NMAC;

(2) the applicant for temporary license must not have previously sat for a certification examination for therapeutic massage and bodywork (NCETMB), the national certification examination for therapeutic massage (NCETM), the massage board licensing examination (MBLEx), or other examining or certification agency approved by the board;

(3) the applicant may obtain a temporary license while waiting to sit for the national examination;

(4) upon submitting the application for licensure, the applicant for a temporary license must submit a temporary license fee, as set forth in Subsection D of 16.7.3.8 NMAC;

(5) the board may deny issuance of a temporary license for the same reasons a permanent license may be denied.

B. Issuance of the temporary license:

(1) the applicant for temporary license may not begin work until the temporary license has been issued by the board, has been received by the licensee, and has been publicly posted in principal place of practice;

(2) the temporary licensee may *not* advertise in the yellow pages or other similar advertising book;

(3) the temporary licensee must keep the board informed at all times of any change in address and contact phone number(s);

(4) if the temporary license has not yet expired and the board receives official notice that the temporary licensee has passed a national examination, the temporary license will automatically become null and void. Provided that all other requirements have been met, a permanent license will be issued when payment of the initial license fee has been made.

C. Surrender of temporary license required:

(1) if a temporary license holder fails the national examination, the temporary license immediately becomes null and void and must be surrendered directly to the board office within 15 days of the examination date; and the privileges to practice authorized by the temporary license are no longer valid;

(2) Expired or null and void temporary licenses shall be surrendered to the board;

(3) If an applicant, who holds a temporary license that must be surrendered, has misplaced or lost the temporary license and cannot return it to the board as required, the applicant must provide the board with an affidavit attesting that the license has been lost or misplaced and that the applicant is no longer practicing massage therapy. [16.7.4.16 NMAC - Rp, 16.7.4.16 NMAC, 11/15/2019]

16.7.4.17 SPECIFIC PROVISION FOR PERMANENT LICENSURE: The applicant must

meet all the requirements set forth in Sections 16.7.4.10 through 16.7.4.15 NMAC, in addition to the following requirements:

A. Jurisprudence examination: The applicant for permanent licensure must successfully pass the board's jurisprudence examination as set forth in 16.7.10.8 NMAC.

B. Pass a licensing or certification exam approved by the board (including MBLEx, NCETM or NCETMB), and must make arrangements for the national examining agency to send official examination results, as defined in 16.7.4.7 NMAC, directly to the board.

C. Licensure fee: Upon written notification, sent by the board that the applicant has met all other requirements for licensure, the applicant must submit the initial license fee as stated in the notification based on the fee structure set forth in Subsection A of 16.7.3.8 NMAC.

(1) the initial licensure fee must be paid in full before the permanent license will be issued;

(2) if the applicant fails to pay the initial license fee within 30 days of receipt of the notification of approval, the application will be deemed withdrawn and subject to the provisions in 16.7.4.19 NMAC.

[16.7.4.17 NMAC - Rp, 16.7.4.17 NMAC, 11/15/2019]

16.7.4.18 REQUIREMENTS FOR LICENSURE BY CREDENTIALS:

A. In addition to the requirements in Sections 16.7.4.10 through 16.7.4.15 and 16.7.4.17 NMAC, the applicant for licensure by credentials must provide verification of a current, valid massage therapy license in another state/territory of the United States, the District of Columbia or foreign nation.

(1) verification of licensure or registration as a massage therapist must be sent directly to the board by the other licensing jurisdiction;

(2) the license to practice massage therapy must be in good standing. A prior disciplinary action by another licensing jurisdiction, related to health, safety and welfare, or any other civil or criminal issues will be evaluated by the board on a case by case basis. The review may lead to the issuance of a conditional or provisional license or to other disciplinary action up to and including denial of licensure.

B. The applicant must have met educational and examination requirements in the other jurisdiction equal to or exceeding New Mexico's educational and examination requirements.

[16.7.4.18 NMAC - Rp, 16.7.4.18 NMAC, 11/15/2019]

16.7.4.19 APPLICATION EXPIRATION, WITHDRAWAL, AND DESTRUCTION:

A. Expiration or withdrawal of application: The application for licensure expires as follows and all previously paid fees will be forfeited if:

(1) the applicant fails to complete all requirements for temporary or permanent licensure within one year from the date the applicant's application file is started by board office staff; or

(2) the applicant withdraws the application, either by notifying the board in writing or by not paying the initial license fee within the time allowed in Subsection C of 16.7.4.17 NMAC.

B. If the applicant still wishes to seek licensure after the application has expired or been withdrawn and it is still within one year after the application expired was withdrawn, the applicant shall complete the following procedure.

(1) Submit a "reapplication form for withdrawn or expired application;"

(2) Submit whatever the application fee is at the time of reapplication;

(3) Complete any other requirements or submit any other documentation pending

when the application was expired or withdrawn.

C. Application

destruction: The board will maintain the expired or withdrawn application file for a period of one year after the expiration or withdrawal date.

(1) After that date, the file will be purged from the board's records and destroyed;

(2) The applicant whose application has been purged from the board's records must complete the entire application process again if, in the future, they are interested in licensure.

D. Temporary

license unavailable: The option for a temporary license will no longer be available to a person whose application has expired, been withdrawn, or been destroyed from the board's records.

[16.7.4.19 NMAC - Rp 16.7.4.19 NMAC, 11/15/2019]

16.7.4.20 INITIAL

LICENSE PERIOD: The applicant who has met all the requirements for licensure shall be issued an initial license for a period of up to two years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on October 31.

A. The first renewal cycle may be for as short a period as one year and the initial license fee may be prorated accordingly based on the fee structure set forth in Subsection A of 16.7.3.8 NMAC.

B. After the license is renewed the first time, the license will be scheduled into a biennial cycle and will be renewed every two years.

[16.7.4.20 NMAC - Rp 16.7.4.20 NMAC 11/15/2019]

16.7.4.21 DISPLAY OF

LICENSE: While performing massage therapy the, licensee must display their current license to practice massage therapy in a conspicuous place of their practice location or place of their business.

[16.7.4.21 NMAC - Rp 16.7.4.21 NMAC, 11/15/2019]

16.7.4.22 ADDRESS AND EMPLOYMENT PRACTICE

CHANGES: It is the licensee's responsibility to provide written notification to the board of any changes in addresses, phone numbers, and practice location(s) within 30 days in order that renewal notices and other correspondence from the board will be received by the licensee in a timely manner, and in order for the board to be able to maintain accurate licensing records. A form is available for this purpose from the board office or from the board's website at www.rld.state.nm.us, or a letter to the board advising of the changes will also be adequate.

[16.7.4.22 NMAC - Rp 16.7.4.22 NMAC, 11/15/2019]

16.7.4.23 ELECTRONIC APPLICATIONS:

In accordance with the Uniform Electronic Transactions Act, Sections 14-16-1 through 14-16-21 NMSA 1978,, the board or its designee will accept electronic application.

A. A person seeking licensure as a New Mexico massage therapist or registrant may do so by submitting an electronic application. Applicants shall submit all information as required by 16.7.4 NMAC.

B. A massage therapist may renew his or her license, and a registrant may renew his or her registration, electronically through a designated website provided by the board. A person renewing his or her license or certificate shall submit all documentation as required by 16.7.12 NMAC

C. A massage therapist or registrant who is currently on inactive status may submit an electronic applications requesting reactivation of his or her license or registration. A person requesting reactivation of his or her license or registration shall submit all documentation as required by the Massage Therapy Practice Act, Section 61-12C-18 NMSA 1978, and 16.7.12.9 and 16.7.12.15 NMAC.

D. A person whose massage therapy license or

registration has been suspended or revoked, or has expired, may in accordance with the Massage Therapy Act, the board’s rules and any lawful board or court order, submit an electronic application seeking reinstatement. Applicants shall submit all information as required by the Massage Therapy Practice Act, NMSA 1978. Chapter 61, Article 12C NMSA and the board’s rules. [16.7.4.23 NMAC - Rp 16.7.4.23 NMAC, 11/15/2019]

HISTORY OF 16.7.4 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the State Records Center and Archives under: Rule 92-2, Requirements for Licensure, 1/17/1992. Rule 92-2, Requirements for Licensure, 9/9/1992; Regulation 2, Requirements for Licensure, 1/5/1994; Rule 92-3, Licensure Without Examination, 1/17/1992; Rule 92-3, Licensure by Credentials, 9/9/1992; Regulation 3, Licensure by Credentials, 1/5/1994; Rule 92-4, Application Procedure, 1/17/1992; Rule 92-4, Application Procedure, 9/9/1992; Regulation 4, Application Procedure, 1/5/1994; Rule 92-5, Provisional License, 1/17/1992; Rule 92-5, Provisional License, 9/9/1992; Regulation 5, Temporary License, 1/5/1994.

History of Repealed Material:

16 NMAC 7.4, Requirements for Licensure - Repealed 12/24/1999. 16.7.4 NMAC, Requirements for Licensure - filed 6/28/2005, Repealed 11/15/2019.

Other History:

16.7.4 NMAC, Requirements for Licensure filed 6/28/2005 was replaced by 16.7.4 NMAC, Requirements for Licensure effective 11/15/2019.

REGULATION AND LICENSING DEPARTMENT MASSAGE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 5 REQUIREMENTS FOR SCHOOLS

16.7.5.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board. [16.7.5.1 NMAC - Rp 16.7.5.1 NMAC, 11/15/2019]

16.7.5.2 SCOPE: This part

applies to applicants for a massage therapy school registration, and to registered massage therapy schools. [16.7.5.2 NMAC - Rp 16.7.5.2 NMAC, 11/15/2019]

16.7.5.3 STATUTORY

AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Subsections B and F of Section 61-12C-8 NMSA 1978, and Section 61-12C-10 NMSA 1978. [16.7.5.3 NMAC - Rp 16.7.5.3 NMAC, 11/15/2019]

16.7.5.4 DURATION:

Permanent. [16.7.5.4 NMAC - Rp 16.7.5.4 NMAC, 11/15/2019]

16.7.5.5 EFFECTIVE

DATE: November 15, 2019 unless a later date is cited at the end of section. [16.7.5.5 NMAC - Rp 16.7.5.5 NMAC, 11/15/2019]

16.7.5.6 OBJECTIVE:

This part is to establish the minimum application requirements for massage therapy schools, and to establish the standards for registered massage therapy schools. [16.7.5.6 NMAC - Rp 16.7.5.6 NMAC, 11/15/2019]

16.7.5.7 DEFINITIONS:

(Refer to 16.7.1.7 NMAC). [16.7.5.7 NMAC - Rp 16.7.5.7 NMAC, 11/15/2019]

16.7.5.8 REQUIREMENTS

FOR REGISTRATION: At the time of application the applicant will provide the following information to the board.

A. A completed, legible application for licensure, which must either be typed or printed in black ink. Incomplete applications will not be accepted and will be returned to the applicant for completion.

B. A 650 hour curriculum that must meet the following minimum curricula requirements:

- (1) 165 hours minimum of anatomy and physiology, to include:**
 - (a)** physiology;
 - (b)** anatomy;
 - (c)** kinesiology; and
 - (d)** 40 hours minimum of pathology.

(2) 150 hours minimum of massage therapy as defined in 16.7.1.7 NMAC.

(a) Shall include contraindications of massage therapy.

(b) A minimum of 100 hours of hands on training must be completed before a student may begin clinical practicum, as defined in Subsection G of 16.7.1.7 NMAC.

(3) 75 hours minimum of general instruction, to include:

- (a)** business; effective October 31, 2021, minimum of 20 hours;
- (b)** hydrotherapy; effective October 31, 2021, minimum of eight hours;
- (c)** first aid – four hours;
- (d)** cardiopulmonary resuscitation and automatic external defibrillator (CPR/AED) four hours;

(e) 30 hours minimum of professional ethics.

(4) Electives may include:

- (a) additional massage therapy;
- (b) related hands-on modalities;
- (c) additional anatomy and physiology;
- (d) clinical practicum (not to exceed 150 hours);
- (e) counseling;
- (f) herbology;
- (g) homeopathy;
- (h) nutrition;
- (i) breathing and stretching techniques;
- (j) theory;
- (k) other, with prior board approval.

C. Policies and procedures for board review, including but not limited to:

- (1) enrollment and financial;
- (2) cancellation/withdrawal and refund;
- (3) grading method;
- (4) attendance and make up;
- (5) students conduct and discipline:
- (6) dress code;
- (7) hygiene protocol;
- (8) draping procedures;
- (9) evaluation forms;
- (10) curriculum;
- (11) advertising catalog;
- (12) list of text books for all courses; and
- (13) qualifications of instructors as provided in 16.7.5.12 NMAC.

D. Massage therapy school registration fee in accordance with Subsection C of 16.7.3.8 NMAC. [16.7.5.8 NMAC - Rp 16.7.5.8 NMAC, 11/15/2019]

16.7.5.9 INSPECTIONS OF

SCHOOLS: The massage therapy school will be inspected by a board appointed inspector upon registration and thereafter as needed. Findings of the inspector will be reported to the board as part of the approval process. If an inspection reveals that a school is not in compliance with the board's laws or rules, the school will have 30 days to become compliant; at which time, the school will be re-inspected. If the school fails a second inspection, the board may take action against the school for non-compliance.

A. Provisional

registration: A provisional registration will be given to a new school until the school is operating and available for inspection.

B. Term of

provisional registration: The provisional registration will be valid no longer than one year from the date of issuance.

C. Inspection criteria:

The inspector will observe and report on the following:

- (1) cleanliness of premises;
- (2) New Mexico state school registration and instructor's qualifications;
- (3) local business license posted;
- (4) posted complaint policy with board address and phone number available;
- (5) student clinic log;
- (6) student attendance log;
- (7) student files; and
- (8) equipment and teaching aids.

[16.7.5.9 NMAC - Rp 16.7.5.9 NMAC, 11/15/2019]

16.7.5.10 STANDARDS FOR REGISTERED MASSAGE THERAPY SCHOOLS:

A. Qualifications of all instructors must be documented and maintained on the premises of the registered massage therapy school.

B. Massage therapy school registrations will be renewed yearly.

C. Registered massage therapy schools will comply with 16.7.2 NMAC, Professional Conduct.

D. Registered massage therapy schools may charge the public a fee for the room usage during the time a student is performing massage therapy for clinical practicum training as defined in 16.7.5.7 NMAC.

[16.7.5.10 NMAC - Rp 16.7.5.10 NMAC, 11/15/2019]

16.7.5.11 CHANGES AFFECTING REGISTRATION:

Massage therapy school registrations issued by the board are not transferable. Any change in the business designation of a massage therapy school may have the legal effect of attempting to transfer the registration and of operating without a legal registration.

A. Any of the following changes will require a new registration, and hence, a new application for registration with the board;

(1) any change to the name of the school from that under which it was originally registered;

(a) The name of the massage therapy school must not tend to mislead the public, and shall not significantly resemble the business name of another registered massage therapy school.

(b) The name of the massage therapy school shall not be announced, used, or in any way be conveyed to the public until the new registration has been issued by the board.

(2) Any change of fifty percent or more of ownership of the stock in the corporation or of the shares in a partnership;

(3) Any change in the sole proprietorship.

B. A registered massage therapy school shall notify the board in writing within 30 days of any changes in instructional staff, curriculum, or other changes that may affect the programs offered, provided that the school shall not modify its

curriculum to fall below the minimum requirements outlined in 16.7.5 NMAC.

[16.7.5.11 NMAC - Rp 16.7.5.11 NMAC, 11/15/2019]

16.7.5.12 QUALIFICATIONS FOR INSTRUCTORS WITHIN THE MINIMUM CURRICULA:

All instructors providing hands-on massage therapy instruction within a registered massage therapy school's minimum curricula shall

A. hold a valid massage therapist license in New Mexico;

B. have completed at least 50 contact hours of instructional experience of professional teaching or workshop instruction; and

C. have practiced massage therapy for a minimum of two years within the past three years. [16.7.5.12 NMAC - N, 11/15/2019]

16.7.5.13 SCHOOL DOCUMENTATION REQUIREMENTS FOR INSTRUCTORS WITHIN THE MINIMUM CURRICULA:

A. All massage therapy schools shall provide to the board, both in initial applications for registration and as part of each renewal thereafter, a list of all instructors providing hands-on massage therapy instruction within their minimum curricula.

B. As part of an initial application for registration and as necessary in each renewal thereafter, a massage therapy school shall submit the following documentation pertaining to all instructors within its minimum curricula:

(1)

Documentation verifying two years of professional massage therapy experience during the past three years, including a minimum of three of the following documents:

(a) income tax forms documenting massage therapy practice;

(b) verifiable letters from clients confirming receipt of massage therapy services from the applicant;

(c) proof of rent or lease of practice location or office space;

(d) proof of current association membership;

(e) proof of current professional insurance;

(f) copies of dated receipts for massage therapy practice-related supplies or furnishings that total a minimum of \$500;

(g) verifiable letters from employers; and

(h) work log consisting of appointment dates and time periods worked on clients.

(2) Documentation of completion of 50 contact hours of instructional experience of professional teaching or workshop instruction.

C. As part of any application for a renewal of a massage therapy school registration, the applicant shall submit a list of all instructors providing hands-on massage therapy instruction within their minimum curricula. A school shall only submit supporting documentation as to an instructor's qualifications if it has not previously provided such documentation to the board.

D. First Renewal Following Adoption of these Rules: All currently-registered massage therapy schools shall provide documentation to the board as to the qualifications of all instructors providing hands-on massage therapy instruction within their minimum curricula in their next renewal applications. A school does not need to submit supporting documentation as to an instructor's qualifications if that instructor was a registered massage therapy instructor, independent or school-based, as of February 4, 2019.

E. The board shall not grant an initial registration or a renewal application for any massage therapy school who fails to submit the necessary documentation related

to its instructors within the minimum curricula.

[16.7.5.13 NMAC - N, 11/15/2019]

16.7.5.14 REQUIREMENTS FOR TEACHING ASSISTANTS WITHIN THE MINIMUM CURRICULA:

Registered massage therapy schools may utilize persons to assist massage therapy instructors within the minimum curricula in providing instruction to massage therapy students working toward obtaining their massage therapy license. Such persons shall be considered teaching assistants.

A. The teaching assistant must be a licensed massage therapist.

B. The teaching assistant must be supervised by a massage therapy instructor who is physically present in the room.

C. Experience as a teaching assistant shall apply to the 50-hour requirement outlined in Paragraph (3) of Subsection B of 16.7.6 NMAC.

D. It is the responsibility of the registered massage therapy school to ensure that the teaching assistant complies with the board's regulations.

[16.7.5.14 NMAC - N, 11/15/2019]

HISTORY OF 16.7.5 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the State Records Center and Archives under: Rule 92-7, Approval of Massage Therapy Schools/Instructors, 3/26/1992; Rule 92-7, Massage Therapy Schools/Instructors, 9/9/1992; Regulation 7, Massage Therapy Schools/Instructors, 1/5/1994.

History of Repealed Material:

16 NMAC 7.5, Requirements for Schools and Mentorship Training Programs - Repealed 12/24/1999. 16.7.5 NMAC, Requirements for Schools filed 5/29/2001 - Repealed 11/15/2019.

Other History:

16.7.5 NMAC, Requirements for

Schools filed 5/29/2001 was replaced by 16.7.5 NMAC, Requirements for Schools effective 11/15/2019.

REGULATION AND LICENSING DEPARTMENT MASSAGE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 7 STUDENTS

16.7.7.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board.
[16.7.7.1 NMAC - Rp 16.7.7.1 NMAC 11/15/2019]

16.7.7.2 SCOPE: This part applies to students during massage therapy training.

[16.7.7.2 NMAC - Rp 16.7.7.2 NMAC 11/15/2019]

16.7.7.3 STATUTORY

AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Subsection B of Section 61-12C-6 NMSA 1978.

[16.7.7.3 NMAC - Rp 16.7.7.3 NMAC 11/15/2019]

16.7.7.4 DURATION:

Permanent.

[16.7.7.4 NMAC - Rp 16.7.7.4 NMAC 11/15/2019]

16.7.7.5 EFFECTIVE

DATE: November 15, 2019, unless a different date is cited at the end of a section.

[16.7.7.5 NMAC - Rp 16.7.7.5 NMAC 11/15/2019]

16.7.7.6 OBJECTIVE:

This part is to establish rules for students during massage therapy training.

[16.7.7.6 NMAC - Rp 16.7.7.6 NMAC 11/15/2019]

16.7.7.7 DEFINITIONS:

(Refer to 16.7.1.7 NMAC).

[16.7.7.7 NMAC - Rp 16.7.7. NMAC 11/15/2019]

16.7.7.8 GENERAL

PROVISIONS:

A. Students not yet licensed may not charge for massage therapy services.

(1) Students may only accept voluntary unsolicited tips, gratuities and donations while practicing massage therapy under school endorsed functions, under the supervision of a massage therapy instructor;

(2) Students may not suggest either verbally or in writing, amounts of tips, gratuities or donations.

B Students may *not* provide massage therapy services without direct supervision of a massage therapy instructor.

C. Students may distribute identification cards which must include the school's name, address, and phone number; the student's name, and the word "student".

D. Student complaints:

(1) Complaints concerning the registered massage therapy school, instructor(s), or other student(s) should first be addressed through the registered massage therapy school's complaint policy;

(2) If the school does not resolve the complaint adequately, or in extreme circumstances, a complaint may be brought before the board in accordance with 16.7.14.8 NMAC.

E. Students will comply with 16.7.2 NMAC, Professional Conduct.

[16.7.7.8 NMAC - Rp 16.7.7.8 NMAC 11/15/2019]

HISTORY OF 16.7.7 NMAC: [RESERVED]

History of Repealed Material:

16.7.7 NMAC - Massage Therapists - Students filed 5/29/2001, Repealed effective 11/15/2019.

Other History:

16.7.7 NMAC - Massage Therapists - Students filed 5/29/2001 was replaced by 16.7.7 NMAC - Massage

Therapists - Students filed 5/29/2001 effective 11/15/2019.

REGULATION AND LICENSING DEPARTMENT MASSAGE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 10 EXAMINATIONS

16.7.10.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board.
[16.7.10.1 NMAC - Rp 16.7.10.1 NMAC, 11/15/2019]

16.7.10.2 SCOPE: This part applies to massage therapy applicants for licensure.

[16.7.10.2 NMAC - Rp 16.7.10.2 NMAC, 11/15/2019]

16.7.10.3 STATUTORY

AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Sections 61-12C-13 and 61-12C-16 NMSA 1978.

[16.7.10.3 NMAC - Rp 16.7.10.3 NMAC, 11/15/2019]

16.7.10.4 DURATION:

Permanent.

[16.7.10.4 NMAC - Rp 16.7.10.4 NMAC, 11/15/2019]

16.7.10.5 EFFECTIVE

DATE: November 15, 2019, unless a later date is cited at the end of a section.

[16.7.10.5 NMAC - Rp 16.7.10.5 NMAC, 11/15/2019]

16.7.10.6 OBJECTIVE:

This part is to establish the examination requirements for massage therapy licensure.

[16.7.10.6 NMAC - Rp 16.7.10.6 NMAC, 11/15/2019]

16.7.10.7 DEFINITIONS:

(Refer to 16.7.1 NMAC).

[16.7.10.7 NMAC - Rp 16.7.10.7 NMAC, 11/15/2019]

16.7.10.8 JURISPRUDENCE EXAMINATION:

A. All massage therapy licensure applicants must successfully pass the board’s open-book jurisprudence examination.

(1)

the applicant will receive the jurisprudence examination with instructions from the board office after the board office receives both the application and application fee;

(2)

to complete the jurisprudence examination, the applicant will use the statute and regulations received either from the board or which the applicant downloaded from the board’s website at www.rld.state.nm.us;

(3) the

applicant must pass the jurisprudence examination with a minimum score of seventy percent;

(4) the

applicant must return the completed jurisprudence examination to the board office as required.

B. Applicants may retake the examination as many times as necessary to achieve a passing grade.

C. The jurisprudence examination shall not be reproduced or shared in any manner.

[16.7.10.8 NMAC - Rp 16.7.10.8 NMAC, 11/15/2019]

16.7.10.9 LICENSING EXAMINATION:

A. Applicants for massage therapy licensure must successfully pass a certification examination for therapeutic massage and bodywork (NCETMB), the national certification examination for therapeutic massage (NCETM) administered by the national certification board for therapeutic massage and bodywork (NCBTMB), the massage and bodywork licensing examination (MBLEx) administered by the federation of state massage therapy boards, or other examining or certification agency approved by the board.

B. The candidate must apply to take the NCETMB, NCETM or the MBLEx examination and meet the examining agency’s requirements.

C. The applicant must ensure that the examining agency sends the official examination results directly to the board office.

[16.7.10.9 NMAC - Rp 16.7.10.9 NMAC, 11/15/2019]

16.7.10.10 PROCEDURES TO RETAKE A LICENSING EXAMINATION:

Applicants who fail to pass an examination must apply directly to the examining agency to retake the examination.

[16.7.10.10 NMAC - Rp 16.7.10.10 NMAC, 11/15/2019]

HISTORY OF 16.7.10 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Rule 92-8, Examination Procedures, 3/26/1992

Rule 92-8, Examination Procedures, 9/9/1992

Rule 92-8, Examination Procedures, 11/19/1992

Regulation 8, Examination Procedures, 1/5/1994

History of Repealed Material:

16.7.10 NMAC - Massage Therapists - Examinations filed 5/29/2001, Repealed effective 11/15/2019.

Other History:

16.7.10 NMAC - Massage Therapists - Examinations filed 5/29/2001 was replaced by 16.7.10 NMAC - Massage Therapists - Examinations filed 5/29/2001 effective 11/15/2019.

REGULATION AND LICENSING DEPARTMENT MASSAGE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 11 CONTINUING EDUCATION

16.7.11.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board.

[16.7.11.1 NMAC - Rp 16.7.11.1 NMAC 11/15/2019]

16.7.11.2 SCOPE: This part applies to licensed massage therapists.

[16.7.11.2 NMAC - Rp 16.7.11.2 NMAC 11/15/2019]

16.7.11.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Section 61-12C-17 NMSA 1978.

[16.7.11.3 NMAC - Rp 16.7.11.3 NMAC 11/15/2019]

[16.7.11.3 NMAC - Rp 16.7.11.3 NMAC 11/15/2019]

16.7.11.4 DURATION:

Permanent.

[16.7.11.4 NMAC - Rp 16.7.11.4 NMAC 11/15/2019]

16.7.11.5 EFFECTIVE

DATE: November 15, 2019, unless a later date is cited at the end of a section.

[16.7.11.5 NMAC - Rp 16.7.11.5 NMAC 11/15/2019]

16.7.11.6 OBJECTIVE:

This part is to establish the continuing education requirements and procedures and to ensure that licensed massage therapists provide the highest quality professional service. Therefore, licensees should engage in education activities that foster this objective.

[16.7.11.6 NMAC - Rp 16.7.11.6 NMAC 11/15/2019]

16.7.11.7 DEFINITIONS:

(Refer to 16.7.1.7 NMAC).

[16.7.11.7 NMAC - Rp 16.7.11.7 NMAC 11/15/2019]

16.7.11.8 GENERAL

PROVISIONS: The board does not maintain a list of continuing education providers. The licensee must determine where to obtain the required continuing education.

A. As a condition for license renewal, each massage therapist licensed pursuant to the Massage Therapy Practice Act must complete 16 hours of continuing education of which up to eight hours can be taken on-line.

(1) continuing education must be completed within the 24 months immediately preceding the renewal date of October 31;

(2) excess hours cannot be carried over to future renewals;

(3) continuing education taken prior to the 24 month period will not be accepted;

(4) each licensee will maintain documentation of all completed continuing education, including contact information for the provider of each course.

B. Audit process: The board will audit continuing education to verify compliance.

(1) a minimum of ten percent of renewing licensees will be randomly selected for audit;

(2) audit requests may be included in the renewal notice;

(3) licensees not selected for audit shall attest to the completion of continuing education for the current renewal cycle;

(4) the board may audit any licensee's continuing education records at any time before the next scheduled license renewal;

(5) audited licensees who fail to provide the requested continuing education documentation are not eligible for license renewal.

[16.7.11.8 NMAC - Rp 16.7.11.8 NMAC 11/15/2019]

16.7.11.9 CONTINUING EDUCATION REQUIREMENTS:

A. The board will accept, towards a licensee's continuing education requirements, courses, seminars, workshops, or classes in an area related to the practice of massage therapy. This includes, but is not limited to:

(1) massage;
(2) bodywork;
(3) health care;

(4) psychology;

(5) anatomy and physiology;

(6) business;
(7) insurance;
(8) ethics;
(9) professional development;

(10) movement therapy;

(11) stress management; and

(12) exempt modalities as defined by Section 61-12C-5.1 NMSA 1978.

B. The board will also accept, towards a licensee's continuing education requirements, a licensee's publication of an article relating to massage therapy in a local, regional, or national publication. No more than 12 hours of continuing education credit shall be granted in any given renewal period for the publication of such an article. The number of continuing education hours shall be determined by the massage therapy board, provided that in the interim the board's staff may grant the continuing education hours to then be ratified at the next regular meeting of the board.

C. All massage therapists shall be required to complete a minimum of four hours of ethics training as part of the 16-hour requirement for each renewal period.

D. All massage therapists shall be required to complete a minimum of eight hours of live, in-person training as part of the 16-hour requirement for each renewal period.

E. Continuing education courses are the responsibility of every massage therapy licensee, and it is the obligation of each licensee to comply with these rules. A licensee's lack of knowledge as to whether a continuing education course was previously approved by the board will not be a valid justification or defense for a licensee's failure to comply with continuing education requirements. [16.7.11.9 NMAC - Rp 16.7.11.9 NMAC 11/15/2019]

16.7.11.10 CONTINUING EDUCATION COURSES TAUGHT BY CONTINUING EDUCATION PROVIDERS:

A. The board will accept all courses offered by a continuing education provider, as defined in 16.7.1 NMAC and Section 61-12C-3 NMSA 1978, towards a licensee's continuing education requirements regardless of the location at which the course is taught.

B. Any continuing education provider who was an active New Mexico registered independent massage therapy instructor on February 4, 2019, must provide both the course syllabus and the required fee for each new course not previously approved by the board prior to such course being counted towards a licensee's continuing education requirements. This is a one-time requirement per continuing education course.

C. A course taught by a continuing education provider, as defined in Subsection 7 of 16.7.1 NMAC who was not an active New Mexico registered independent massage therapy instructor on February 4, 2019, does not require prior approval by the board before being counted towards a licensee's continuing education requirements. [16.7.11.10 NMAC - Rp 16.7.11.10 NMAC 11/15/2019]

16.7.11.11 OTHER CONTINUING EDUCATION COURSES:

A. Applicants seeking the board's approval of other continuing education courses must submit the following documentation to the board:

(1) completed application form;

(2) course syllabus for the proposed course;

(3) copy of any license, registration, or certification applicable to the course, if offered by the applicant's home jurisdiction;

(4) proof of a minimum of two years' experience in the area of instruction;

(5) applicant's up-to-date resume;

(6) fee as outlined by 16.7.3.8 NMAC.

B. Technique courses will only be accepted towards a licensee's continuing education requirements if taught hands-on and live, in-person.

C. Provided that the applicant has submitted a complete application, the board will approve or deny the course's use towards a licensee's continuing application requirements based on the following non-exhaustive factors:

(1) whether the applicant has violated any of the board's rules or the Massage Therapy Practice Act;

(2) whether the applicant has any recent administrative disciplinary history in New Mexico or any other jurisdiction;

(3) whether the applicant was dishonest in his or her application, or has a history of criminal offenses that substantially relate to the practice of massage therapy or a failure to pay child support; and

(4) any other factor deemed relevant by the board.

D. Upon receipt of a complete application, the board's staff shall, with the consultation of the board's application committee, make a preliminary and tentative recommendation as to whether the application should be approved or denied. This recommendation will be conveyed to the applicant in writing within 30 days of the board's receipt of the completed application. The final decision will be made by the board at its next regularly-scheduled meeting.

E. In the event that the board's staff tentatively recommends the denial of an application, the applicant may request in writing the opportunity to be heard at the next regularly-scheduled board meeting. Where the applicant has made a request to be heard and the board votes to deny the application, the board will issue a final written decision no later than 15 business days following the board's meeting. [16.7.11.11 NMAC - Rp 16.7.11.11 NMAC 11/15/2019]

HISTORY OR 16.7.11 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under: Rule 10, Continuing Education, 9/3/1993.

History of Repealed Material:

16.7.11 NMAC - Massage Therapists - Continuing of Education filed 5/29/2001, Repealed effective 11/15/2019.

Other History:

16.7.11 NMAC - Massage Therapists - Continuing of Education filed 5/29/2001 was replaced by 16.7.11 NMAC - Massage Therapists - Continuing of Education filed 5/29/2001 effective 11/15/2019.

**REGULATION AND
LICENSING DEPARTMENT
MESSAGE BOARD**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 7 MESSAGE
THERAPISTS
PART 12 LICENSE/
REGISTRATION RENEWAL**

16.7.12.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board. [16.7.12.1 NMAC - Rp, 16.7.12.1 NMAC, 11/16/2019]

16.7.12.2 SCOPE:

This part applies to massage therapy licensees and massage therapy school registrants.

[16.7.12.2 NMAC - Rp, 16.7.12.2 NMAC, 11/16/2019]

16.7.12.3 STATUTORY

AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Sections 61-12C-17 and 61-12C-18 NMSA 1978.

[16.7.12.3 NMAC - Rp, 16.7.12.3 NMAC, 11/16/2019]

16.7.12.4 DURATION:

Permanent.

[16.7.12.4 NMAC - Rp, 16.7.12.4 NMAC, 11/16/2019]

16.7.12.5 EFFECTIVE

DATE: November 16, 2019, unless a later date is cited at the end of a section.

[16.7.12.5 NMAC - Rp, 16.7.12.5 NMAC, 11/16/2019]

16.7.12.6 OBJECTIVE:

This part is to establish the requirements for renewal of massage therapy licenses and massage therapy school registrations as well as, the inactive status and reactivation of inactive massage therapy licenses. [16.7.12.6 NMAC - Rp, 16.7.12.6 NMAC, 11/16/2019]

16.7.12.7 DEFINITIONS:

Refer to 16.7.1.7 NMAC - Definitions.

[16.7.12.7 NMAC - Rp, 16.7.12.7 NMAC, 11/16/2019]

**16.7.12.8 GENERAL
PROVISIONS FOR
ALL LICENSEES AND
REGISTRANTS:**

A. Administrative provisions relative to the renewal process:

(1) Licenses and registrations expire on an annual or biennial basis on October 31. The specific annual or biennial schedule for each license or registration type is further detailed in 16.7.4.20 NMAC.

(2) A current license or registration renewal form shall be mailed to the last known address on file with the board.

(3) Each licensee and registrant must inform the board in writing, within 30 days of any change in contact information, such as address or telephone number.

(4) Failure to receive the renewal notice shall not relieve the licensee or registrant from the responsibility of renewing the license or registration by the renewal date.

(5) The licensee or registrant shall complete

the renewal application form in the manner stated on the form. The form must be submitted with the requested documentation and required fee(s) as set forth in 16.7.3 NMAC.

(6) Incomplete renewal applications will be returned to the licensee or registrant for completion, which might result in the assessment of late penalty fees.

B. Grace period provisions:

(1) Renewal applications for licenses or registrations postmarked or hand-delivered after October 31 must also be accompanied by the late renewal penalty fee established in 16.7.3 NMAC. If October 31 falls on a weekend, a renewal postmarked or hand-delivered on the next business day will be considered timely.

(2) After the renewal date of October 31, there is a 60 day grace period ending December 30 of the same year during which the license or registration may still be renewed, and during which the licensee or registrant may still practice or provide the services authorized by the license or registration.

(3) Massage therapists who have not renewed their licenses with a postmark date of December 30, or the next business day if December 30 falls on a weekend, will automatically be placed on inactive status as of December 31 of that year.

(4) Massage therapy schools that have not renewed their registrations with a postmark date of December 30, or the next business day if December 30 falls on a weekend, will automatically expire and become null and void immediately.

[16.7.12.8 NMAC - Rp, 16.7.12.8 NMAC, 11/16/2019]

16.7.12.9 INACTIVE STATUS FOR MASSAGE THERAPISTS:

A. Inactive status issues for massage therapists:

(1) Massage therapists whose licenses have been

placed on inactive status may not provide the services authorized by the license.

(2) Massage therapists who practice with an inactive license are subject to disciplinary action by the board.

(3) The inactive status period shall last two years, beginning on the December 30 that the license or registration is placed on inactive status.

(4) The licensee must monitor the period of inactive status.

(5) The board will *not* send any notices of the upcoming expiration of inactive status to the licensees.

B. Reactivation from inactive status - therapists only:

(1) Massage therapy licenses will expire if not reactivated within two years from the date the license was placed on inactive status.

(2) The required reactivation form must be requested from the board office a minimum of one month prior to the expiration of the inactive status period.

(3) The licensee shall return the reactivation form with the required proof of completion of continuing education as set forth in 16.7.11 NMAC, along with the reactivation fee and late renewal penalty fee as set forth in 16.7.3.NMAC.

(4) The reactivation application and required enclosures must be postmarked or hand-delivered to the board office no later than two years from the December 30 of the year in which the license or registration was placed on inactive status. Failure to do so will cause the license to expire, lapse, and become null and void.

(5) Reactivation applications received with a postmark date or hand-delivered after December 30 will be returned to the expired licensee because the license may no longer be reactivated.

[16.7.12.9 NMAC - Rp, 16.7.12.9 NMAC, 11/16/2019]

16.7.12.10 MASSAGE THERAPISTS:

A. Massage therapists will renew their licenses on or before the renewal date of October 31 of the biennial renewal cycle first established when their initial licenses were issued.

B. Some massage therapists will renew on the odd-numbered year, while others will renew on the even-numbered year.

C. The general provisions in 16.7.12.8, 16.7.12.9, and 16.7.12.10 NMAC explain the policy and procedure for massage therapist license renewal.

D. Massage therapists shall meet the continuing education requirements and shall maintain documentation of continuing education as set forth in 16.7.11 NMAC.

[16.7.12.10 NMAC - Rp, 16.7.12.10 NMAC, 11/16/2019]

16.7.12.11 [RESERVED]

16.7.12.12 MASSAGE THERAPY SCHOOLS:

A. Massage therapy school registrations shall be renewed annually by October 31 or by the next business day if the October 31 falls on a weekend.

B. The general provisions in 16.7.12.8 NMAC explain the general policy and procedure for massage therapy school renewal.

C. Registrants will submit a curriculum of the massage therapy training program annually to the board to document compliance with the course requirements set forth in 16.7.5 NMAC.

D. After the grace period, which ends on December 30, an owner/operator of a massage therapy school who has not renewed the school's registration shall no longer maintain, manage or operate the "massage therapy school" as defined in 16.7.12.7 NMAC or in Subsection F of Section 61-12C-3 NMSA 1978 of the Massage Therapy Practice Act, or offer education, instruction, or training in "massage

therapy” as defined in Subsection E of Section 61-12C-3 NMSA 1978 of the Massage Therapy Practice Act.

E. The registration shall expire, lapse and become null and void if not timely renewed. [16.7.12.12 NMAC - Rp, 16.7.12.12 NMAC, 11/16/2019]

16.7.12.13 APPROVED RENEWAL APPLICATION:

Upon approval of the licensee’s or registrant’s renewal application, the board will issue a renewal license or registration to the licensee or registrant. [16.7.12.13 NMAC - Rp, 16.7.12.13 NMAC, 11/16/2019]

16.7.12.14 RENEWAL LICENSE OR REGISTRATION DISPLAY:

The renewal license or registration shall be displayed by the licensee or registrant in a conspicuous place in the licensee’s or registrant’s principal practice location or place of business. [16.7.12.14 NMAC - Rp, 16.7.12.14 NMAC, 11/16/2019]

16.7.12.15 EXPIRATION OF LICENSE OR REGISTRATION:

A. If a massage therapist does not reactivate their license by the end of the inactive status period, the license will automatically expire without notice from the board and become null and void.

B. If a massage therapy school has not renewed its registration by the end of the 60-day grace period, the registration will automatically expire without notice from the board and will become null and void.

C. Expired licenses and registrations cannot be reactivated.

D. Licensees and registrants formerly licensed or registered by the board whose registrations have expired must make application to the board and comply with the same requirements as any previously unlicensed or unregistered applicant.

E. A former licensee or registrant with an expired license or registration may not provide or offer to provide massage therapy services, instruction, education or training in massage therapy as defined in Subsection E of Section 61-12C-3 NMSA 1978 of the Massage Therapy Practice Act or in Part 1 and Part 4 of the board’s rules and regulations. Practicing or providing the services formerly authorized by the expired license or registration is a violation of the law and is subject to disciplinary action by the board.

[16.7.12.15 NMAC - Rp, 16.7.12.15 NMAC, 11/16/2019]

16.7.12.16 UNLICENSED PRACTICE PROHIBITED:

A. Massage therapists and massage therapy schools may not render or attempt to render massage therapy services or training and instruction as a massage therapy school without the required current and valid license or registration issued by the board as provided in Section 61-12C-27 NMSA 1978 of the Massage Therapy Practice Act.

B. In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp), any person, company, firm, or entity who is not licensed or registered by the board is subject to disciplinary actions and proceedings by the board if it is determined that they have been offering or providing massage therapy services or offering or providing educational training in massage therapy as a massage therapy school in New Mexico without a valid New Mexico license or registration.

C. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against any person, company, firm, or entity that violates the Massage Therapy Practice Act by practicing without a valid New Mexico license.

D. In addition, the board may assess the person, company, firm, or entity engaging in the unlicensed practice of massage therapy or massage therapy education, the administrative costs, including

investigative costs and the costs of conducting a hearing.

E. Reports of unlicensed practice may be reported to the board for investigation by phone, fax, mail, or e-mail. An approved complaint form is available from the board office or downloadable from the board’s website at www.rld.state.nm.us.

[16.7.12.16 NMAC - Rp, 16.7.12.16 NMAC, 11/16/2019]

HISTORY OF 16.7.12 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the State Records Center and Archives under: Rule 11, License/Massage Therapy School Renewals, 9/3/1993.

History of Repealed Material:

16 NMAC 7.12, License/Registration Renewal; Registration - Repealed 12/24/1999.

16.7.12 NMAC, License/Registration Renewal - Repealed 6/24/2005.

16.7.12 NMAC, License/Registration Renewal filed 5/23/2005 Repealed 11/16/2019.

Other History:

16.7.12 NMAC, License/Registration Renewal filed 5/29/2001 was replaced by 16.7.12 NMAC, License/Registration Renewal effective 6/24/2005.

16.7.12 NMAC, License/Registration Renewal filed 5/23/2005 was replaced by 16.7.12 NMAC, License/Registration Renewal effective 11/16/2019.

REGULATION AND LICENSING DEPARTMENT MASSAGE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 14 COMPLAINTS

16.7.14.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board.

[16.7.14.1 NMAC - Rp 16.7.14.1 NMAC, 11/15/2019]

16.7.14.2 SCOPE:

This part applies to licensees, registrants, massage therapists, registered massage therapy schools and applicants for licensure or registration.

[16.7.14.2 NMAC - Rp 16.7.14.2 NMAC, 11/15/2019]

16.7.14.3 STATUTORY

AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Subsections H and K of Section 61-12C-8 NMSA 1978, and Section 61-12C-24 NMSA 1978.

[16.7.14.3 NMAC - Rp 16.7.14.3 NMAC, 11/15/2019]

16.7.14.4 DURATION:

Permanent.

[16.7.14.4 NMAC - Rp 16.7.14.4 NMAC, 11/15/2019]

16.7.14.5 EFFECTIVE

DATE: November 15, 2019 unless a different date is cited at the end of a section.

[16.7.14.5 NMAC - Rp 16.7.14.5 NMAC, 11/15/2019]

16.7.14.6 OBJECTIVE:

This part is to establish the procedures for processing complaints and taking disciplinary action against licensed massage therapists, registered massage therapy schools, and applicants for licensure or registration, for violation of the Massage Therapy Practice Act or any provisions of 16.7 NMAC.

[16.7.14.6 NMAC - Rp 16.7.14.6 NMAC, 11/15/2019]

16.7.14.7 DEFINITIONS:

(Refer to 16.7.1.7 NMAC).

[16.7.14.7 NMAC - Rp 16.7.14.7 NMAC, 11/15/2019]

16.7.14.8 GENERAL PROVISIONS:

A. A complaint may be initiated in writing by any person.

B. Complaints shall be legible, either printed in black ink or typed.

C. Complaints shall contain factual allegations, constituting the alleged violations of any provisions of the Massage Therapy Practice Act and 16.7 NMAC.

[16.7.14.8 NMAC - Rp 16.7.14.8 NMAC, 11/15/2019]

16.7.14.9 PROCEDURES FOR RECEIPT OF A COMPLAINT:

A. The board's designee will maintain a written log of all complaints received which records at a minimum, the date the complaint was received, and name, addresses of the complainant(s) and respondent(s).

B. Upon receipt of a complaint the board's designee will:

(1) log in the date the complaint was received;

(2) determine whether the respondent is licensed, registered or an applicant for licensure or registration with the board;

(3) assign a complaint number and create an individual file; complaint numbering will begin with the last two digits of the year in which the complaint is filed, followed by the month, and will then continue sequentially (e.g., 96-01-001 first = complaint filed in January 1996);

(4) send the complainant written acknowledgment of receipt of the complaint;

(5) immediately forward the complaint to the complaint committee; the complaint committee chair will be responsible for convening the complaint committee to review the complaint(s).

[16.7.14.9 NMAC - Rp 16.7.14.9 NMAC, 11/15/2019]

16.7.14.10 COMPLAINT COMMITTEE:

A. The board chair will appoint a complaint committee consisting of at least one professional member of the board, who will chair the committee. The board chair may also appoint to the complaint committee the board administrator or a complaint manager.

B. The complaint committee will handle complaints in a confidential manner as required by law.

C. The complaint committee will review all complaints received by the board and make recommendations for disposition of the complaint to the full board in executive session.

D. No complaint committee meeting will be held without the presence of the professional board member.

E. A complaint committee member who believes they are not capable of judging a particular complaint fairly on the basis of its own circumstances will not participate; another professional member will be appointed by the chair to serve as committee chair for the complaint being considered.

F. For any complaint which the complaint committee reasonably anticipates may be referred to the board for consideration of the issuance of a notice of contemplated action, the respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint.

G. The complaint committee will not be required to provide the respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the issuance of a notice of contemplated action if the committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.

H. If the complaint committee determines that further information is needed, it may issue investigative subpoenas pursuant to the Uniform Licensing Act; it may employ an investigator, experts, or other persons whose services are determined to be necessary to assist in the processing and investigation of the complaint. The complaint committee will have independent authority to employ such persons without prior approval of the board. The board administrator will determine

budgetary availability and will contract for investigative services.

I. Upon completion of its review or investigation of a complaint, the complaint committee will present a summary of the case to the board for the purpose of enabling the board to decide whether to proceed with the case or to dismiss the case. The summary will be identified by complaint number without identifying the complainant(s) or respondent(s) by name.
[16.7.14.10 NMAC - Rp 16.7.14.10 NMAC, 11/15/2019]

16.7.14.11 BOARD ACTION:

A. If the board determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case will be closed.

B. The board's designee will send a letter of the board's decision to both the complainant and respondent. The letter will state the board's actions and the reasons for its decision.

C. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, the board may vote to issue a notice of contemplated action.

D. The board's designee will forward a complete copy of the complaint committee's report, including exhibits to the attorney general's office for assignment of an administrative prosecutor.

E. The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings, or referring the complaint to district attorneys for prosecution of persons alleged to be practicing massage therapy without a proper license or registration.

F. Any board member who believes that they are not capable of judging a particular complaint fairly on the basis of its own circumstances will not

participate in the decision to issue a notice of contemplated action and will not participate in the hearing, deliberation, or decision of the board.

G. Members of the complaint committee will not participate in the decision whether to issue a notice of contemplated action, other than by making a recommendation to the board whether to issue a notice of contemplated action, and will not participate in the hearing, deliberation, or decision of the board.

[16.7.14.11 NMAC - Rp 16.7.14.11 NMAC, 11/15/2019]

16.7.14.12 SETTLEMENT AGREEMENT:

A. The board may enter into a settlement agreement with the licensee or registrant as a means of resolving the complaint.

B. Any proposed settlement agreement must be approved by the board, and must also be approved by the respondent, upon a knowing and intentional waiver by the respondent of their right to a hearing as provided by the Uniform Licensing Act.

C. The settlement agreement must be signed by either the licensee's attorney or the licensee must acknowledge that he or she has been advised to seek the advice of an attorney.

[16.7.14.12 NMAC - Rp 16.7.14.12 NMAC, 11/15/2019]

16.7.14.13 NOTICE OF CONTEMPLATED ACTION:

A. All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act.

B. The board chair, or his/her designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedural decisions on behalf of the board, including, but not limited to, matters related to discovery, continuances, time extensions, amendments, pre-hearing

conferences, and proposed findings of fact and conclusions of law.

C. The hearing officer may make such orders as he or she determines may be necessary to implement the authority conferred by Subsection B of 16.7.14.13 NMAC above, including but not limited to discovery schedules, pleading schedules, and briefing schedules.

D. No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.

E. Licensees and registrants who have been found culpable and sanctioned by the board will be responsible for the payments of all costs of the disciplinary proceedings.

F. Any license or registration, including a wall certificate, issued by the board and subsequently suspended or revoked will be promptly returned to the board office, but no later than 30 days of receipt by the licensee or registrant of the board's order suspending or revoking the license.

[16.7.14.13 NMAC - Rp 16.7.14.13 NMAC, 11/15/2019]

HISTORY OF 16.7.14 NMAC: [RESERVED]

History of Repealed Material:

16.7.14 NMAC - Massage Therapists - Complaints filed 5/29/2001, Repealed effective 11/15/2019.

Other History:

16.7.14 NMAC, Massage Therapists - Complaints filed 5/29/2001 was replaced by Massage Therapists - Complaints effective 11/15/2019.

**REGULATION AND
LICENSING DEPARTMENT
MESSAGE BOARD**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 7 MESSAGE
THERAPISTS
PART 16 PARENTAL
RESPONSIBILITY ACT
COMPLIANCE**

16.7.16.1 ISSUING

AGENCY: Regulation and Licensing Department, Massage Therapy Board.
[16.7.16.1 NMAC - Rp 16.7.16.1 NMAC, 11/15/2019]

16.7.16.2 SCOPE: This part applies to all licensees and applicants for licensure under the New Mexico Massage Therapy Practice Act.
[16.7.16.2 NMAC - Rp 16.7.16.2 NMAC, 11/15/2019]

16.7.16.3 STATUTORY

AUTHORITY: This part is adopted pursuant to the Parental Responsibility Act Section 40-5A-1 et seq., NMSA 1978 (Ch. 25, Laws of 1995), the New Mexico Massage Therapy Practice Act, Section 61-12C-1 et seq., NMSA 1978 and the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.
[16.7.16.3 NMAC - Rp 16.7.16.3 NMAC, 11/15/2019]

16.7.16.4 DURATION:

Permanent.
[16.7.16.4 NMAC - Rp 16.7.16.4 NMAC, 11/15/2019]

16.7.16.5 EFFECTIVE

DATE: November 15, 2019 unless a different date is cited at the end of a section.
[16.7.16.5 NMAC - Rp 16.7.16.5 NMAC, 11/15/2019]

16.7.16.6 OBJECTIVE:

This part is established to facilitate the operation of the Parental Responsibility Act as it pertains to licensees and applicants for licensure, by delegating authority to issue notices of contemplated

action and to refer such cases for administrative prosecution to the board administrator.
[16.7.16.6 NMAC - Rp 16.7.16.6 NMAC, 11/15/2019]

16.7.16.7 DEFINITIONS:

Refer to 16.7.1.7 NMAC.
[16.7.16.7 NMAC - Rp 16.7.16.7 NMAC, 11/15/2019]

16.7.16.8 DELEGATION

OF AUTHORITY: The authority of the massage therapy board to issue a notice of contemplated action against any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in 40-5A-1 NMSA 1978, et seq., and as provided further in 16.1.1 NMAC, of the New Mexico Administrative Code, which is incorporated herein by reference, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the New Mexico massage therapy board. 16.16.7 NMAC shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.
[16.7.16.8 NMAC - Rp 16.7.16.8 NMAC, 11/15/2019]

**HISTORY OF 16.7.16 NMAC:
[RESERVED]**

History of Repealed Material:

16.7.16 NMAC - Massage Therapists - Parental Responsibility Act Compliance filed 5/29/2001, Repealed effective 11/15/2019.

Other History:

Massage Therapists - Parental Responsibility Act Compliance filed 5/29/2001 was replaced by Massage Therapists - Parental Responsibility Act Compliance effective 11/15/2019.

**SECRETARY OF STATE,
OFFICE OF**

This is an amendment to 1.10.13 NMAC, Sections 6 through 12, 15, 16, 18, 20, 22, 27, 28 and 31 and adding a new Section 32, effective 10/29/2019.

1.10.13.6 OBJECTIVE:

The objective of this rule is to provide clear guidance regarding the application and implementation of the provisions of the Campaign Practices Act, Sections 1-19-1 through 1-19-37 NMSA 1978 to affected parties [~~in a manner that meets the requirements set forth in applicable case law~~] while also providing for clear and specific guidance to the secretary of state in administering and enforcing the law.
[1.10.13.6 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.7 DEFINITIONS:

A. "Advertisement"
pursuant to Subsection A of Section 1-19-26 NMSA 1978, means a communication referring to a candidate or ballot [~~measure~~] question that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, internet videos, paid online advertising, recordings, or by printed materials, including mailers, handbills, signs and billboards, but "advertisement" does not include:

- (1) a communication by a membership organization or corporation to its current members, stockholders or executive or administrative personnel;
- (2) a communication appearing in a news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium;
- (3) a candidate debate or forum, or a communication announcing a candidate debate or forum, paid for on behalf of the debate or forum sponsor; provided that two or more candidates for the same position have been invited to participate, or provided that the single

candidate is invited in the event that there is only one candidate for that position;

(4)

nonpartisan voter guides allowed by the federal Internal Revenue Code of 1986 for Section 501(c)(3) organizations; or

(5) statements

made to a court or administrative board in the course of a formal judicial or administrative proceeding.

B. “Agent” means

a person with express or implied authorization to engage in campaign related activities on behalf of a candidate or committee.

C. “Aggregate contributions” means the sum total of all contributions given to a candidate, campaign committee, or political committee by the same donor in the same election cycle. Aggregate contributions may not exceed contribution limits.

D. “Ballot [measure] question” means a constitutional amendment, bond, tax or other question submitted to the voters in an election, as defined in Subsection C of Section 1-19-26 NMSA 1978.

E. “Clearly identified” means: (1) the name of the candidate or ballot [measure] question appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate or ballot [proposal] question is otherwise apparent by unambiguous reference.

F. “Committee” means a political committee or campaign committee covered under the Campaign Reporting Act.

G. “Contribution or coordination political committee” means a type of political committee that makes contributions or coordinated expenditures to candidates or committees.

H. “Coordinated expenditure” means an expenditure that is made by a person other than a candidate or campaign committee at the request or suggestion of, or in cooperation, consultation, or concert with, a candidate, [an agent of the candidate] the candidate’s campaign committee or a political party or any

agent or representative of a candidate, campaign committee or political party, including a legislative caucus committee for the purpose of:

(1) supporting or opposing the nomination or election of a candidate; or

(2) paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico within 30 days before the primary election or 60 days before the general election in which the candidate is on the ballot.

I. “Debt” means an outstanding expenditure or loan which is not fully paid at the time it is reported in the campaign finance information system and is therefore reported as unpaid debt.

J. “Donor” means contributor.

K. “Earmarking” means making a contribution in which the original donor expresses an intention for the contribution to pass through some other person to a specific candidate or committee or to be used for a specific purpose, such as funding independent expenditures.

L. “Election cycle” for purposes of applying the disclosure of reporting requirements of the act and this rule, the definition of this term is the definition set forth in Subsection A of Section 1-1-3.1 NMSA 1978 and means the period beginning on [the day] January 1 after the last general election and ending [on the day of the] December 31 after the general election. [~~For purposes of applying the contribution limits established by Section 1-19-34.7 NMSA 1978, the definition is the one used in Subsection G of Section 1-19-34.7 NMSA 1978 and is more fully explained in Section 1-10.13.27 NMAC.~~]

M. “Expressly advocate” means that the communication contains a phrase including, but not limited to, “vote for,” “re-elect,” “support,” “cast your ballot for,” “candidate for elected office,” “vote against,” “defeat,” “reject,” or “sign the petition for,” or

a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot [measures] questions or candidates.

N. “Final report”

means the last report electronically filed under the Campaign Reporting Act in accordance with Subsection F of Section 1-19-29 NMSA 1978 indicating that:

(1) there are no outstanding campaign debts;

(2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and

(3) the bank [account has] accounts have been closed.

O. “Foreign nationals” means an individual who is not a citizen or a national of the United States (as defined in 8 U.S.C. §1101(a)(22)) and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20).

P. “General election cycle” means the period beginning on the day after the primary election and ending [on the day of the] December 31 after the general election. [~~See 1-10.13.27 NMAC for specific information on how this is applied to different reporting entities.~~]

Q. “Independent expenditure” means an expenditure that is:

(1) made by a person other than a candidate or campaign committee;

(2) not a coordinated expenditure as defined in [paragraph H of this section] the Campaign Reporting Act; and

(3) made to pay for an advertisement that:

(a) expressly advocates for the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot [measure] question;

(b) is susceptible to no other reasonable

interpretation than as an appeal to vote for or against a clearly identified candidate or ballot [measure] question; or

(c)

refers to a clearly identified candidate or ballot [measure] question and is published and disseminated to the relevant electorate in New Mexico within 30 days before the primary election or 60 days before the general election in which the candidate or ballot [measure] question is on the ballot.

R. “In-kind contributions” means goods or services or anything of value contributed to a candidate or committee other than money. The provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is an in-kind contribution. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.

S. “Legislative Caucus Committee” means a political committee established by the members of a political party in a chamber of the legislature pursuant to the provisions of Subsection O of Section 1-19-26 NMSA 1978. A legislative caucus committee is also a political committee pursuant to Subsection O of Section 1-19-26 NMSA 1978.

[S:] **T. “Loan”** means an extension of credit to a candidate or committee by any person, including the candidate themselves, for use as monies spent toward the election of a candidate or other political purpose.

[F:] **U. “Members”** means all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization’s invitation to become a member, and either:

(1) have some financial attachment to the membership organization; or
(2) pay membership dues at least annually, of

a specific amount predetermined by the organization; or

(3) have

an organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization’s highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization’s annual budget; or the right to participate directly in similar aspects of the organization’s governance.

[U:] **V. “Membership organization”** means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(1) is composed of members;
(2) expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;
(3) makes its articles, bylaws, constitution or other formal organizational documents available to its members;
(4) expressly solicits persons to become members;
(5) expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member’s name on a membership newsletter list; and
(6) is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for offices covered under the Campaign Reporting Act.

[V:] **W. “Mixed purpose political committee”** means a type of political committee that makes independent expenditures and coordinated expenditures or

contributions and that segregates funds used for coordinated expenditures and contributions subject to contribution limits into a separate bank account from funds used for independent expenditures.

[W:] **X. “Person”** means individual or entity pursuant to Subsection [K:] P of Section 1-19-26 NMSA 1978.

[X:] **Y. “Pledge”** means a promise from a contributor to send or deliver a contribution by a specified time.

[Y:] **Z. “Political party”** means an association that has qualified as a political party pursuant to the provisions of Section 1-7-2 NMSA 1978.

[Z:] **AA. “Primary election cycle”** means the period beginning [the day] January 1 after the [preceeding] last general election and ending on the day of the primary election. [See Section 1-10.13.27-NMAC for specific information on how this is applied to different reporting entities.]

[AA:] **BB. “Primary purpose”** means the purpose for which an entity or committee:

(1) was created, formed or organized; or
(2) has made more than fifty percent of its expenditures during the current election cycle exclusive of salaries and administrative costs; or
(3) has devoted more than fifty percent of the working time of its personnel during the current election cycle.

[BB:] **CC. “Relevant electorate”** means the constituency eligible to vote for the candidate or ballot [measure] question.

[CC:] **DD. “Reporting individual”** means [every] a public official, candidate or treasurer of a campaign committee [and every] or a treasurer of a political committee pursuant to Subsection [Q] V of Section 1-19-26 NMSA 1978.

[DD:] **EE. “Solicit”** means to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether it is to

be made or provided directly to the candidate or committee, or through a conduit or intermediary.

~~EE.~~ **FE.**

“Sponsoring organization” means an organization that has provided more than twenty-five percent of the total contributions to a political committee as of the time the committee is required to register under this rule.

~~FF.~~ **GG.** “Special

event” means a barbeque, tea, coffee, dinner, reception, dance, concert or similar fundraiser where tickets costing ~~fifteen dollars (\$15)]~~ twenty-five dollars (\$25) or less are sold and no more than one thousand dollars (\$1,000) net contributions are received.

~~GG.~~ **HH.**

“Statement of no activity” means the prescribed form used by a reporting individual to indicate that no contributions were raised or expenditures were made during a particular reporting period.

~~HH.~~ **II.**

“Treasurer” means an individual explicitly designated by a candidate or committee to authorize disbursements, receive contributions, maintain a proper record of the campaign finances, and who, along with the candidate, is liable for discrepancies in the finances and reports of the committee.

[1.10.13.7 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.8 CANDIDATE CAMPAIGN COMMITTEE REGISTRATIONS:

A. A candidate for a non-statewide office shall register the candidate’s campaign committee with the secretary of state within 10 days of receiving contributions or expending one thousand dollars (\$1,000) or more for campaign expenditures or filing a declaration of candidacy; whichever occurs earlier.

B. A candidate for statewide office shall register the candidate’s campaign committee with the secretary of state within 10 days of receiving contributions or expending ~~two~~ three thousand ~~five~~

~~hundred]~~ dollars ~~[((\$2,500)]~~ (\$3,000) or more ~~[for campaign expenditures]~~ or filing a declaration of candidacy; whichever occurs earlier.

C. All candidates shall complete a ~~[candidate]~~ campaign committee registration form and submit the completed form to the secretary of state, or otherwise with the proper filing officer, if completed at the time the declaration of candidacy is submitted. Following acceptance of the ~~[candidate]~~ campaign committee registration form, the secretary of state will create a user account for the candidate in the campaign finance information system (CFIS) and will issue the candidate a unique CFIS user identification and password.

D. A candidate is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the candidate’s liability regarding fines and civil actions against the candidate or public official related to campaign reporting.

E. Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state’s office. In order to file electronically, the candidate must, at all times, maintain a valid email address on file with the secretary of state.

F. A candidate may serve as the candidate’s own treasurer. If the candidate does not serve as the candidate’s own treasurer, then the candidate shall appoint a treasurer who shall be jointly responsible as a reporting individual with the candidate for the campaign committee.

G. If the candidate does not serve as the candidate’s own treasurer, in the event of a vacancy in the position of treasurer, the candidate shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.

H. The candidate is deemed to have authorized and

approved each report entry submitted to CFIS.

I. A candidate may only have one campaign committee at a time. Any candidate campaign committee registration form received will result in the secretary of state moving the last reported campaign balance, including debts, to the new campaign committee account in CFIS unless the candidate is seeking public financing and must keep a previous campaign account open and separated. [1.10.13.8 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.10 POLITICAL COMMITTEE REGISTRATIONS:

~~[A.—The Campaign Reporting Act, specifically Subsection A, Subparagraph 3 of Subsection L, and Subsection M of Section 1-19-26 NMSA 1978 and Section 1-19-26.1 NMSA 1978, requires every person who spends more than five hundred dollars (\$500) on advertisements influencing or attempting to influence an election to register as a political committee, to appoint a treasurer, establish a bank account and thereafter report every contribution received and every expenditure made for any purpose as long as the person continues to exist. The courts have determined, however, that only a small subset of these persons can constitutionally be compelled to comply with these extensive registration and reporting requirements. In compliance with these court decisions, only the following will be obligated to comply with the requirements for political committees that are prescribed by the Campaign Reporting Act:~~

~~————— (1) ——— a state or county political party;~~

~~————— (2) ——— an association of two or more persons that has as its primary purpose making contributions to candidates or committees, coordinated expenditures or any combination thereof, and has received more than five hundred dollars (\$500) in contributions or made expenditures of more than five hundred dollars (\$500) in the preceding 12 months; and~~

~~(3)~~ an association of two or more persons that has as its primary purpose making independent expenditures and that has received more than five thousand dollars (\$5,000) in contributions or made expenditures of more than five thousand dollars (\$5,000) in the preceding 12 months.

~~(4)~~ Unless otherwise stated, requirements for political committees set forth in these rules shall apply only to political committees that fall within one of these categories enumerated in this section, and will not be applied to political committees that satisfy the statutory definition pursuant to Subsection L of Section 1-19-26 NMSA 1978 but that do not fall within any of these categories. However, all persons making independent expenditures shall be subject to the reporting requirements for independent expenditures set forth in Section 1.10.13.11 NMAC.]

[B:] A. Registration.

~~(1)~~

Notwithstanding the political committee registration requirements as outlined in Section 1-19-26.1 NMSA 1978 and pursuant to applicable case law, a political committee of the kind described in Subparagraph 3 of Subsection A of 1.10.13.10 NMAC is not required to register until 10 days after it has received more than five thousand dollars (\$5,000) in contributions or made expenditures of more than five thousand dollars (\$5,000) in a 12-month period;]

~~(2)~~ (1)

Prior to receiving or making any contribution or expenditure for a political purpose. All political committees shall complete a political committee registration form/statement of organization and submit the completed form, along with a fifty dollar (\$50) filing fee, to the secretary of state. The form shall include:

(a)

the full name of the political committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization;

(b) the physical address of the political committee, a mailing address if different from the physical address, and an email address;

(c)

a statement of the [political] purpose for which the political committee was organized; under this section, the committee shall designate the type of expenditures it will be making; the committee will have the option of registering as:

(i)

an independent expenditure political committee;

(ii)

a contribution or coordination political committee;

(iii)

a mixed purpose political committee; or

(iv)

other; if a political committee selects other, then the political committee shall submit a written explanation to the secretary of state as to why the categories of independent expenditure political committee, contribution or coordination political committee, and mixed purpose political committee do not apply;

~~(d)~~

~~the name, address and relationship of any connected or associated organization or entity; a connected or associated organization or entity means a related corporation, union or trade organization from which the political committee receives more than fifty percent of its funding;]~~

~~(e)~~ (d)

the names and addresses of the officers of the committee;

~~(f)~~

~~an identification of the bank used by the committee for all expenditures or contributions made or received; this shall include the name of the bank, business address of the branch office where the account was opened, and a telephone number for the bank; and]~~

(e) an

identification of the bank(s) used by the committee for all expenditures or contributions made or received; this shall include the name of the bank(s), business address(es) of the branch

office(s) where the account(s) was/ were opened, and telephone number for the bank(s); and

~~(g)~~ (f)

the treasurer's name, mailing address, email address, and contact information.

~~(3)~~ (2) Following acceptance of the political committee registration form, the secretary of state will create a user account for the political committee in the (CFIS) and will issue the treasurer a unique CFIS user identification and password.

~~(4)~~ (3) The

provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission (FEC). If the political committee is located in another state and reports to the FEC, the committee shall file a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico with the secretary of state within 10 days of filing the report to the FEC.

~~(5)~~ (4) If a

political committee is located in another state, and is making contributions and expenditures to New Mexico reporting individuals, but is not registered with the FEC, then the out-of-state political committee must register and report its New Mexico contributions and expenditures in accordance with the provisions of the Campaign Reporting Act and this rule.

~~(6)~~ (5) If a

political committee is located in New Mexico, and is required to register as a political committee under this rule, the political committee must register with the secretary of state even if it is also registered with the FEC.

~~(7)~~ (6) The

political committee's treasurer is responsible for carrying out the duties described in the Campaign Reporting Act and this rule, and should understand the responsibilities and potential liabilities associated with those duties. Under the Campaign Reporting Act, the treasurer is a

reporting individual who can be named in a complaint or official action by the secretary of state. Additionally, a treasurer may be found liable if he or she knowingly and willfully violates the Campaign Reporting Act.

~~(8)~~ (7) If a change is made to a treasurer of a political committee, the political committee shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.

~~(9)~~ (8) A political committee shall not continue to receive or make any contributions or expenditures unless the name of the current treasurer is on file with the secretary of state by filing an updated political committee registration form.

~~(10)~~ (9) A political committee is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the political committee's liability regarding fines and civil actions related to campaign reporting.

(10) Any changes to the information provided in the registration form/statement of registration shall be reported to the secretary of state within 10 days.

~~(E)~~ B. Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the political committee must maintain a valid email address on file with the office.

~~(D)~~ C. **Political party registration:** Qualified political parties that file rules in accordance with Article 7 of the Election Code with the secretary of state or county clerk are required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act and this rule.

E.—The contribution limits provided for in Section 1-19-34.7 NMSA 1978 do not apply to a

political committee that only makes independent expenditures or to any contribution to a political committee that is deposited in a segregated bank account that may only be used to make independent expenditures.]

D. Legislative caucus committee registration: a legislative caucus committee is required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act.

E. Notice of cancellation:
(1) A political committee that has not received any contribution or made any coordinated or independent expenditures for a continuous period of at least one year may cancel its registration as a political committee by completing and submitting a prescribed cancellation form to the secretary of state.

(2) A political committee that has cancelled its registration pursuant to Subsection G of Section 1-19-29 NMSA 1978, shall submit a new registration in the event that its future activities meet the requisites for registration pursuant to Section 1-19-26.1 NMSA 1978.

(a) a political committee submitting a new registration must file with the secretary of state within 24 hours of receiving any contribution or making any expenditure for a political purpose.

(b) a new registration shall include:
(i) current bank account balance(s); and
(ii)

a certification that no contributions have been received or any expenditures made for a political purpose during the period wherein the political committee's registration was cancelled pursuant to Subsection G or Section 1-19-29 NMSA 1978.

[1.10.13.10 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.11 REPORTING OF INDEPENDENT EXPENDITURES:

A.—Persons making independent expenditures for elections covered by the act who do not fall within any of the categories enumerated in Subsection A of 1.10.13.10 NMAC cannot be constitutionally compelled to comply with all the registration and reporting requirements imposed on political committees by the Campaign Reporting Act. Courts have also ruled, however, that persons who engage in the particular kind of campaign spending that meets the definition of independent expenditure under this rule can be required to report certain categories of information regarding the nature of their independent expenditures and the sources of the money that were used to pay for them. Accordingly, all persons making independent expenditures for elections covered by the act will be required to file reports in compliance with the rules set forth in this section:]

A. A person who makes an independent expenditure not otherwise required to be reported under the Campaign Reporting Act shall file a prescribed report with the secretary of state within:

(1) three days of making the expenditure if the expenditure, by itself or aggregated with all independent expenditures made by the same person during the election cycle, exceeds one thousand dollars (\$1,000) in a non-statewide election(s) or question(s) or in an amount that exceeds three thousand dollars (\$3,000) in a statewide race(s) or ballot measure(s).

(2) 24 hours of making the expenditure if the expenditure is in an amount of three thousand dollars (\$3,000) or more and is made within seven days before a non-statewide election.

B.—Any person who makes an independent expenditure not otherwise required to be reported under these regulations in an amount that exceeds one thousand dollars (\$1,000) for one or more non-statewide race or ballot measure or in an amount that exceeds two thousand five hundred dollars (\$2,500) for

one or more statewide race or ballot measure, or in an amount that, when added to the aggregate amount of the independent expenditures made by the same person during the election cycle, exceeds these thresholds, shall file a report of the independent expenditure that includes all of the following information:]

B. The report required by Subsection A of this section shall include:

(1) The name and address of the person who made the independent expenditure.

(2) The name and address of the person to whom the independent expenditure was made and the amount, date and purpose of the independent expenditure. If no reasonable estimate of the monetary value of a particular expenditure is practicable, [it is sufficient to report instead] a description of the services, property or rights furnished through the expenditure;

(3) The source of the contributions used to make the independent expenditure as provided in Subsections C and D of this section.

~~(4)~~ — The candidate(s) or ballot measure(s) referenced in the advertisement(s) that are paid for by the independent expenditure and a description of the message included in the advertisement(s). If the advertisement(s) refer to multiple candidates or ballot measures, some statewide and some non-statewide, the lower reporting threshold for non-statewide elections, i.e. one thousand dollars (\$1,000) for reporting under Subsections B and C of this section, and three thousand dollars (\$3,000) for reporting under Subsection D of this section, will trigger the reporting requirement.]

C. A person who makes independent expenditures totaling three thousand dollars (\$3,000) or less in a non-statewide [race] election or ballot [measure] question, or [seven] nine thousand [five hundred dollars (\$7,500)] dollars (\$9,000) or less in a statewide [race] election or ballot [measure] question,

[during the election cycle] shall report the name and address of each person who has made contributions of more than a total of two hundred dollars (\$200) in the previous 12 months that were earmarked or made in response to a solicitation to fund independent expenditures, and shall report the amount of each such contribution made by that person. For purposes of this Subsection C of 1.10.13.11 NMAC, a contribution is earmarked or made in response to a solicitation to fund independent expenditures, if the person making the contribution:

(1) designates, requests, or suggests that the amounts be used for independent expenditures.

A person "designates, requests, or suggests" that amounts be used for independent expenditures if, at any time, there is an agreement, suggestion, designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, that all or any part of the transfer or payment be used to fund independent expenditures;

(2) provided the amounts in response to a solicitation or other request, whether direct or indirect, express or implied, oral or written, for a transfer or payment to fund independent expenditures; or

(3) knew or had reason to know from the surrounding circumstances that the amounts would be used to fund independent expenditures.

D. A person who makes independent expenditures totaling more than three thousand dollars (\$3,000) for a non-statewide[race] election or ballot [measure] question or more than [seven] nine thousand [five hundred dollars (\$7,500)] (\$9,000) for a statewide [race] election or ballot [measure] question during an election cycle, in addition to reporting the information specified in Subsection C of this section, shall report the following information:

(1) if the expenditures were made exclusively from a segregated bank account that contains only funds contributed to the

account by individuals for the purpose of making independent expenditures, the name and address of, and the amount of each contribution not previously reported for, each contributor who contributed more than two hundred dollars (\$200) in the aggregate to the account [during the 12 months preceding the report] in the election cycle; or

(2) if the expenditures were made in whole or in part from [any source other than a bank account of the kind described in paragraph (1)] funds other than a bank account of the kind described in Paragraph (1), the name and address of, and amount of each [donation] contribution made by, each [donor] contributor who [donated] contributed more than a total of five thousand dollars (\$5,000) during the election cycle, to the person making the independent expenditures [in the previous twelve months]; provided, however, that a [donation] contribution is exempt from reporting pursuant to this paragraph if the [donor] contributor requested in writing that the [donation] contribution not be used to fund independent or coordinated expenditures or make contributions to a candidate, campaign committee or political committee.

E. A person reporting an independent expenditure under this section shall complete the online registration process prescribed by the secretary of state in order to access the required disclosure reporting system. All reports of independent expenditures under this section shall be filed using the required system.

F. Time [of filing reports] requirements:

(1) — An independent expenditure of more than three thousand dollars (\$3,000) that is made within 14 days before a primary, general, or statewide special election shall be reported within 24 hours after making the expenditure.

(2) — Except for independent expenditures that are required to be reported within twenty-four hours pursuant to Paragraph 1 of Subsection F of 1.10.13.11 NMAC,

every independent expenditure shall be reported on the earliest of the reporting dates specified in Section 1-19-29 NMSA 1978 subsequent to the date the independent expenditure is made.]

~~(3)~~ (1) An independent expenditure is considered to be made on the first date on which the communication or advertisement is published, broadcast or otherwise publicly disseminated.

~~(4)~~ (2) If any person making independent expenditures incurs subsequent independent expenditures, the person shall report such expenditures pursuant to this section.

G. No person may make contributions or expenditures with an intent to conceal the names of persons who are the true source of funds used to make independent expenditures, or the true recipients of the expenditure.

[1.10.13.11 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.12 GENERAL REPORTING RULES:

A. Candidate campaign committees.

(1) All campaign committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until midnight mountain time on the date of filing without penalty. Beginning after 12:01 a.m. mountain time on the day after the due date of the report, penalties for late filing shall begin to accrue.

(2) Campaign committees shall report all contributions, in-kind contributions, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) Coordinated expenditures made on behalf of the candidate or campaign committee shall be reported by the campaign committee as in-kind contributions received from the coordinating political committee and are subject to contribution limits.

(4) Candidates must file all required reports while

they are an active candidate and continue to file timely reports until such time as they meet the requirements to file a final report. For example, a primary election candidate that loses the primary election must file all reports included in the primary election cycle and continue to file reports until the candidate files a final report. Losing an election does not terminate a candidate's requirement to file under the Campaign Reporting Act.

(5) A candidate's personal funds spent in support of a candidate's own campaign are considered a contribution and shall be disclosed by filing the required reports in CFIS; however, these funds are not subject to contribution limits.

(6) Upon request by the secretary of state, the campaign committee shall provide a copy of bank statements, for all accounts, for any reporting period.

(7) Candidates benefiting from independent expenditures have no obligation to report the independent expenditure.

B. Political committees.

(1) All political committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until midnight on the date of filing deadline without penalty. Beginning after 12:01 a.m. mountain time on the date after the filing deadline of the report, penalties for late filing shall begin to accrue.

(2) Political committees shall report all contributions, in-kind contributions, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) In addition to disclosing the information required by the Campaign Reporting Act for expenditures, a political committee making coordinated expenditures shall also disclose the name of the candidate, campaign committee, or political committee ~~who~~ with whom the expenditure is being coordinated ~~with~~.

(4) Upon request by the secretary of state, the political committee shall provide a copy of bank statements, for all accounts, for the political committee for any reporting period.

C. Hardship waivers.

(1) All reports required by these rules shall be filed electronically in the manner and on forms as prescribed by the secretary of state. Reporting individuals required to file reports may apply to the secretary of state for exemption from electronic filing in case of hardship by submitting a hardship waiver request form prescribed by the secretary of state. The secretary of state may approve or deny this request. Approval may be granted at the discretion of the secretary of state only if the reporting individual has no way to access CFIS.

(2) Upon approval of a hardship waiver, the reporting individual shall submit the report on a prescribed paper form. Approval of a hardship waiver by the secretary of state, authorizes the secretary of state to enter the report into the electronic system on behalf of the reporting individual. A copy of the electronic report entered by the secretary of state will be mailed to the reporting individual once it has been entered into CFIS.

(3) Submission of a hardship waiver request does not constitute meeting the reporting requirements including the statutory reporting deadlines. Failure to adhere to a report deadline may still result in fines pursuant to Section 1-19-35 NMSA 1978. Reporting individuals shall make arrangements for hardship approval with the secretary of state in advance of report deadlines to ensure timely filing.

[1.10.13.12 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.15 LATE FILING OF REPORTS:

A. If a reporting individual or person required to file a report under 1.10.13.11 NMAC fails to timely file a report in CFIS, or

fails to file a report, a written notice will be sent by the secretary of state to the reporting individual or person required to file a report explaining the violation and the fine imposed.

B. The reporting individual or person required to file a report is afforded 10 working days from the date of the written notice to file, if needed, and provide a written explanation within CFIS indicating why the violation occurred.

C. If a timely explanation is provided and the report is filed within the timeframe provided by the notice, the secretary of state will make a determination whether good cause exists to fully or partially waive the fine.

D. If the reporting individual or person required to file the report fails to provide a written response or fails to file a report within the timeframe provided by the notice, the secretary of state shall issue a notice of final action requiring the reporting individual or person required to file the report to file the late report, provide a written explanation of why the violation occurred, and pay the fine owed.

E. Fines for late filing will accrue beginning the day after the filing deadline until the report is filed at the statutory rate of fifty dollars (\$50) per day up to a maximum fine of five thousand dollars (\$5,000) per report. Candidates required to file supplemental reports are subject to additional fines pursuant to Subsection C of Section 1-19-35 NMSA 1978.

F. The reporting individual or person required to file the report may challenge the imposition of a fine within 10 working days of the date of the notice of final action by filing a request for arbitration on the prescribed arbitration request form. The arbitrator shall conduct the hearing within 30 days of the request for arbitration. The arbitrator may schedule the arbitration beyond the 30-day timeframe with the agreement of the parties.

G. The arbitrator shall issue a binding written decision in

accordance with Subsection F of Section 1-19-34.4 NMSA 1978, which shall be a public record. The decision shall be issued and filed with the secretary of state within 30 days of the arbitration hearing.

H. Failure to respond to the notice of final action may result in a referral to the attorney general's office or district attorney's office, or effective January 1, 2020, the state ethics commission. [1.10.13.15 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.16 LOANS:

A. All loans made to a candidate or committee, including loans sourced from a candidate's own personal funds must be reported.

B. Contribution limits apply to loans, unless the loan is sourced from the candidate's own personal funds in accordance with Subsection [F] H of Section 1-19-34.7 NMSA 1978.

C. If a spouse of a candidate co-signs a commercial loan to a candidate pledging community assets as collateral, it is not considered a contribution from the spouse to the candidate as long as the candidate's interest in the community asset meets or exceeds the amount of the loan.

D. Loan repayments and forgiven loans must be reported separately from other expenditures within the loan module of CFIS. [1.10.13.16 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.18 IN-KIND CONTRIBUTIONS:

A. In-kind contributions must be reported with the actual value of the contribution. If an actual value is not available, an estimated value of the contribution may be used.

B. Coordinated expenditures are treated as in-kind contributions and must be reported as such.

C. If a committee or person makes an in-kind contribution that benefits multiple candidates, each candidate must report the estimated benefit received per person.

D. Goods, such as facilities, equipment, or supplies, are valued at the price the item or facility would have cost, given its age and condition, at the time the contribution was made.

E. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the candidate or committee.

F. The value of in-kind contributions from a political party or legislative caucus committee to a candidate nominated by that party in a general election cycle do not apply to the limitations on contributions to candidates or campaign committees. [1.10.13.18 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.20 CONTRIBUTIONS:

A. The entire amount paid by a donor to attend a political fundraiser or other political event or to purchase a fundraising item sold by a candidate is a contribution and counts against the donor's limit for political contributions, except for special events pursuant to Subsection C of Section 1-19-34 NMSA 1978.

B. Contributions received as a result of special events shall be reported cumulatively on the special events form in CFIS. Reporting individuals shall report the sponsor of the event, the amount received (gross proceeds), the expenditures incurred, the estimated number of persons in attendance, and the net amount received after deducting the expenditures incurred in conducting the event (net proceeds).

C. For all other fundraising events at which the price of admission exceeds [~~fifteen dollars (\$15)~~] twenty five dollars (\$25), or which raise more than one thousand dollars (\$1,000) in net proceeds, the reporting individual must report each individual contribution pursuant to Section 1-19-31 NMSA 1978.

D. No single anonymous contribution may be accepted in excess of one hundred dollars (\$100). No more than five hundred dollars (\$500) may be accepted in aggregate anonymous contributions for any non-statewide candidate in a primary or general election cycle. No more than two thousand dollars (\$2000) may be accepted in aggregate anonymous contributions for any statewide campaign committee or political committee in a primary or general election cycle.

E. A candidate's spouse and family are subject to the same contribution limits to the candidate's campaign as other contributors, provided, however, that a candidate may contribute from a joint account with a spouse or family member without limit if the funds would otherwise be available to the candidate in the regular course of business, or as community property or as a joint tenant.

F. The personal funds of a candidate include:

(1) assets which the candidate has the legal right of access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;

(2) income from employment, including self-employment;

(3) dividends and interest from, and proceeds from, sale or liquidation of stocks, real estate or other investments;

(4) income from trusts, if established before the commencement of a primary or general election cycle;

(5) bequests to the candidate, if established before the commencement of a primary or general election cycle;

(6) personal gifts that have been customarily received by the candidate prior to the commencement of a primary or general election cycle; and

(7) proceeds from lotteries or games of chance.

G. The reporting individual is responsible for ensuring that all contributions are lawful. If the reporting individual has reason to suspect that a contribution is excessive or prohibited, he or she must, within 10 days of receiving the contribution, validate the legality of the contribution and correct any discrepancy, if necessary, in order to comply with the law.

[1.10.13.20 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.22 EXCESSIVE OR PROHIBITED CONTRIBUTIONS:

A. Excessive or prohibited contributions may be returned to the donor, without penalty to the reporting individual, if the candidate or committee voluntarily returns the contribution without a finding of violation by the secretary of state. If the secretary of state makes a formal finding that an excessive or illegal contribution has been received by a candidate or committee, the candidate or committee shall forfeit the excessive or illegal contribution in accordance with Subsection D of Section 1-19-34 NMSA 1978 or Subsection [E] G of Section 1-19-34.7 NMSA 1978.

B. The reporting individual must check committee records regularly to reasonably ensure that aggregate contributions from one contributor do not exceed the contribution limits of the Campaign Reporting Act.

C. When an excessive contribution is made via written instrument with more than one individual's name on it, but only has one signature, the permissible portion may be attributed to the signer and the excessive portion may be attributed to the other individual whose name is printed on the written instrument, without obtaining a second signature. This may be done so long as the reattribution does not cause the other contributor to exceed any contribution limit.

D. An excessive contribution which is not designated for either the primary or general election cycle, and which is made

after the primary, but before the general election, may be applied to the outstanding debts from the primary election cycle if the campaign committee has more net debts outstanding from the primary election cycle than the excessive portion of the contribution. The re-designation must not cause the contributor to exceed any contribution limits.

E. Contributions and donations may not be solicited, accepted, received from, or made directly or indirectly by, foreign nationals who do not have permanent residence in the United States. [1.10.13.22 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.27 [PRIMARY AND GENERAL ELECTION CYCLES FOR PURPOSES OF CONTRIBUTION LIMITS:

A. For state representatives and any other two year office holders, the primary election cycle begins the day after each general election and ends at midnight on the day of the primary election. The general election cycle begins on the day after each primary election and ends at midnight on the day of the general election.

B. For statewide office holders and any other four year office holders and for political committees, the primary election cycle begins on the day after the general election in which the office is on the ballot, or included in governor's primary election proclamation, and ends at midnight on the day of the primary election in which the office appears on the ballot. The general election cycle begins on the day after the applicable primary election and ends at midnight on the day of the general election.

C. Transferring funds to a different primary or general election cycle in CFIS: Within CFIS, the secretary of state shall move funds, including debts, from an existing candidate campaign account to a new candidate campaign account pursuant to Section I of 1.10.13.8 NMAC, including for a candidate campaign committee that reports on a

different election cycle. This transfer is applicable to all current and former candidates and elected officials who have an open CFIS account including candidates who chose to run for a different office.

~~(1) — Each time a candidate runs for office, a new candidate campaign committee registration form is required. If a candidate has previously run for an office covered by the CRA, the secretary of state will create a new campaign in CFIS for the election year listed on the registration form in the candidate's existing CFIS account.~~

~~(2) — Upon submitting the candidate campaign committee registration form for the new campaign year, the candidate is eligible to collect contributions in accordance with the contribution limits and the election cycle applicable to the campaign year and office listed on the form.~~

~~(3) — Candidate withdrawal or loss of a primary election: If a candidate withdraws from candidacy or loses an election, the candidate may move funds collected to a future election campaign by submitting a new candidate campaign committee registration form.~~

~~(4) — If contributions collected under the previous campaign cycle exceed what is allowable for the office associated with the new campaign, the candidate must take one of the following actions:~~

~~(a) — Refund excessive funds to the original contributor;~~

~~(b) — Allocate excessive funds received in a primary election cycle to the general election cycle to ensure limits are met; or~~

~~(c) — Turn excess funds over to the SOS to deposit within the public election fund pursuant to Section 1-19-34.7 NMSA-1978: [RESERVED]~~

[1.10.13.27 NMAC - N, 10/10/2017; A, 04/24/2018; Repealed, 10/29/2019]

1.10.13.28 COORDINATED EXPENDITURES:

A. A coordinated expenditure shall be treated as an in-kind contribution from the person who made the expenditure to the candidate or committee at whose request or suggestion, or in cooperation, consultation or concert with whom, the expenditure was made, and shall be subject to all the limits, prohibitions and reporting requirements that are applicable to such contributions under the Campaign Reporting Act.

B. Candidates for office may endorse other candidates. Endorsements do not constitute a coordinated expenditure unless the endorser pays for an advertisement that constitutes a coordinated expenditure.

C. A candidate's or committee's response to an inquiry or questionnaire about that candidate's positions on legislative or policy issues, which does not include discussion of campaign plans, projects, activities or needs, does not constitute a coordinated expenditure.

D. Persons may use publicly available information and materials in creating, producing or distributing an advertisement, and such use does not, in and of itself, constitute coordination with the candidate or campaign. However, expenditures funding the republication of materials produced by a candidate's campaign shall be reported as coordinated expenditures subject to contribution limits.

~~[E:]~~ The following is a non-exhaustive list of scenarios in which] factors which will be considered in determining whether an expenditure [will be deemed-coordinated] shall be treated as a coordinated expenditure:

(1) whether the person making the expenditure is also an agent of the candidate or committee receiving the contribution;

(2) whether any person authorized to accept receipts or make expenditures for the person making the expenditure is also an agent of the candidate or committee receiving the contribution;

(3) whether the person making the expenditure has been established, financed, maintained, or controlled by any of the same persons that have established, financed, maintained, or controlled a political committee authorized by the candidate;

(4) whether the reporting individual shares or rents space for a campaign-related purpose with or from the person making the expenditure;

(5) whether the reporting individual, or any public or private office held or entity controlled by the reporting individual, including any governmental agency, division, or office, has retained the professional services of the person making the expenditure or a principal member or professional or managerial employee of the entity making the expenditure, during the same election cycle, either primary or general, in which the expenditure is made; or

(6) whether the reporting individual and the person making the expenditure have each consulted or otherwise been in communication with the same third party or parties, if the reporting individual knew or should have known that the reporting individual's communication or relationship to the third party or parties would inform or result in expenditures to benefit the reporting individual.

[1.10.13.28 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.31 DISCLAIMER NOTICES ON ADVERTISEMENTS:

~~[A:] — The disclaimers on campaign advertising mandated by Sections 1-19-16 and 1-19-17 NMSA-1978 will be required only for:~~

~~(1) — advertisements that are disseminated by a candidate, a campaign committee or a political committee registered pursuant to 1.10.13.8 NMAC, or at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, a candidate's campaign committee or a political committee registered pursuant to 1.10.13.8 NMAC; and~~

(2) advertisements that are disseminated by a person who has made independent expenditures in an aggregate amount exceeding one thousand dollars (\$1,000) during the current election cycle, and that either:

(a) expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot measure, or

(b) refer to a clearly identified candidate or ballot measure and are disseminated to the relevant electorate within 30 days before the primary election or 60 days before the general election at which the candidate or ballot measure is on the ballot.

B. The requirements of Subsection A of this section do not apply to the following:

(1) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed; or

(2) skywriting, water towers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impractical.

C. The disclaimer statements required by Subsection A of this section shall be set forth legibly on any advertisement that is disseminated or displayed by visual media. If the advertisement is transmitted by audio media, the statement shall be clearly spoken during the advertisement. If the advertisement is transmitted by audiovisual media, the statement shall be both written legibly and spoken clearly during the advertisement.]

A. The disclaimers on campaign advertising mandated by Section 1-19-26.4 NMSA 1978 are required for:

(1) advertisements that are disseminated by a candidate, a campaign committee or a political committee, including a legislative caucus committee, registered pursuant to 1.10.13.8 NMAC or at the request or suggestion of, or in cooperation,

consultation or concert with, a candidate, a candidate's campaign committee or a political committee, including a legislative caucus committee registered pursuant to 1.10.13.8 NMAC; and,

(2) advertisements that are disseminated by a person who has made independent expenditures in an aggregate amount exceeding one thousand dollars (\$1,000) during the current election cycle, and that either:

(a) expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot question, or

(b) refer to a clearly identified candidate or ballot question and are disseminated to the relevant electorate within 30 days before the primary election or 60 days before the general election at which the candidate or ballot question is on the ballot.

B. The requirements of Subsection A of this section do not apply to the following:

(1) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed; or

(2) skywriting, water towers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impractical.

C. The disclaimer statements required by Subsection A of this section shall be set forth legibly on any advertisement that is disseminated or displayed by visual media. If the advertisement is transmitted by audio media, the statement shall be clearly spoken during the advertisement. If the advertisement is transmitted by audiovisual media, the statement shall be both written legibly and spoken clearly during the advertisement.

D. The disclaimer statements required for advertisements described in Subsection A of this section shall clearly state the name of the candidate, committee or other

person who authorized and paid for the advertisement.

E. Any printed disclosure statement described in Subsection D of this section shall:

(1) be of sufficient type size to be clearly readable by the recipient of the communication;

(2) be contained in a printed box set apart from the other contents of the communication; and

(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

F. Any disclosure statement described in Subsection D of this section which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement that identifies the candidate by name and clearly states the name of the candidate, committee or other person who authorized and paid for the advertisement and if applicable, states that the candidate has approved the communication.

G. Any disclosure described in Subsection D of this section which is transmitted through television shall include, in addition to the requirements of that paragraph, a statement that identifies the candidate by name and if applicable, states that the candidate has approved the communication. Such statement shall be conveyed by:

(1) an unobscured, full-screen view of the candidate making the statement, or

(2) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(3) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds.

[1.10.13.31 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.32 LEGISLATIVE CAUCUS COMMITTEE:

A. Only one legislative caucus committee may exist for the majority and minority of each legislative chamber.

B. The speaker and the minority floor leader of the house of representatives and the majority floor leader and the minority floor leader of the senate shall be the designated leaders of the legislative caucus committees for the members of their political party in their legislative chamber unless:

(1) two-thirds of the members of a political party in a legislative chamber vote to designate a different leader from among their members; and

(2) the results of that vote are recorded with the secretary of state.

C. A legislative caucus committee must comply with all statutes and rules applicable to political committees, with the exception of in-kind contributions from a legislative caucus committee to a candidate nominated by that party in a general election cycle, which do not apply to limitation on contributions.

D. No funds belonging to a legislative caucus committee shall be expended by the committee unless a current designated leader of the committee is on file with the secretary of state.

E. Funds belonging to a legislative caucus committee shall be managed by the designated leader or the leader's designee.

F. A legislative caucus committee cannot be dissolved or cancel its registration as a political committee pursuant to Subsection G of Section 1-19-29 NMSA 1978. [1.10.13.32 NMAC – N, 10/29/2019]

HISTORY OF 1.10.13 NMAC:
[RESERVED]

WORKFORCE SOLUTIONS, DEPARTMENT OF**TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 32 WORKFORCE INNOVATION AND OPPORTUNITY ACT LOCAL AREA DESIGNATION PROCEDURE**

11.2.32.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS) [11.2.32.1 NMAC - N, 10/29/2019]

11.2.32.2 SCOPE: State workforce development board (state board), New Mexico department of workforce solutions, chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients, and workforce system partners. [11.2.32.2 NMAC - N, 10/29/2019]

11.2.32.3 STATUTORY AUTHORITY: Title I of the Workforce Innovation and Opportunity Act, 29 USC Subchapter I of Chapter 32 (WIOA), and Section 50-14-1 et seq., 1978 NMSA. [11.2.32.3 NMAC - N, 10/29/2019]

11.2.32.4 DURATION: Permanent. [11.2.32.4 NMAC - N, 10/29/2019]

11.2.32.5 EFFECTIVE DATE: October 29, 2019, unless a later date is cited at the end of a section. [11.2.32.5 NMAC - N, 10/29/2019]

11.2.32.6 OBJECTIVE: To establish the process by which the governor shall designate local workforce development areas within the state that are eligible to receive funding under Title 1 of WIOA, after consultation with local boards and chief elected officials and after consideration of comments received

through the public comment process. [11.2.32.6 NMAC - N, 10/29/2019]

11.2.32.7 DEFINITIONS:
[RESERVED]

11.2.32.8 BACKGROUND:
A. Title 1 of the Workforce Innovation and Opportunity Act (WIOA) requires DWS to issue a policy to provide guidance regarding the process for designation of workforce development areas in New Mexico, along with the process for appealing designation decisions. WIOA mandates that the State Workforce Development Board must assist the governor in designation of workforce development areas, as required in WIOA Section 106, and requires an established appeals process.

B. The governor shall designate local workforce development areas within the state through consultation with the state board, after consultation with chief elected officials, and after consideration of comments received through the public comment process as described in WIOA, Section 102(b)(2)(E)(iii)(II). Considerations shall include:

(1) the extent to which the areas are consistent with the labor market areas in the state;

(2) the extent to which the areas are consistent with regional economic development areas in the state; and

(3) the extent to which the areas have available federal and non-federal resources necessary to effectively administer activities under subtitle B and other applicable provisions of this act, including whether the areas have the appropriate education and training providers, such as institutions of higher education and area career and technical education schools. [11.2.21.8 NMAC - N, 10/29/2019]

11.2.32.9 LOCAL AREA DESIGNATION PROCEDURE

A. At any time, CEOs from local areas, the state board, any unit of general local government, or

the governor may propose or request a local area designation. A request is initiated by filing a written request to DWS, the state administrative entity (SAE) authorized by the governor to implement Title I of WIOA.

B. Requests for local workforce development area designations must be sent in writing to the department of workforce solutions at 401 Broadway NE, Albuquerque, NM 87102, to the attention of the cabinet secretary.

C. Requests must be received by the governor through DWS no later than October 1 of the year previous to the program year the designation would be in effect. A program year (PY) is from July 1 through June 30. (i.e.: PY 2018 is July 1, 2018 through June 30, 2019)

D. The full request for the designation as a local workforce development area must:

(1) Address the following questions:
(a) Is the proposed designation consistent with labor market areas in the state; and

(b) Is the proposed designation consistent with regional economic development areas in the state; and

(c) Are there available federal and non-federal resources, including appropriate education and training institutions, to effectively administer activities pursuant the youth, adult and dislocated worker programs under Title I of WIOA.

(2) Submit a service delivery plan that includes a description of resources available to the area to provide services and the ability to coordinate multiple resources;

(3) demonstrate local support for the designation by chief elected officials, including, but not limited to, county commissioners, mayors, city council, or other applicable boards;

(4) demonstrate local capacity to manage funds per federal and state guidelines, and the capacity to provide oversight of the programs;

(5) provide evidence that the proposed entity, in the two program years for which data is available prior to the request, met or exceeded the adjusted levels of performance, successfully met the state and federal fiscal requirement, and was not subject to the sanctions process per DWS and USDOL guidelines; and

(6) address how the proposed new area designation will impact other local workforce areas or regions. It should be understood by any county, city, or combination of such seeking the designation, that the new area will secure formula allocated funds for each WIOA funding stream (i.e.: adult, dislocated worker, and youth) based on the formula factors identified by USDOL.

E. If the requirements are met, the governor, through DWS, will forward the request to the state board for consideration. The state board must provide public notice pursuant to the New Mexico Open Meetings Act. The SWDB shall provide notice of the time, place and agenda for any meeting where designation will be discussed. The notice must be specific enough to permit citizens to recognize matters of interest.

F. If the state board determines that there is compelling evidence for designation, the state board will recommend the designation of the local area to the governor. The governor may approve the request and recognize the resulting configuration of the local area(s).
[11.2.32.9 NMAC - N, 10/29/2019]

11.2.32.10 APPEAL PROCEDURES: Any changes to existing local area designation by the state board may be appealed to the governor through DWS.

A. Appeals must be sent in writing to the department of workforce solutions, 401 Broadway NE, Albuquerque, NM 87102, to the cabinet secretary’s attention.

B. The appeal must be filed within 14 calendar days after notification of the decision.

C. The appeal must contain a specific statement of the grounds upon which the appeal is sought.

D. The state board will have 60 days from the date the appeal is received to hold a public hearing to allow for comments and objections concerning the request

E. The state board will review the record, including public comments, and will submit a recommendation to the governor within 25 business days of the hearing. The final decision rests with the governor.

F. If the decision of the appeal changes the designation, the changes will become effective on July 1st of the following year.

G. If a decision on appeal is not rendered in a timely manner, or if the appeal does not result in designation, the entity may request review by the US Secretary of Labor, under the procedures set forth in 20 CFR 667.640(a).
[11.2.32.10 NMAC - N, 10/29/2019]

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.3.100 NMAC, Sections 1, 7, 102, 106, 107 and 109, effective 10/29/2019.

11.3.100.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions, [Employment Security Division], P.O. Box 1928, Albuquerque, NM 87103
[7-15-98; 11.3.100.1 NMAC - Rn & A, 11 NMAC 3.100.1, 01-01-2003; A, 11-15-2012, A, 10/29/2019]

11.3.100.7 DEFINITIONS: In addition to the definitions found in the individual parts and sections, the following definitions apply in Parts 100 through 500 of Title 11, Chapter 3:

[~~A. —“Bureau” means the unemployment insurance bureau of the employment security division of the New Mexico department of workforce solutions.~~]

[B] A. “Claim” means a request for benefits pursuant to the Unemployment Compensation Law.

[C] B. “Contribution” means the state unemployment insurance tax imposed on employers pursuant to the Unemployment Compensation Law.

[D] C. “Department” means the New Mexico department of workforce solutions.

[E] D. “Division” means the unemployment insurance division of the New Mexico department of workforce solutions, formerly the employment security division [of the New Mexico department of workforce solutions], formerly known as the employment security commission and formerly known as the employment security department.

[F] E. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities.

[G] F. “Electronic form” means body of information collected by electronic means, computer program or other automated means similar to the body of information collected by a paper document.

[H] G. “E-mail” or “electronic mail” means communications similar to paper letters and memos transmitted electronically for the purpose of communication.

[I] H. “Electronic signature” means electronic symbols or process attached to or logically associated with a record, adopted and executed by an individual with the intent to sign the record or electronic form.

[J] I. “Good cause” means a substantial reason, one that affords a legal excuse, or a legally sufficient ground or reason.

[K] J. “IVR” means the interactive voice response system used by the [state office claims] department to [process claims] administer the Unemployment Compensation Law.

[L] K. “Password” means a series of letters and numbers intended by the sender and receiver

to provide additional security to electronic transmissions. Typically, the password is adopted by the sender and conveyed to the receiver prior to a series of communications. The password is used to verify the identity of the sender of the communications. The password, along with the sender’s “username” can constitute a signature for all legal purposes.

[M] L. “Personal identification number” or “PIN” means a series of letters and numbers intended by the sender and receiver to provide additional security to electronic transmissions. The terms “password” and “PIN” are used interchangeably in the department’s rules, regulations and policies.

[N] M. “Rule” and “regulation” are synonymous and refer to provisions of the New Mexico Administrative Code.

[O] N. “Secretary” means the cabinet secretary of the New Mexico department of workforce solutions or that person’s official designee as provided in the department’s internal policies and procedures.

[P] O. “Signature” means any means of signature including, but not limited to, manual, facsimile, electronic, digital or other means permitted by law.

[Q] P. “Sole proprietorship” is a business operated by individual whose ownership interest is not held as shares in a corporation, limited liability company, general or limited partnership or limited liability partnership. The use of the terms “sole proprietor” or “sole proprietorship” do not exclude marital community ownership or a marital partnership.

[R] Q. “State office claims” means the claims section of the unemployment insurance bureau of the employment security division of the New Mexico department of workforce solutions.

[S] R. “Tax section” means the tax administration section of the unemployment insurance [bureau of the employment security] division of the New Mexico department of workforce solutions.

[T] S. “The assistant unemployment bureau chief for claims” means that person or that person’s official designee.

[U] T. “The assistant unemployment bureau chief for tax” means that person or that person’s official designee.]

[V] U. “The director of the employment security division” means that person or that person’s official designee as provided in the department’s internal policies and procedures.

[W] V. “The unemployment insurance bureau chief” means that person or that person’s official designee as provided in the department’s internal policies and procedures.]

[X] W. “Transmit” means any method of communication customary in the business community, including but not limited to U.S. postal service, private courier services, personal delivery and electronic communications such as telephone, facsimile, electronic mail and internet. Unless specifically required by law or department rule, transmissions and communications do not require hard or paper documents. Unless specifically required by law or department rule, the date and time of the receipt of the transmittal by the appropriate department official is the received or filed date.

[Y] X. “Unemployment Compensation Law” means Section 51-1-1 et seq. NMSA 1978 as amended from time to time.

[Z] Y. “Username” means the term as commonly used in electronic communication which is an abbreviation of the name of the sender of electronic communications. Typically, the username, which is less secure, is used in conjunction with a password or PIN to provide secure communications between a sender and receiver while allowing the receiver assurances and verification of the identity of the sender.

[AA] Z. “Wages” means all [remuneration] compensation for employment except as provided in these rules or in state and federal statutes applicable to unemployment compensation.

(1) Borrowed monies, including monies borrowed from a 401(K) or other pension account, even if such borrowed money may create a taxable event, shall not be deemed [~~remuneration~~] compensation or wages such as to disqualify the individual from unemployment benefits.

(2) 26 U.S. C. Section 3306(b)(13) of the Internal Revenue Code excludes from the definition of wages “any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129.” Under 26 U.S.C. Section 127 of the Internal Revenue Code, employer-paid education expenses are excludable from the gross income of and wages of an employee if provided under an educational assistance plan. This exclusion applies to both graduate and undergraduate courses and is effective with respect to courses beginning after December 31, 2001.

[11.3.100.7 NMAC - N, 01-01-2003; A, 11-15-2012; A, 10/29/2019]

11.3.100.102 VALUATION OF [~~REMUNERATION~~] IN KIND COMPENSATION:

A. If a claimant receives any wages in a medium other than cash, the reasonable cash value of any [~~remuneration~~] compensation other than cash shall be deemed for all purposes of the Unemployment Compensation Law to be either:

(1) the amount agreed upon between the employing unit and the claimant if the terms of the agreement are reported to the department and the department agrees that such agreed amount or value is reasonable; or

(2) the cash value as shown to the satisfaction of the department.

B. If the department determines that the amount agreed to is unreasonable, or if the employing unit and the individual fail to agree

upon an amount, or if the employing unit fails to report the terms of an agreement to the department and fails to show the cash value of such non-cash [~~remuneration~~] compensation prior to the due date of contributions or payment in lieu of contributions with respect to such wages, the department shall fix an amount or value after considering all available information or evidence. The amount fixed by the department shall be deemed for all purposes of the Unemployment Compensation Law to be the cash value of the claimant’s wages received in any medium other than cash.

[7-15-98; 11.3.100.102 NMAC - Rn, 11 NMAC 3.100.102, 01-01-2003; Repealed, 11-15-2012; 11.3.100.102 NMAC - Rn & A, 11.3.100.105 NMAC, 11-15-2012, A, 10/29/2019]

11.3.100.106 AVAILABILITY AND CONFIDENTIALITY OF DEPARTMENT RECORDS:

A. The Public Records Act permits the inspection of public records of this state “except as otherwise provided by law,” Paragraph (8) of Subsection A of Section 14-2-1 NMSA 1978. Section 51-1-32 NMSA 1978 requires that “information obtained from employers, employing units or claimants pursuant to the administration of the Unemployment Compensation Law and determinations as to the benefit rights of any claimant are confidential and shall not be open to inspection in any manner revealing the claimant’s employer’s or employing unit’s identity except that such information may be made available to those designated persons and agencies, and for the purposes specified in regulations issued by the secretary.”

B. The department’s files and records, including but not limited to investigation reports, statements, memoranda, correspondence or other data, regardless of the media on which stored, pertaining to matters under consideration or scheduled for hearing, other departmental proceeding or judicial appeal shall

be available for inspection and copying, at any reasonable time by the employing unit or individual who is a party to any proceeding before the department.

C. The contents of the department’s files and records shall not be released to any person except the employers, employing units or claimants to whom the file or record pertains or the employers’, employing units’ or claimants’ authorized representative, and then, only upon a signed, written release, court order, grand jury subpoena or search warrant. Except in instances of court orders, grand jury subpoenas and search warrants, if more than one party is named in the file or record sought, both parties must sign a consent to the release of the file or record if it is sought for any purpose other than a proceeding before the department.

D. With the consent and approval of the secretary and upon advice of the department’s general counsel, the contents of the department’s files and records may be released to law enforcement agencies for the purpose of criminal investigations and child support proceedings.

E. From time to time, the department may enter into agreements to exchange information with other government agencies and with non-government providers of public assistance, which agreements may provide for the exchange of information otherwise confidential under Section 51-1-32 NMSA 1978. The conveyance of this information is for the purpose of obtaining information necessary for the department to provide services to its customers or so that other agencies can provide public assistance benefits to the individuals about whom the information pertains. In such instances, every reasonable effort shall be made to maintain the confidentiality of the information exchanged.

F. Unless otherwise provided by statute or a written agreement provided in Subsection E of 11.3.100.106 NMAC, the

department shall charge the indicated fees for copies of department files and records:

~~(1)~~ audio tape, \$3.00 per tape;

~~(2)~~ video tape, \$5.00 per tape;

~~(3)~~ floppy disc, \$1.00 per disc;

~~(4)~~ (1) CD or DVD disc, \$5.00 per disc;

~~(5)~~ (2) printed paper copies, \$1.00 of first page of file or request; 50 cents per page thereafter up to 100 copies; 25 cents all copies thereafter within the same file or request;

~~(6)~~ (3) staff research time, \$20.00 per hour for all time in excess of one hour spent in locating or reviewing a file prior to copying;

~~(7)~~ (4) employment or income verification, whether or not copies are requested, \$6.00; and

~~(8)~~ (5) any other request shall be charged at a reasonable rate for the equipment, staff and other resources used to provide the copies.
[11.3.100.106 NMAC - N, 01-01-2003; 11.3.100.106 NMAC - Rn & A, 11.3.100.109 NMAC, 11-15-2012; A, 10/29/2019]

11.3.100.107 WEBSITE:

A. For the convenience of the department, its employees, its customers and the general public, the department operates and maintains one or more websites to provide a portal to services offered by the department. The website contains original material pages and material developed by the department as well as commercially prepared software systems acquired to provide access to services that support the ~~Workforce Investment Act~~ Workforce Innovation Opportunities Act and the department's mission. The department website also features links to the websites of other providers who also offer services that are related or complementary to the services offered by the department.

B. Binding agreement: Use of the department's website constitutes acceptance as a contract of the published terms and conditions as provided in this rule and as published on the website from time to time.

C. General disclaimer: The department shall attempt to ensure that the information on the website is accurate by continuously updating the information. The department does not warrant or guarantee that the information is free from error. The website is a work in progress, under constant development in order to better serve the website users. The department accepts no liability for any loss or damage, direct, indirect, consequential or otherwise, incurred in the reliance on the material, information or programs provided on the website.

D. Public information: Information on the website is public information pursuant to the Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

E. Property of the department: All the material, information or programs on the department website are the property of the department unless otherwise specified. The material, information or programs on the department website:

(1) are provided as a public service for informational and educational purposes only.

(2) are not intended as legal advice of any kind.

(3) may be used only for the purpose of gaining general information or for nonprofit purposes.

(4) is for public use and may be duplicated and disseminated for non-commercial purposes so long as not subject to another's copyright; any such duplication or dissemination must be accompanied by a citation acknowledging the department as the source of the information and the department's copyright and trademark notices;

(5) may not be used for commercial purposes of any

kind without the written permission of a division director or higher officer of the department except that employment listings may be used by individual website users for obtaining employment.

F. Copyright notice: All copyrightable text, graphics, design, selection and arrangement of information is protected by copyright (2011, New Mexico department of workforce solutions).

G. Third party links: The department website provides links to third party websites and vice versa as a courtesy and convenience to the department's website users. The department is not responsible for the content or condition of third party websites. The department has no responsibility or liability to users for the content or accuracy of websites linked from this page or websites that provide a link to this page. The department does not endorse the views, products or services of third party websites. The department has no responsibility for the privacy practices or internal content of linked sites. The provision of a link provides no assurance that the linked site has a privacy policy similar to the department's privacy policy.

H. Privacy: The department is committed to maintaining the privacy of the personal information of those persons who access and use the department's website. The department is committed to maintaining the security of its computer system.

(1) Monitoring: The department's computer system including the website is monitored to ensure proper operation, to verify the functioning of applicable security features and for similar purposes.

(2) Personally identifiable information: For the purpose of the website, "personally identifiable information" means information collected on-line that could serve to identify an individual, including, but not limited to:

(a) first and last name;

(b) physical address;
 (c) e-mail address;
 (d) telephone number;
 (e) social security number;
 (f) tax identification number;
 (g) credit card information;
 (h) bank account information;
 (i) any combination of information that could be used to determine identity.

(3) Except where specified, website users need not provide personally identifiable information to visit the department website or download information from the website.

(4) Any personally identifiable information provided to the department will be used solely by the department, its agents, contractor and employees in accordance with Section 14-8-21 NMSA 1978, unless the information is designated as a public record under the Public Records Act.

(5) Unless the user chooses to provide the information for a specific purpose, personally identifiable information is not collected and maintained by the department.

(6) Personally identifiable information may be required to qualify or determine eligibility for certain government services.

(7) The department shall take reasonable precaution to protect the confidentiality of personally identifiable information from loss, misuse, alteration or disclosure to unauthorized persons.

(8) Unless otherwise prohibited by state or federal law or applicable rules and regulations, an individual may access and correct personally identifiable information whether or not the access was created by accident, unauthorized access or a change in circumstances.

(9) E-mail or other forms of information requests sent to the department website may be saved and used to respond to the request, to forward the request to the appropriate agency, communicate updates of information or to provide the department’s webmaster with valuable customer feedback to assist in improving the website.

(10) Despite all precautions, the department does not guarantee or warrant users of the website against hardware failure, unauthorized intrusion or other technical problems that might affect privacy and confidentiality.

(11) To maintain the website user’s privacy, the department requires the use of a password before accessing any personal or account information. The department shall provide methods for the assignment of user names and passwords in a manner customary in the industry from time to time.

I. Trespass: The department shall use all legally available means to prevent, monitor and investigate any attempt to deface, delete, modify or misappropriate the department’s website, server, database, information system or other department technology asset.

J. Finality: No information provided to the department through this electronic medium is final until the department transmits a confirmation to the website user.

K. Publication of an amendment to website policy: A copy of this rule shall be published on the website. From time to time, the department may heighten, but shall not decrease the privacy policy without amendment of this rule. [11.3.100.107 NMAC - N, 01-01-2003; 11.3.100.107 NMAC - Rn & A, 11.3.100.110 NMAC, 11-15-2012; A, 10/29/2019]

11.3.100.109 ELECTRONIC TRANSACTIONS:

A. Official communications with the department shall contain all material customarily found on paper forms.

B. [Additionally;] Electronic forms and records used by the department shall clearly indicate the purpose of the form, instructions for completion and submission electronically, information on receiving assistance by telephone or e-mail, require the submission of a valid e-mail address, telephone number or United States postal service address at which the sender can be contacted regarding the information submitted and the purpose underlying the submission of the information.

C. A person choosing to communicate with the department electronically bears the responsibility of ensuring that the information submitted and the methods by which the person can be contacted are accurate. The recipient must notify the department in the event of an address change.

D. If electronic correspondence is elected, the recipient will not receive correspondence by US mail. It is the recipient’s obligation to exercise due diligence in checking the email of record and to frequently log into the online account to obtain any correspondence.

E. The use of a person’s name, identifying information, username and password or PIN in electronic and other communications with the department is deemed a signature for all legal purposes.

F. Persons using a means of electronic communication shall be advised that the submission of the information using the identifier is deemed a binding signature.

G. Use of electronic notification constitutes reasonable and proper notice for all purposes, laws, rules and regulations.

H. Employers shall submit all quarterly wage reports to the department electronically using their online accounts, unless the department has granted an express, written exception.

I. Third party administrators shall remit all quarterly wage contributions, payments, and

fact finding responses electronically. [11.3.100.109 NMAC - N, 01-01-2003; 11.3.100.109 NMAC - Rn & A, 11.3.100.112 NMAC, 11-15-2012; A, 10/29/2019]

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.3.300 NMAC, Sections 1, 7, 302, 303, 304, 308, 315, 320, and 321, effective October 29, 2019.

11.3.300.1 ISSUING

AGENCY: New Mexico Department of Workforce Solutions, [Employment Security Division], P.O. Box 1928 Albuquerque, NM 87103.

[11.3.300.1 NMAC - Rp, 11.3.300.1 NMAC, 11/1/2018; A, 10/29/2019]

11.3.300.7 DEFINITIONS:

A. "Additional claim" means a claim application which reactivates a claim during an existing benefit year or other eligibility period and certifies to a period of employment other than self-employment which occurred subsequent to the date of filing the last initial, additional or reopened claim.

B. "Agent state" means any state in which an individual files a claim for benefits from another state or states.

C. "Alternate base period" means the last four completed quarters immediately preceding the first day of the claimant's benefit year.

D. "Base period and benefit year" means the base period and benefit year applicable under the unemployment compensation law of the paying state.

E. "Base period", also called the **"regular base period"**, means the first four of the last five completed quarters as provided in Subsection A of Section 51-1-42 NMSA 1978 or the alternate base period.

F. "Benefits" means the [unemployment-insurance-compensation] benefits

payable to a claimant with respect to their unemployment, under the unemployment [insurance] compensation law of any state.

G. "Claimant"

means an individual who has filed an initial claim, additional claim or reopened claim for unemployment [compensation] benefits and this filing is within a benefit year or other eligibility period.

H. "Combined-wage claimant" means a claimant who uses wages from more than one state to establish monetary eligibility for benefits and who has filed a claim under this arrangement.

I. "Educational or training institution or program" means any primary school, secondary school or institution of higher education, public or private, which offers instruction, either for a fee or without charge, and which requires attendance and participation, either in person or online, to receive the instruction.

J. "Emergency unemployment compensation" (EUC) occurs when regular unemployment benefits are exhausted and extended for additional weeks. Unemployment extensions are created by passing new legislation at the federal level, often referred to as an "unemployment extension bill". This new legislation is introduced and passed during high or above average unemployment rates.

K. "Employment" means all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise.

L. "Full-time employment" means the normal full-time hours customarily scheduled and prevailing in the establishment in which an individual is employed, but in no event less than 32 hours per week.

M. "Good cause" means a substantial reason, one that affords a legal excuse, a legally sufficient ground or reason. In determining whether good cause has been shown for permitting

an untimely action or excusing the failure to act as required, the department may consider any relevant factors including, but not limited to, whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party that prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party's physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action. However, good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by failure to keep the department directly and promptly informed of the claimant's, employer's or employing unit's correct address. A written decision concerning the existence of good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order.

N. "Initial claim" means a new claim application submitted by the claimant to establish a benefit year and to obtain a determination of weekly and maximum benefit amounts.

O. "Instruction" means all teaching or opportunity for learning whether of a vocational or academic nature.

P. "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies as approved by the United States secretary of labor under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

Q. "Interstate claimant" means an individual who claims benefits under the

unemployment [~~insurance~~] compensation law of one or more liable states through the facilities of an agent state. The term “interstate claimant” shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such claimants in specified areas.

R. “Last employer” means the most recent employer or employing unit from which the claimant separated for reasons other than lack of work; or in the event that the claimant separated from the most recent employer for lack of work, the employer or employing unit before that from which the claimant separated for any reason other than lack of work, provided the claimant has not subsequently worked and earned wages in insured work or bona fide employment other than self-employment in an amount equal to or exceeding five times the claimant’s weekly benefit amount.

S. “Liable state” means any state against which a claimant files, through another state, a claim for benefits.

T. “Paying state” means the state against which the claimant is filing that actually issues the benefit payment.

U. “Real estate salesperson” means an individual who is licensed by the New Mexico real estate commission.

V. “Regular base period” means the first four of the last five completed quarters as provided in Subsection A of Section 51-1-42 NMSA 1978.

W. “Reopened claim” means a claim application which reactivates a claim during an existing benefit year or other eligibility period and certifies to a continuous period of unemployment for which the claimant did not file timely continued claims and during which the claimant either remained unemployed or had a period of self-employment since last reporting on this claim.

X. “State” means the states of the United States of

America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

Y. “Student” means any individual enrolled in an educational or training institution or program.

Z. “Trade adjustment assistance” (TAA) is a federal program that provides a variety of reemployment services including training and job-searching assistance and benefits to displaced workers who have lost their jobs or suffered a reduction of hours and wages as a result of increased imports or shifts in production outside the United States.

AA. “Trade readjustment allowances” (TRA) are income support payments to individuals who have exhausted unemployment benefits and whose jobs were affected by foreign imports as determined by a certification of group coverage issued by the Department of Labor.

BB. “Transitional claim” means a claim filed to request a determination of eligibility and establishment of a new benefit year having an effective date within a seven-day period immediately following the benefit year ending date and a week for which compensation or waiting week credit was claimed; i.e. continuous certification.

CC. “Wages” means all compensation for services, including commissions and bonuses and the cash value of all compensation in any medium other than cash.

DD. “Week of unemployment” means any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

[11.3.300.7 NMAC - Rp, 11.3.300.7 NMAC, 11/1/2018; A, 11.3.300.7 NMAC, 9/1/2019; A, 10/29/2019]

11.3.300.301 FILING INITIAL, ADDITIONAL AND REOPENED CLAIMS:

A. Upon filing an initial claim, an additional claim, or a reopened claim, the claimant shall be subject to a waiting week period

before the commencement of benefits begins.

B. Unless otherwise prescribed, any claimant wishing to claim benefits shall register for work, file an initial, additional, transitional or reopened claim for benefits and provide the name and address of their last employer.

C. The date of filing of any initial, additional or reopened claim shall be the Sunday of the week in which filed. Upon a showing of good cause, any initial claim or additional claim may be back-dated to the Sunday of the week immediately following the week in which the claimant was separated, and any reopened claim may be back-dated up to a maximum of [~~twenty-one~~] 21 days from the preceding Sunday of the date of the request for back-dating. “Good cause,” as used in 11.3.300.301 NMAC, exists when it is established that factors or circumstances beyond the reasonable control of the claimant caused the delay in filing. All requests for back-dating or post-dating shall include a fact-finding [~~report~~] response.

D. Unless otherwise prescribed, all claims shall be made online or by phone, giving all information required thereby. A claimant shall also separately register for work within 14 calendar days of the date the claim is filed. If a claimant is already registered with the department from a prior claim, the registration must be reactivated within 14 days of the date the claim is filed. If a claimant’s registration is not current with the department, their benefits shall be temporarily withheld until they comply unless good cause for the failure to register is shown. [11.3.300.301 NMAC - Rp, 11.3.300.301 NMAC, 11/1/2018; A, 11.3.300.7 NMAC, 9/1/2019; A, 10/29/2019]

11.3.300.303 TIMELY RESPONSE TO REQUEST FOR INFORMATION:

A. Any response to a request for [~~additional~~] information from the department must be received by the department within 10 calendar

days from the date transmitted.

Responses to requests for additional information must be received within two business days from the date of transmission.

B. The 10 calendar day period shall begin to run on the first day after the date the request was transmitted to the claimant or to the employer. If the tenth calendar day falls on a date when the department offices are closed, receipt on the first business day thereafter shall be timely. If a response is not received timely, the department will make a determination based on the information available at that time.

C. Employers and third party administrators must respond to request for additional information electronically.

[11.3.300.303 NMAC - Rp, 11.3.300.303 NMAC, 11/1/2018; A, 10/29/2019]

11.3.300.304 LATE FILING OF CONTINUED CLAIMS:

A. If the department finds good cause for a claimant's failure to timely file a continued claim, the claimant may file a late continued claim provided the certification is filed ~~[not later than the thirteenth day following the last day of the week requiring the certification]~~ within 14 days of the last day of the week requiring certification.

B. A certification not processed due to a department request for additional information from the claimant shall be considered timely if the requested information is received by the department no later than 10 calendar days after the request for additional information is transmitted to the claimant.

[11.3.300.304 NMAC - Rp, 11.3.300.304 NMAC, 11/1/2018; A, 11.3.300.304 NMAC, 9/1/19; A, 10/29/2019]

11.3.300.308 CLAIM DETERMINATION:

A. Notice to employer of filing of claim: Whenever a claimant files an initial claim for benefits or an additional claim, the department shall immediately

transmit to the claimant's last known employer, at the address of the employer as registered with the department, if so registered, and, if not registered, to the address provided by the claimant, a dated notice of the filing of the claim and a fact-finding questionnaire. The employer shall provide the department with full and complete information in response to the inquiry. The employer shall transmit a response directly to the department within 10 calendar days from the date the notice of claim is sent. Unless excused by the department, the response must be an electronic transmittal.

B. Request for additional information: Prior to issuance of a determination the department may request additional information from the employer, the claimant or witnesses relative to the separation of the claimant from employment. The employer shall provide the department full and complete information to the request for additional information within two business days from the transmission. Unless excused by the department, the response must be an electronic transmittal.

C. Initial determination: A determination on any claim for unemployment benefits shall be transmitted only after the department has evaluated the claim.

(1) ~~[When a non-monetary issue is not raised in an application for benefits and the employer's response is not received by the department within 10 calendar days after the transmission of the notice of claim, a determination shall be made based upon the information on the application.]~~ If an employer's response is not received within 10 calendar days after the transmission of the notice of a claim, and a non-monetary issue is not raised in the application for benefits, a determination shall be made upon the information on the application.

(2) The 10 day period shall begin to run on the day after the notice of claim was transmitted to the employer as indicated on the application. If

the tenth calendar day falls on the weekend or on a holiday, the reply shall be timely if received by the department on the following business day.

(3) After the 10 day period has passed, the department shall immediately transmit to the parties the determination including the reason, and shall advise the parties of the right to appeal that determination pursuant to these rules.

(4) If the claimant is subsequently disqualified from the receipt of benefits resulting in an overpayment, the employer will remain liable for any benefit charges incurred to the date of disqualification if the employer or an agent of the employer demonstrates an established pattern of failing to respond timely or adequately to the notice of claim within the ~~[ten]~~ 10-day period. ~~[In no employer shall be liable for more than ten weeks' worth of benefits charges pursuant to 11.3.300.308 NMAC as a penalty for its failure to respond to the claim in a timely manner.]~~

(a) A pattern is defined as failure to respond timely or adequately to five claims, or more at the secretary's discretion, within a calendar year.

(b) An inadequate response is defined as the employer's failure to provide relevant information or documentation that was reasonably available at the time a response was requested by the department.

(5) An employer may appeal a determination within 15 days of the assessment of the penalty that the employer or agent of the employer failed to respond timely or adequately to the notice of claim. Upon a finding on appeal that the employer or an agent of the employer had good cause for failure to transmit a timely or adequate response, the employer will be relieved of such charges. Overturned determinations will not be factored into the analysis of whether a pattern exists.

D. Redetermination: A redetermination may be issued only if all the following criteria are met:

(1) The department perceives the need for reconsideration as a result of a protest by an interested party due to new or additional information received. Examples of the type of errors which may prompt a redetermination are misapplication or misinterpretation of the law, mathematical miscalculation, an additional fact not available to the department at the time of the determination excluding those facts the employer and claimant had the opportunity to provide prior to the initial determination, transmitting a notice to the wrong employer or address, an employer's timely response statement disputing a claim for benefits, or other administrative error.

(2) All evidence and records are re-examined.

(3) A written redetermination notice is issued to the claimant and any other interested party, and is documented in the department records.

(4) A redetermination can be issued no later than 45 calendar days from the original determination date or 45 days from the date of the first payment derived from the original determination, whichever event occurs latest.

(5) The department may issue a redetermination provided that the employer's statement was received within the statutory time limits and within less than 45 calendar days from the date of the first payment.

(6) If the claimant began collecting benefits and as a result of redetermination will be denied benefits, the claimant shall be advised.

E. Stopping payment due to administrative error: Once an initial determination is made and payment of benefits is begun, payments shall not be stopped without prior notice and an opportunity to be heard pursuant to 11.3.500.9 NMAC. When payments are made as a result of administrative error by the department and are clearly not authorized by law, rule, regulation, or

any determination made pursuant to Subsection C of 11.3.300.308 NMAC, such payment shall not be deemed to have been made pursuant to a determination of eligibility.

F. Employer's notice of a labor dispute: When there is a strike, lock-out or other labor dispute, the employer shall file with the department after the commencement of such activity, and upon the demand of the department, a report of the existence and nature of the labor dispute, and the number of persons affected; and shall promptly provide the names, social security numbers and work classifications of all individuals unemployed due to the labor dispute, and whether and in what manner each individual is participating in the dispute or has a direct interest in the outcome.

G. Termination of continued claims: Payment of continued benefits to any person who has been determined eligible to receive benefits on an initial claim in accordance with 11.3.300.308 NMAC shall not thereafter be terminated without notice and an opportunity to respond.

[11.3.300.308 NMAC - Rp, 11.3.300.308 NMAC, 11/1/2018; A, 11.3.300.304 NMAC, 9/1/19; A, 10/29/2019]

11.3.300.315 RETIREMENT INCOME:

A. Each eligible claimant who, pursuant to a pension or retirement plan financed in whole or in part by a base-period employer of the claimant shall have the weekly benefit amount reduced, but not below zero, by the prorated amount of the pension, retirement pay, annuity or other similar periodic or lump-sum payment that exceeds the percentage contributed to the plan by the eligible claimant. The maximum benefit amount payable shall also be reduced to an amount not more than 26 times the reduced weekly benefit amount. For purposes of this section periodic retirement income is not deemed "received", if, under the time period allowed by the Internal Revenue Code, 26 U.S.C. Section 3405 and

related provisions, that amount is placed in a non-taxable qualifying retirement account.

B. A claimant's, monthly pension or retirement payment shall be multiplied by 12, then divided by 52 to determine the amount of pension or retirement income attributed to a week beginning with the last week worked prior to separation from employment.

C. A lump-sum pension or retirement payment shall be considered a periodic payment and the amount divided by 52 and allocated on a weekly basis beginning with the last week worked prior to separation from employment, [11.3.300.315 NMAC - Rp, 11.3.300.315 NMAC, 11/1/2018; A, 10/29/2019]

11.3.300.320 WORK SEARCH REQUIREMENT:

A. WORK SEARCHES: To qualify for continued benefits, a claimant must:

(1) be a member of a union with a hiring hall or referral hall and meet the union requirements for job referral or placement; [~~a union with a hiring hall is one that actively seeks to place its members in employment~~]

(a) the claimant must be a member in good standing at the time of certification;

(b) the hiring hall or referral hall must be actively seeking to place its members in employment; or

(2) actively seek work by contacting a minimum number of different employers each week during the week for which benefits are claimed, as directed by department representatives. It is not mandatory that the work searches occur on different days of the week;

(a) a claimant may contact the same employer more than one time during a given week, which may count for multiple searches if the claimant applies for multiple jobs with the same employer so long as the applications are distinct and separate positions;

(b) a claimant may list jobs applied for through the New Mexico department of workforce solutions workforce connection centers, the New Mexico state personnel office (SPO), America's job bank, Workforce Innovation and Opportunity Act (WIOA) partners and similar programs as approved from time to time by the department as valid work search contacts for each week of claim certification;

(3) Other unions may apply for work search waivers by submitting a request in writing to the secretary, who may upon discretion, make an exception to the work search requirements.

B. in order to qualify for continued benefits, interstate, if New Mexico is the liable state, claimants must seek work within the week for which benefits are being claimed and actively seek work by contacting a minimum of two different employers each week, or if a union member, actively seek work by contacting the union as required by the union in order to be eligible for job referral or placement

C. claimants must keep a record of the name, address and telephone number or electronic mail address of each employer contacted in the event of an audit; and must retain a copy of any email confirmation received as a result of applying for a job online.

(1) This information must be provided to department representatives upon request;

(2) the claimant must provide the requested information no later than 10 calendar days from the date of the department's request;

(3) the claimant must provide sufficient information for the department to verify the claimant's work search efforts. If the claimant is able to provide the specific job number or requisition number for the job applied for, this information will be considered sufficient to verify the contact.

(4) failure to provide the required information without good cause may result in a denial of benefits for the week in question;

~~[the claimant must provide adequate information to allow verification of the contact;]~~

(5) if the information provided is insufficient to verify a valid work search occurred, benefits for the week in question will be denied;

(6) if a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits.[-s]Such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978;

(7) any denial imposed for failure to provide the required information may be appealed pursuant to 11.3.300.500.9 NMAC;

D. A claimant whose work search is deemed inadequate or invalid shall be denied benefits for the week in question. A rebuttable presumption that the claimant failed to meet the active work-search requirements for that week will be raised in all cases where a claimant's work search is deemed inadequate or invalid. In order to overturn the denial of benefits the claimant shall provide proof that the claimant did meet the active work-search requirements for that week. If a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits. Such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978. Any denial imposed on the basis of an inadequate or invalid work search may be appealed pursuant to 11.3.300.500.9 NMAC.

E. The department may waive the work search requirements for claimants who the department determines are on temporary lay-off status from their regular full-time employment upon receipt of an assurance from the employer that the lay-off shall not exceed four

weeks or upon receipt of an express offer in writing of substantially full-time work which will begin within a period not exceeding four weeks. Such waivers shall apply only to the four-week period covered on the determination. A claimant who receives a determination granting a waiver for the four-week period shall promptly transmit any change to the claimant's recall date or start date to the department. The claimant's eligibility shall then be subject to redetermination pursuant to Subsection A of 11.3.300.308 NMAC.

F. In cases where the department determines a claimant is in a temporary lay-off status due to a government furlough or shutdown, the department may waive the work search requirements during the period of the temporary lay-off for all affected claimants.

[11.3.300.320 NMAC - Rp, 11.3.300.320 NMAC, 11/1/2018; A/E, 1/9/2019; A, 11.3.300.304 NMAC, 9/1/19; A, 10/29/2019]

11.3.300.321

REEMPLOYMENT SERVICES:

A claimant shall be eligible to receive benefits with respect to any week only if the claimant participates in reemployment services such as job search assistance services, if the claimant has been determined to be likely to exhaust regular benefits, and needs reemployment services pursuant to a profiling system established by the department, unless the department determines that:

A. this claimant has completed such services; or

B. there is justifiable cause for the claimant's failure to participate in such services;

C. if the claimant does not participate in reemployment services as required by the department, benefits shall be denied beginning the week of non-participation.

[11.3.300.321 NMAC - Rp, 11.3.300.321 NMAC, 11/1/2018; A, 10/29/2019]

11.3.300.325 OVERPAYMENTS AND WAIVER OF OVERPAYMENTS PURSUANT TO THE TRADE ACTS [~~AND TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACTS~~] OR ANY ENACTED FEDERAL EXTENSION PROGRAM:

A. The department shall use the process set forth herein to evaluate disputes of overpayments paid under the Trade Acts, the Trade Adjustment Assistance (TAA), Trade Readjustment Assistance (TRA) [~~or the Emergency Unemployment Compensation (EUC) Acts~~] Federal Extended Benefits, or any enacted federal extension program under the following circumstances:

(1) When a decision of the department results in an overpayment, an appealable determination will be sent to the claimant. The claimant may file an appeal no later than 15 days from the date of the determination in accordance with 11.3.500 NMAC.

(2) At the department's discretion, a request for review of an overpayment may be administratively initiated to determine if a waiver of overpayment will be approved. A waiver will be approved if the department determines that:

- (a) the application was made timely;
- (b) payment was made without the fault of the claimant; and
- (c) requiring repayment would be contrary to equity and good conscience.

(3) The department's affirmative finding of any one of the following factors of fault precludes a waiver:

- (a) that the claimant knowingly made a material misrepresentation, which misrepresentation resulted in the overpayment; or
- (b) that the claimant knowingly failed to disclose a material fact, which failure to disclose resulted in the overpayment; or

(c) that the claimant knew or should have known that he was not eligible for the payment; or

(d) that the department has previously issued a determination of fraud in regards to the overpayment.

(4) The department shall consider the following factors in determining whether, in equity and good conscience, the department should require repayment:

- (a) whether the overpayment was the result of a decision on appeal;
- (b) whether the claimant was given notice that repayment would be required in the event of reversal on appeal;
- (c) whether the recovery of the overpayment would cause an extraordinary and lasting financial hardship to the claimant, resulting in the claimant's inability to obtain minimal necessities of food, medicine and shelter for at least 30 days and period of financial hardship lasting at least three months, and
- (d) whether, if recoupment from other benefits is proposed, the length of time of extraordinary and lasting financial hardship shall be the longest potential period of benefit eligibility as seen at the time of the request for waiver of determination.

(5) In determining whether fraud has occurred, the department shall consider the following factors:

- (a) whether the claimant knowingly made, or caused another to make, a false statement or representation of a material fact resulting in the overpayment;
- (b) whether the claimant knowingly failed, or caused another to fail, to disclose a material fact resulting in the overpayment.

B. If a determination of fraud is made, the claimant shall be ineligible for any further TAA, TRA or [~~FEUC~~] any other enacted federal

extension program benefits and shall be ineligible for waiver of any overpayment.

C. A finding that the overpayment was not the result of a decision on appeal or that the recovery would not cause extraordinary and lasting financial hardship shall preclude a waiver.

D. If a claimant fails, without good cause, to complete training, a job search or a relocation, any payment to such claimant that is not properly and necessarily expended in attempting to complete the activity shall constitute an overpayment. Such overpayments shall be recovered or waived according to the standards of fault, equity and good conscience contained in 11.3.300.325 NMAC.

E. In any event, no repayment shall be required or deduction made until a notice and an opportunity for fair hearing have been provided to the claimant in accordance with 11.3.500 NMAC, a determination has been issued by the department, and the determination has become final.

[11.3.300.325 NMAC - Rp, 11.3.300.325 NMAC, 11/1/2018; A, 11.3.300.304 NMAC, 9/1/19; A, 10/29/2019]

11.3.300.326 DOMESTIC ABUSE:

A. A claimant is eligible for waiting period credit or benefits if the claimant voluntarily leaves work due to circumstances directly resulting from domestic abuse.

(1) "Domestic abuse" means abuse as defined in Section 40-13-2 NMSA 1978, and includes but is not limited to any incident by a household member against another household member resulting in: physical harm; severe emotional distress; bodily injury or assault; a threat causing imminent fear of bodily injury by any household member; criminal trespass; criminal damage to property; repeatedly driving by a residence or work place; telephone harassment; stalking; harassment, or harm or threatened harm to children.

(2)

“Household member” means a spouse, former spouse, family member, including relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, intimate partner or a person with whom the claimant has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member.

B. Documentation:

The claimant shall provide documentation satisfactory to the department for the determination of whether the claimant has experienced domestic abuse for purposes of ~~[unemployment insurance benefits]~~ benefit eligibility. The documentation shall be of a competent nature, reasonably susceptible to verification and bearing indicia of credibility. The documentation shall include a sworn statement by the claimant regarding the domestic abuse. The documentation may include information from individuals or organizations from whom the claimant has sought assistance for the domestic abuse, including but not limited to police or court records, documentation from a shelter worker, attorney at law, a member of the clergy, physician or other medical or mental health practitioner. If upon review of the claimant’s documentation, the department determines that further verification is warranted, the department may require additional supporting documentation.

C. Determination:

To be eligible for benefits as a result of domestic violence, the department must first determine that the claimant is monetarily eligible ~~[for unemployment insurance compensation benefits]~~. The existence of domestic violence shall be established by a preponderance of the evidence.

(1) Factors

to be considered in determining if claimant voluntarily leaves work as a result of domestic violence include but are not limited to whether: claimant reasonably fears domestic abuse at or en route to or from

claimant’s place of employment; claimant reasonably is required to relocate to another geographic area to avoid future domestic abuse; claimant reasonably believes that leaving employment is necessary for the future safety of the claimant or the claimant’s family due to the domestic abuse; the abuse itself interfered with claimant’s ability to work, travel or prepare for work; claimant reasonably left the labor market to escape such abuse; the abuse occurred at claimant’s place of employment; the abuser’s relatives or friends or the abuser were co-workers of claimant or otherwise present at the worksite; claimant informed the employer and gave the employer the opportunity to ameliorate the domestic abuse within a reasonable period of time, but the employer would not or could not do so; claimant has filed a civil or criminal proceeding against an alleged abuser; however nothing in this provision shall be construed as requiring the filing of a civil or criminal proceeding as a prerequisite to establishing the existence of domestic violence.

(2) Claimant

must indicate at the time of filing the claim that the reason for leaving employment was as a result of qualifying domestic abuse.

(3) Claimant

must provide evidence tending to prove the existence of qualifying domestic abuse within 10 days of the filing of the claim.

(4) Claimant

will be eligible to receive benefits retroactively to the date of filing if adequate documentation is received within 10 days of the filing of the claim, if otherwise eligible for benefits.

(5) If no

documentation is received within 10 days of the filing of the claim, an initial determination will be issued denying the claim on the basis of domestic abuse.

(6) If claimant

subsequently submits documentation tending to demonstrate the existence of domestic abuse, a determination will be made on the basis of the

subsequent documentation submitted. Claimant will not be eligible to receive benefits retroactively to the date of filing but will be eligible to receive benefits retroactively to the date of submission of the subsequent documentation supporting domestic abuse.

(7) Only an

alleged victim of domestic abuse may obtain benefits under this provision; an alleged perpetrator may not.

D. If domestic abuse

is proven, a determination will be issued identifying domestic abuse as the reason for the separation and a contributing employer’s account will not be charged any portion of benefits paid.

[11.3.300.326 NMAC - Rp, 11.3.300.326 NMAC, 11/1/2018; A, 10/29/2019]

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.3.400 NMAC, Sections 6-7, 401, 404, 409, 413, 417-419, 416 and adding section 428, effective 10/29/2019.

11.3.400.6 OBJECTIVE: The purpose of these rules is to provide clarification of the Unemployment Compensation Law. These rules assist employers and claimants ~~[in]~~ to better [understanding] understand how specific sections of the law are being administered by the department. The rules also assist employers ~~[in- better]~~ achieve compliance ~~[and- provide]~~ by facilitating understanding of the department’s procedures ~~[necessary to]~~ so that employers can meet ~~[it’s]~~ the requirements of unemployment compensation law. [11.3.400.6 NMAC - Rp, 11.3.400.6 NMAC, 11/30/2016; A, 10/29/2019]

11.3.400.7 DEFINITIONS:**A. “Account” means**

the employer account, identified by an account number, established and maintained ~~[for]~~ by each employer, or employer member of a group account, for the purpose of determining

liability for contributions or payments in lieu of contributions and includes a record of all unemployment insurance activity including benefit charge allocations, contributions and wages from which benefits to eligible claimants can be determined.

B. “Agency” means any officer, board, commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

C. “Alternate base period” means the last four completed quarters immediately preceding the first day of the claimant’s benefit year.

D. “Annual payroll” means the total taxable amount of [remuneration] payment from an employer for employment during a 12-month period ending on a computation date.

E. “Base period” means the first four of the last five completed quarters as provided in Subsection A of Section 51-1-42 NMSA 1978 or the alternate base period.

F. “Base-period employers” means the employer of an individual during the individual’s base period.

G. “Base-period wages” means the wages of an individual for insured work during the individual’s base period on the basis of which the individual’s benefit rights were determined.

H. “Benefit charges” means the dollar amounts allocated or accrued to an employer’s account for unemployment benefits paid to individuals.

I. “Benefit payments used to calculate the average benefit cost rate” means all unemployment compensation benefits and state extended benefits paid from the trust fund to claimants with wages from non-reimbursable covered employment.

J. “Benefit ratio” means the result determined by dividing an employer’s benefit charges by the employer’s taxable payroll.

K. “Common ownership” means that two or more businesses are substantially owned, managed or controlled by the same person or persons.

L. “Computation date” means for each calendar year the close of business on June 30 of the preceding calendar year.

M. “Contributions” means the tax payments required by Section 51-1-9 NMSA 1978 to be made into the fund by an employer on account of having individuals performing services for the employer.

N. “Contribution rate” means the rate applicable to the tax payments the employer is required to pay into the fund.

O. “Employer’s reserve” means the difference between all of the employer’s previous years’ contribution payments and all of the employer’s previous years’ benefit charges, divided by the average of the employer’s annual payrolls for the immediately preceding fiscal years, up to a maximum of three fiscal years.

P. “Employing enterprise” means a business activity engaged in by an employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters.

Q. “Employment” means services performed by an individual including corporate officers for wages or other [remuneration] payment for an employer that has the right, whether utilized or not, to control or direct the individual in the performance of the services at the employer’s place of business which includes all locations where services are performed for the employer under the individual’s contract of service and the individual is not customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of services.

R. “Excess claims premium” means the charge in addition to the contribution rate applicable to the employer if an employer’s contribution rate is

calculated to be greater than five and four-tenths percent, provided that an employer’s excess claims premium shall not exceed one percent of the employer’s annual payroll.

S. “Experience history factor” means the determination based on the employer’s reserve which is the difference between all of the employer’s previous years’ contribution payments and all of the employer’s previous years’ benefit charges, divided by the average of the employer’s annual payrolls for the immediately preceding fiscal years, to a maximum of three fiscal years.

T. “Good cause” means a substantial reason, one that affords a legal excuse, or a legally sufficient ground or reason. In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the department may consider any relevant factors including, but not limited to, whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party that prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party’s physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action. However, good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by the claimant’s, failure to keep the department directly and promptly informed of the claimant’s correct email or postal mailing address or the employer’s or employing unit’s failure to keep the department directly and promptly informed of the employer’s or employing unit’s correct email address. A written decision concerning the existence of

good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order.

U. "Group account" means the account, identified by an account number, established for two or more employers whose application to become liable for payments in lieu of contributions and for sharing the cost of benefits paid by them, has been approved by the department in accordance with Subsection E of Section 51-1-13 NMSA 1978.

V. "Group member" means any employer who has become associated with another or others to form a group account.

W. "Interested agency" means the agency of an interested jurisdiction.

X. "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval.

Y. "Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands or, with respect to the federal government, the coverage of any federal unemployment compensation law.

Z. "Knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.

AA. "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the interstate reciprocal coverage arrangement and whose adherence thereto has not terminated.

BB. "Payment in lieu of contributions" means nonprofit employers or governmental agencies that elect to pay the division for the fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization or governmental agency, to individuals of weeks of unemployment that begin during the effective period of such election.

[BB] CC.

"Predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise.

[CC] DD.

"Reserve factor" means the annual factor determined by the department that is necessary to ensure that the unemployment trust fund sustains an adequate reserve.

[DD] EE.

"Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

[EE] FF.

"Successor" means any person or entity that acquires an employing enterprise and continues to operate such business entity.

[FF] GG.

"Taxable year" means the calendar year beginning the first day of January and ending the last day of December.

[GG] HH.

"Total wages for the purpose of computing the reserve ratio and the benefit cost rate" means all wages paid to covered employees for payroll periods ending in a calendar year as reported on the quarterly census of employment and wages.

[HH] II.

"Trust fund balance" means the trust fund balance on deposit with the U.S. treasury in the state's account as of June 30 that includes only funds that will be used for payments of benefits to claimants.

[II] JJ.

"Violates or attempts to violate" means intent to evade, a misrepresentation or a willful nondisclosure.

[JJ] KK.

"Wages" means all remuneration for services, including commissions, bonuses or unpaid loans to employees and the cash value of all remuneration in any medium other than cash.

[11.3.400.7 NMAC - Rp, 11.3.400.7 NMAC, 11/30/2016; A, 10/29/2019]

11.3.400.8 THROUGH 11.3.400.400: [RESERVED]

11.3.400.401 [RECORDS OF EMPLOYING UNITS] EMPLOYER TAX ACCOUNT AUDITS:

A. Records of Employing Units:

(1) Each employing unit shall keep true and accurate employment and payroll records which shall include, with reference to the employing unit the name and correct address of such employing unit, and the name and correct address of each branch or division or establishment operated, owned or maintained by such employing unit at different locations in New Mexico, all disbursements for services rendered to the employing unit; and with reference to each and every individual performing services for it, the following information:

[(1)] (a) the individual's name, address, and social security number;

[(2)] (b) the dates on which the individual performed services for such employing unit, including beginning and ending dates, and the state or states in which such services were performed;

[(3)] (c) the total amount of wages paid to the individual for each separate payroll period, date of payment of said wages, and amounts ~~[or remuneration]~~ paid to the individual for each separate payroll period other than "wages", as defined in the Unemployment Compensation Law;

[(4)] (d) whether, during any payroll period, the individual worked less than full time, and, if so, the hours and dates worked;

[(5)] (e) the reasons for separation of the individual.

[B:] (2) In addition to the records required by Subsection A of 11.3.400.401

NMAC, each employing unit shall keep ~~[, in addition to the records required by Subsection A of 11.3.400.401 NMAC,]~~ and provide to the department upon request, the following:

(a)
[such] records [as with] to establish and demonstrate the ownership and any changes of ownership of the employing unit and the address at which such records are available for inspection or audit by representatives of the department. The records shall show the addresses of the owners of the employing unit or, in the event the employing unit is a corporation or unincorporated organization, such records shall show the addresses of directors, officers, registered agents and any person on whom subpoenas or legal process may be served in New Mexico. In the event the employing unit is a group account, the records shall show the address of the group representative; and

(b)
records to verify any and all workers providing services to the employer are properly classified as employees or independent contractors such as the employer's general ledger or check register.

~~(c.)~~ (3) If any[~~remuneration~~] payments other than money wages is paid to or received by an individual with respect to services performed by his employer, the records shall show the total amount of cash wages and the cash value of any other ~~[remuneration]~~ payments.

~~(d.)~~ (4) All records shall be kept and maintained as to establish clearly the correctness of all reports which the employing unit is required to file with the department and shall be readily accessible to authorized representatives of the department within the geographical boundaries of New Mexico; and in the event such records are not maintained or are not available in New Mexico, the employing unit shall pay to the department the expenses and costs incurred when a representative of the department is required to go outside the state of New Mexico to inspect or audit such records.

~~(e.)~~ (5) If an employing unit elects to maintain its payroll records on magnetic media, it shall be the obligation of such employing unit to reproduce such records on a media, readable by the human eye for the purpose of an audit.

~~(f.)~~ (6) The records prescribed by this rule shall be preserved for a period of at least four years in addition to the current calendar year.

B. Employers must provide accurate work records at any reasonable time and as often as necessary for effective administration of the Unemployment Compensation Law.

(1) The department shall complete random audits of employer records to ensure compliance. Such audits will be conducted electronically whereby employers shall return any requested documentation electronically through the employer's online account.

(2) Employers shall return the required documentation within 20 days from the date of the audit notification letter. Failure to return all documents timely could result in the department seeking compliance through a subpoena and enforcement in district court.

(3) If the audit results in reclassification of employees due to employer misclassification, the employer has the right to appeal the determination following procedures in 11.3.500 NMAC. Penalties and interest assessed as a result of the determination shall not be abated. Any removal of penalties and interest must be addressed during the appeal process.

C. The department determines whether an individual is considered an independent contractor using the "ABC test" as defined in Subparagraphs (a) through (c) of Paragraph (5) of Subsection F of Section 51-1-42 NMSA 1978.

[11.3.400.401 NMAC - Rp, 11.3.400.401 NMAC, 11/30/2016; A, 10/29/2019]

11.3.400.404 WAGE AND CONTRIBUTION REPORTS BY EMPLOYING UNITS:

A. QUARTERLY EMPLOYMENT & WAGE DETAIL REPORT: An employer's wage and contribution report must be filed electronically on the department's web page on or before the last day of the month immediately following the end of the calendar quarter. If the due date falls on a Saturday, Sunday or legal holiday, the report is due on the next department business day. A wage and contribution report must be filed even though no wages were paid, or no contribution or tax is due for the quarter unless the employer's liability has been terminated or suspended pursuant to Section 51-1-18 NMSA 1978. Each wage and contribution report must include only wages, as the term is defined in Subsection T of Section 51-1-42 NMSA 1978, paid during the quarter being reported. Corrections of errors made on previously submitted reports must be electronically submitted as an adjustment ~~[on]~~ through the [department's web] page employer's on-line account.

B. SIGNATURE REQUIREMENTS ON WAGE AND CONTRIBUTION REPORTS: Wage and contribution reports must have an appropriate electronic signature by the owner, partner, corporate officer or a designated representative of the employer. If the employer appoints a designated representative or third party agent who is not an employee, the employer must electronically specify what duties have been assigned to the designated representative or third party agent to perform on the employer's behalf.

C. WAGE DETAIL REPORTING REQUIREMENTS: All employers must file their quarterly wage and contribution report electronically, using one of the acceptable formats prescribed by the department. ~~[The information provided by the employer as to individual employees shall be on a report form prescribed by the department and shall be entered in the department's records.]~~ Reports that

contain extraneous information, are incomplete or otherwise submitted or prepared improperly will ~~not be acceptable and will~~ be rejected and become subject to the following penalties:

(1) if the required report for any calendar quarter is not filed within 10 days after due date, a penalty of ~~fifty dollars (\$50)~~ \$50 is to be paid by the employer;

(2) if the contributions due on such report are not paid in full within 10 days after due date, an additional penalty of five percent but not less than ~~twenty-five dollars (\$25)~~ \$25 is to be paid by the employer on any such contributions remaining unpaid;

(3) if any payment required to be made by the Unemployment Compensation Law (51-1-9 NMSA 1978) is attempted to be made by check which is not paid upon presentment, a penalty of ~~twenty-five dollars (\$25)~~ \$25 shall be paid by the employer; and

(4) in no case shall any penalty as herein provided or as imposed by this section be assessed for any quarter prior to the six completed calendar quarters immediately preceding the quarter in which the employer shall be determined subject to the Unemployment Compensation Law; and in no case shall a penalty for late reporting or late payment of contribution be imposed if, in the opinion of the secretary, an employer's late reporting, late payment of contribution, or both, was occasioned by circumstances beyond the control of the employer, who in good faith exercised reasonable diligence in an effort to comply with the reporting and contribution payment provisions of the Unemployment Compensation Law.

D. ESTIMATED WAGE AND CONTRIBUTION REPORTS: If an employer fails or refuses to make reports in a manner as prescribed in Subsection C of 11.3.401.404 NMAC showing what the employer claims for the amount of wages which it believes to be due,

the department's representative shall estimate the amount according to the process described in Subsection E of 11.3.401.404 NMAC. After the estimated wages are calculated, the department shall provide a notice to the employer advising it that the department is estimating the amount of contribution due, provide the estimated amount of contribution due and advise the employer that unless an appeal is initiated within 15 days pursuant to Subsection B of 11.3.500.8 NMAC, the estimated amount shown in the notice shall be the amount of the contribution due for the period stated in the notice. The notice shall also inform the employer that the department may record a lien against the employer's assets. After service of the notice to the employer the department shall cause the warrant of levy and lien to be recorded in same manner as any other warrant issued by the department. If thereafter, the department should receive from the employer reports for the estimated quarters containing different wage amounts, the estimation of the contribution due shall not be altered, and the employer shall remain liable for the amount assessed.

E. ESTIMATION PROCESS: The estimated contribution shall be one and one-half times higher than the highest wages reported in any quarter in the most recent eight quarters in which wage reports were filed. If no wage and contribution report has been filed since the employer was determined liable or if the employer has never submitted a report to determine liability to the department, no estimations shall be done.

F. ADMINISTRATIVE ERROR: At any time, the department may correct any error the department determines has been made even if notifications have been given, estimations made or contributions paid pursuant to the notifications. By way of example and not by limitation, such internal errors may be the result of an estimation that has been made after notice was sent to an incorrect address, sent to

a deceased or incapacitated natural employer, estimations otherwise imposed without proper notice to the employer, estimations imposed due to misinformation in a wage claim which precipitated the establishment of an incorrect account, or other incidents of human or computer error or excusable neglect within the department. Estimations may be removed only pursuant to the written authorization of the department. [11.3.400.404 NMAC - Rp, 11.3.400.404 NMAC, 11/30/2016; A, 10/29/2019]

11.3.400.409 REPORT TO DETERMINE LIABILITY:

A. REGISTRATION: Each employing unit or employing enterprise engaged in doing business in the state of New Mexico, whether by succession to a business already being operated, by starting a new business, by change in partnership, or otherwise, shall register the business on line. Registration for the business may be filed when the employer has hired its first employee, and:

(1) The employer has paid an individual wages of ~~four hundred fifty (\$450) dollars~~ \$450 or more in any calendar quarter in either the current or preceding calendar year or if there was one or more persons (part-time workers included) in employment in each of twenty different calendar weeks during either the current or the preceding calendar year irrespective of whether the same individual was in employment in each day.

(2) In agricultural labor, the employer has paid wages of ~~twenty thousand (\$20,000) dollars~~ \$20,000 or more to individuals during any calendar quarter in either the current or the preceding calendar year or employed 10 or more individuals in agricultural labor (part-time workers included) in each of 20 different calendar weeks in either the current or preceding calendar year, whether or not the weeks were consecutive and regardless of whether the individuals were employed at the same time.

(3) The employer has paid an individual in domestic service in a private home, local college club or local chapter of a college fraternity or sorority wages of ~~[one thousand (\$1,000) dollars]~~ \$1,000 in any calendar quarter in the current or preceding calendar year.

B. REPORT OF CHANGE IN STATUS:

(1) Every subject employer who shall sell, convey or otherwise dispose of its business, or all or any substantial part of the assets thereof, or who shall cease business for any reason, whether voluntarily or by being in bankruptcy shall, within five days, immediately report such fact, electronically, to the department, stating the name and address of the person, firm or corporation to whom such business, or all or any substantial part of the assets thereof, shall have been sold, conveyed or otherwise transferred.

(2) In cases of bankruptcy, receivership or similar situations, such employer shall report the name and address of the trustee, receiver or other official placed in charge of the business.

(3) Upon the death of any employer, the report shall be made by the employer's personal representative upon the representative's appointment by the court. In the event no personal representative is appointed, the report shall be made by the heir or other person who succeeds to the interest of the employer.

(4) In the event of a dissolution of a partnership or joint venture, such report shall be made by the former partners or joint venturers.

(5) For purposes of Paragraph (1) of Subsection B of 11.3.400.409 NMAC, "substantial" part of a business, shall be any identifiable part which, if considered alone, would constitute an employing unit as defined in Subsection D of Section 51-1-42 NMSA 1978.

[11.3.400.409 NMAC - Rp, 11.3.400.409 NMAC, 11/30/2016; A, 10/29/2019]

11.3.400.413 PROCEDURE FOR RELIEF FROM PENALTIES:

A. An employer aggrieved by the imposition of penalties for late reports or late payment of contributions or payments in lieu of contributions may, ~~[file]~~ submit a written request [with] to the [unemployment division director] department for relief from the imposition of penalties specifically identifying the relief requested and stating the reason for the request. Relief may be granted upon the showing of good cause.

B. ~~[The unemployment division director shall]~~ The department shall review the employer's request and make a recommendation to the secretary to grant or deny relief from penalties to taxpayers.

[11.3.400.413 NMAC - Rp, 11.3.400.413 NMAC, 11/30/2016]

11.3.400.415 CONTRIBUTION RATING OF EMPLOYERS:

Contribution rates for employers are calculated in accordance with Section 51-1-11 NMSA 1978. ~~[This rule shall govern the contribution rating provisions of Section 51-1-11 NMSA 1978.]~~

A. ELIGIBILITY OF EMPLOYER'S ACCOUNT FOR COMPUTED RATE BASED ON 24 MONTHS EXPERIENCE. For purposes of the interpretation and application of Subsection F of Section 51-1-11 NMSA 1978, no employer's experience rating account shall be deemed to have been chargeable with benefits throughout the preceding 24 consecutive calendar month period ending on a computation date as defined in Subsection J of 11.3.400.7 NMAC, unless as of such computation date, the department finds that the employer paid wages in employment during any part of the first calendar quarter of the 24 month period ending on such computation date and that the payment of such wages was not interrupted for eight or more consecutive calendar quarters, or by termination of coverage under Section 51-1-18 NMSA 1978;

provided, all quarterly wage and contribution reports received by the department by July 31 following the computation date will be considered in computing the rate for the succeeding calendar year.

B. CONTRIBUTING EMPLOYERS FOR 24 MONTHS. For each calendar year, if, as of the computation date of that year, an employer has been a contributing employer throughout the preceding 24 months, the contribution rate for that employer shall be determined by multiplying the employer's benefit ratio by the reserve factor then multiplying that product by the employer's experience history factor. An employer's benefit ratio is determined by dividing the employer's benefit charges during the immediately preceding fiscal years, up to a maximum of three fiscal years, by the total of the annual payrolls of the same time period, calculated to four decimal places, disregarding any remaining fraction. The reserve factor is the annual numerical factor determined by the department that is necessary to ensure that the unemployment trust fund sustains an adequate reserve. The employer's experience history factor shall be based on the employer's reserve. The employer's reserve shall be calculated as the difference between all of the employer's previous years' contribution payments and all of the employer's previous years' benefit charges, divided by the average of the employer's annual payrolls for the immediately preceding fiscal years, up to a maximum of three fiscal years, calculated to four decimal places, disregarding any remaining fraction, as set forth in the following table and provided that an employer's contribution rate shall not be less than thirty-three hundredths percent or more than five and four-tenths percent.

If an employer's reserve is:	The employer's experience history factor is:
6.0% and over	0.4000
5.0% - 5.9%	0.5000
4.0% - 4.9%	0.6000
3.0% - 3.9%	0.7000
2.0% - 2.9%	0.8000
1.0% - 1.9%	0.9000
0.0% - 0.9%	0.9500
Under 0.0%	1.0000

C. CONTRIBUTING EMPLOYERS FOR LESS THAN 24 MONTHS. For each calendar year, if, as of the computation date of that year, an employer has been a contributing employer for less than 24 months, the contribution rate for that employer shall be the average of the contribution rates for all contributing employers in the employer's industry based on its North American industry classification system (NAICS) sector, but shall not be less than one percent or more than five and four-tenths percent; provided that an individual, type of organization or employing unit that acquires all or part of a employing enterprise that has a rate of contribution less than the average of the contribution rates for all contributing employers in the employer's industry, shall be entitled to the transfer of the contribution rate of the other employing unit to the extent permitted pursuant to Subsection D of 11.3.400.417 NMAC.

D. EXCESS CLAIMS PREMIUM. If an employer's contribution rate pursuant to Subsection B of 11.3.400.415 NMAC is calculated to be greater than five and four-tenths percent, notwithstanding the limitation in Subsection B of 11.3.400.415 NMAC, the employer shall be charged an excess claims premium in addition to the contribution rate applicable to the employer; provided that an employer's excess claims premium shall not exceed one percent of the employer's annual payroll. The excess claims premium shall be determined by multiplying the employer's excess claims rate by the employer's annual payroll. An employer's excess claims rate shall be determined by multiplying the difference of the employer's

contribution rate, notwithstanding the limitation in Subsection B of 11.3.400.415 NMAC, less five and four-tenths percent by ten percent.

E. NOTIFICATION OF ANNUAL RATE CONTRIBUTIONS. The department shall promptly notify each employer of the employer's rate of contributions and excess claims premium as determined for any calendar year on or before January 31st of the year the rate is effective. Such notification shall include the amount determined as the employer's annual payroll, the total of all of the employer's contributions paid on the employer's behalf for all the past years, total benefits charged to the employer for all such years and the employer's experience history factor. For an employer that has been a contributing employer for less than 24 months, the contribution rate for that employer shall be the average of the contribution rates for all contributing employers in the employer's industry as set forth in Subsection C of 11.3.400.415 NMAC. Such determination shall become conclusive and binding upon the employer unless, within 30 days after the service of notice thereof to the employer's [~~last known address on file with the department~~] address of record, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be promptly notified of the decision on the employer's application for review and redetermination, which shall become final unless, within 15 days after the service of notice thereof to the employer's [~~last known address on file with the department~~] address of record, further appeal is

initiated pursuant to Subsection B of 11.3.500.8 NMAC. The employer shall not have standing, in any appeal involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer of any benefits paid in accordance with a decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to the decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined.

F. NOTIFICATION OF QUARTERLY CHARGES. The department shall provide each contributing employer a written determination of benefits chargeable to the employer within 90 days of the end of each calendar quarter. Such determination shall become conclusive and binding upon the employer unless, within 30 days after the service of the determination to the employer's [~~last known address on file with the department~~] address of record, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be promptly notified of the decision on the employer's application for review and redetermination, which shall become final unless, within 15 days after the service of notice thereof to the employer's [~~last known address on file with the department~~] address of record, further appeal is initiated pursuant to Subsection B of 11.3.500.8 NMAC. The employer

shall not have standing, in any appeal involving the employer’s quarterly rate of contributions or contribution liability, to contest the chargeability to the employer of any benefits paid in accordance with a decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to the decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined.

G. CORRECTION OF ERRORS. The secretary shall correct any error in the determination of an employer’s rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer’s rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have the same rights to review and redetermination as provided in Subsection E of 11.3.400.415 NMAC. [11.3.400.415 NMAC - Rp, 11.3.400.415 NMAC, 11/30/2016; A, 10/29/2019]

11.3.400.417 PURCHASE OR SALE, EXPERIENCE HISTORY TRANSFERS:

A. TOTAL EXPERIENCE HISTORY TRANSFERS:

(1) ACQUISITION OF ALL EMPLOYING ENTERPRISES: A total experience history transfer is available to a successor enterprise only in the situation where the successor has acquired all of the predecessor’s business enterprise and, where the predecessor, immediately after the business transfer as defined in 11.3.400.416 NMAC, ceases operating the same enterprise except for liquidation purposes.

(a) In the sale of a business enterprise, the phrase “all assets” includes the transfer of a favorable experience history.

(b) In the sale of a business enterprise, the phrase assumption of “all liabilities” includes an unfavorable experience history and any unpaid contributions, interest and penalties.

(2) NOTIFICATION BY SUCCESSOR: A successor who has acquired all of the predecessor’s employing enterprises shall notify the department of such acquisition by completing an electronic notification for a total experience history transfer [~~on the department’s webpage~~] through the employer’s online account 60 days on or before the due date of the successor’s first quarterly wage and contribution report after the effective date of the acquisition of the employing enterprise or enterprises. Information with respect to the predecessor and successor employing enterprises necessary to a department determination to approve or disapprove a total history transfer shall be given as prescribed by the electronic notification [~~on the department’s webpage~~] through the employer’s online account or as requested by the department. Upon completion of the notification, the department shall furnish a statement of account to the predecessor and the successor, if the predecessor is delinquent in either submitting wage and contribution reports or the payment of contributions.

(a) All contributions, interest and penalties due from the predecessor employer must be paid. If any amount remains due to the department at the time of the transfer, the successor employer assumes the liability for the outstanding balance as part of the history transfer.

(b) If the successor employer fails to complete an electronic notification to the department before the due date of the successor’s first quarterly wage and contribution report after the

effective date of the acquisition, when the department receives actual notice of the transfer, the department shall effect the transfer of the experience history and applicable rate of contribution retroactively to the date of the acquisition and the successor shall pay a penalty of [~~fifty (\$50) dollars~~] \$50.

(c) An electronic notification for a history transfer must be completed on line during the calendar year of the transaction transferring the employing enterprises. Upon a showing of good cause, the department may extend the due date for the completion of the endorsed notification and quarterly wage and contribution reports for an additional 30 days provided that the request for an extension of time is filed in writing on or before the regular due date.

(3) LIQUIDATION WAGES: Any wages reported by the predecessor and contributions paid by the predecessor for the cessation of the predecessor’s business after the acquisition date of the business by the successor shall be credited to the successor’s account for experience rating purposes.

(4) WRITTEN DETERMINATION TO SUCCESSOR AND PREDECESSOR: The department shall issue a written determination to the successor and predecessor approving or disapproving the total history transfer. All such determinations shall be subject to the provisions of 11.3.500.8 NMAC governing appeals of contribution or tax determinations. Failure to timely appeal a denial of the transfer of a favorable experience transfer without good cause as defined in 11.3.400.7 NMAC will deprive the successor business of the opportunity for the transfer of the favorable experience history transfer.

(5) PREDECESSOR RESUMES OR CONTINUES IN BUSINESS: If the predecessor owner operates a new or different business enterprise upon or after the business transfer, the predecessor shall retain its account

number and a rate in accordance with the provisions of Section 51-1-11 NMSA 1978.

B. PARTIAL EXPERIENCE HISTORY TRANSFERS:

(1) NOTIFICATION BY SUCCESSOR AND SUBMISSION OF JOINT NOTIFICATION FORM: The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of the contribution with liability applicable to each enterprise transferred, has maintained and preserved payroll records that, together with records of contribution liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or the secretary's designee.

(2) The successor shall notify the department of such acquisition by completing an electronic notification for a partial experience history transfer [~~on the department's webpage~~] the employer's online account 60 days on or before the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition of the employing enterprise. The notification shall be endorsed by the predecessor. The notification shall provide a schedule of the name and social security number of and the wages paid to and the contributions paid for all employees for the three and one-half year period preceding the computation date through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The notification shall be supported by the

predecessor's permanent employment records, which shall be available for audit by the department. The notification shall be reviewed by the department and, upon approval the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation, by the predecessor's entire payroll. Upon a showing of good cause as defined in 11.3.400.7 NMAC, the department may extend the due date for the filing of the endorsed notification and quarterly wage and contribution reports for an additional 30 days provided that the request for an extension of time is filed in writing on or before the regular due date. Information with respect to the predecessor and successor employing enterprises necessary to a department determination to approve or disapprove a partial history transfer shall be given as prescribed by the notification or as requested by the department.

(3) WRITTEN DETERMINATION TO SUCCESSOR: The department shall issue a written determination to the successor approving or disapproving the partial history transfer. All determinations disapproving the partial history transfer shall be subject to the provisions of 11.3.500.8 NMAC governing appeals of contribution or tax determinations. Failure to timely appeal a denial of the partial history transfer without good cause as defined in 11.3.400.7 NMAC will deprive the successor business of the opportunity for the transfer of the partial history experience.

C. COMMON OWNERSHIP EXPERIENCE HISTORY TRANSFER:

(1) If the transaction involves only a merger, consolidation or other form of reorganization without a substantial

change in the ownership and controlling interest of the business entity, as determined by the secretary, and both the predecessor and the successor are under common ownership, a party to a merger, consolidation or other form of reorganization shall not be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization.

(2) The experience history attributable to the transferred business shall also be transferred to and combined with the experience history attributable to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer.

D. DETERMINATION OF CONTRIBUTION RATES AFTER TOTAL OR PARTIAL EXPERIENCE HISTORY TRANSFER:

(1) If, on the effective date of the transfer, the successor employer has a contribution rating for the calendar year there will be no change in rate determined for the successor's account as a result of the transfer.

(2) If, on the effective date of the transfer, the successor employer does not have a contribution rating for the calendar year, the rate shall be computed from the successor's prior history combined with the acquired total or partial history of the predecessor.

(3) If, on the effective date of the transfer, the successor employer has not been a contributing employer throughout the preceding 24 months, the contribution rate for the successor employer shall be:

(a) the rate of the predecessor or combined predecessors in the case of a total experience transfer; and

(b) a rate based on experience of the separate schedule of employment and related benefits charged will apply in the case of a partial experience transfer.

(4) If, on the effective date of the transfer, the successor employer has not been a contributing employer throughout the preceding 24 months, and the successor employer acquires all or part of a employing enterprise that has a rate of contribution less than the average of the contribution rates for all contributing employers in the employer’s industry, shall be entitled to the transfer of the contribution rate of the predecessor employing enterprise.

(5) A new rate based on experience of the remaining schedule of employment and related benefits charged will apply to the predecessor account from the effective date of the transfer in the case of a partial experience transfer.

E. CHARGING OF BENEFITS AFTER TRANSFER: Benefits paid subsequent to the effective date of a partial, total or common ownership experience history transfer shall be charged to the successor’s account if the base period wages were transferred to the successor.

[11.3.400.417 NMAC - Rp, 11.3.400.417 NMAC, 11/30/2016; A, 10/29/2019]

11.3.400.418 TIME FOR CORRECTION OF ERRONEOUS RATE DETERMINATIONS:

A. Where an employer’s rate of contribution for any calendar year has been incorrectly determined, the error or omission shall be corrected and the rate adjusted accordingly by the department on its own initiative with notification to the employer at its [last known address] address of record, within the following periods:

(1) on or before June 30 of the calendar year in which the erroneous rate determination was issued if the error was in the determination of benefits chargeable to the employer’s experience rating account;

(2) at any time within the calendar year in which the erroneous rate determination was issued if the error or omission

was due to the employer’s misrepresentation or nondisclosure of a material fact;

(3) at any time during the calendar year in which the erroneous rate determination was issued and any time within the next calendar year if the error or omission was due wholly or in part to a rate computation.

B. Upon issuance of a corrected rate of contribution, the employer shall have the right to a review and redetermination as provided in Subsection L of Section 51-1-11 NMSA 1978.

[11.3.400.418 NMAC - Rp, 11.3.400.418 NMAC, 11/30/2016]

11.3.400.419 CHARGING OF BENEFITS:

Whenever a claimant files a new claim for benefits and is found by the department to have sufficient base period wages to entitle the claimant to benefits if otherwise eligible, the department shall issue a “notice to employer of claim determination” on a form prescribed by the department, to each base period employer unless that employer was also the claimant’s last employer and has been sent notice pursuant to 11.3.300.308 NMAC. The notice to each employer will give the name and social security account number of the claimant, the claim date and the amount of wages paid by that employer in each quarter of the base period.

A. NOTICE TO LAST EMPLOYER OF CLAIM DETERMINATION -- RESPONSE REQUIRED: Whenever a claimant files an initial claim for benefits or an additional claim, the department shall immediately transmit to the claimant’s last known employer, at the [address of the employer as registered with the department] employer’s address of record, if [so] the employer is registered, and, [if not registered], to the address provided by the claimant if the employer is not registered with the department, a dated notice of the filing of the claim and a fact-finding questionnaire.

(1) The employer shall provide the department

with full and complete information in response to the inquiry. The employer shall transmit a response directly to the department electronically through the employer’s online account within 10 calendar days from the date of the transmittal of the notice of claim. [~~Unless excused by the department, the response must be an electronic transmittal.~~]

(2) If the employer fails to respond by the deadline, or if the submitted response is untimely or inadequate, and the initial claim determination is later reversed at the appeal level, the employer may be liable for any benefit charges incurred to the date of disqualification if the employer or the employer’s agent has demonstrated an established pattern of failing to respond timely or adequately.

(a) A pattern is defined as failure to respond timely or adequately to five claims, or more at the secretary’s discretion, within a calendar year.

(b) An inadequate response is defined as the employer’s failure to provide relevant information or documentation that was reasonably available at the time a response was requested by the department.

B. NOTICE TO BASE PERIOD EMPLOYERS OF POTENTIAL LIABILITY-- RESPONSE REQUIRED: Whenever a claimant files an initial claim for benefits or an additional claim, the department shall immediately transmit to all employers who employed the claimant during the established base period at the addresses of record, a dated notice of the filing of the claim that the employer may have liability for and a fact finding questionnaire.

(1) The employer shall provide the department with full and complete information in response to the inquiry. The employer shall transmit a response through the employer’s online account within 10 days from the date of the transmittal of the notice of claim.

(2) If the employer fails to respond by the deadline, the department shall

issue a determination based on the information on hand.

(3) If the employer appeals the determination issued by the department, the employer must first establish good cause for failing to timely respond to the department's inquiry before the appeal may be heard on the merits of the employer's liability.

[B:] C. PRIOR

DETERMINATION OF

ELIGIBILITY FINAL: If a prior, final determination has been made by the department that the claimant did not voluntarily leave claimant's employment with the employer for a cause not attributable to the employer, or that the claimant was not discharged for misconduct connected with claimant's work, or that the employer is no longer an interested party to proceedings on the claim because of failure to respond within the time allowed on the "notice to employer of claim for benefits" issued at the time of the claimant's separation, that determination will remain final and binding for purposes of making a determination in response to the "notice to employer of claim determination" on the chargeability of the employer's account for benefits payable to the claimant.

[C:] D. MULTIPLE PERIODS OF EMPLOYMENT WITH SAME EMPLOYER: If the individual had more than one period of employment and termination of employment with the same base period employer during and after the current and past five quarters, the employer must include in the report:

(1) the date on which each period of employment terminated;

(2) full particulars as to the circumstances of the termination including the reason given by the individual for leaving the employment or the nature of the individual's actions for which he was discharged, or the reason the claimant was laid off, as the case may be.

[D:] E. CONCURRENT EMPLOYMENT WITH TWO OR MORE EMPLOYERS: Where an individual works concurrently for

two or more employers and becomes unemployed from one or more, but one or more of the concurrent employers continues to furnish that individual substantially the same amount of work, benefits shall not be charged to that employer or those employers who continue to furnish the claimant substantially the same amount of employment during such period of unemployment as long as the individual is receiving benefits based on base period earnings, in whole or in part, from the former concurrent employers. Those employers who continue to furnish the claimant work must respond to the "notice to employer of claim determination" within 10 days from the date shown on the notice setting forth the number of hours per week the claimant worked during the current and two preceding quarters.

[E:] F. CHARGING UNDER COMBINED WAGES: Benefits paid to a claimant based on wage credits from one or more states combined with New Mexico shall not be charged to an employer's account when no benefits have been paid upon the sole basis of wage credits in New Mexico.

[F:] G. NOTICE OF DEPARTMENT'S

DETERMINATION: Upon receipt of the employer's response to the "notice to employer of claim determination" within 10 days, the department shall make a determination with respect to relief from the charging of benefits, and shall promptly notify the employer if it is determined that the employer's account will be charged for benefits paid. The determination shall become final unless the employer files an application for appeal, in accordance with 11.3.500.8 NMAC, setting forth the reasons therefore, within 15 days from the date shown on the determination.

[G:] H. LIMITATION ON APPEALS: Notwithstanding the provisions of Subsection F of 11.3.400.419 NMAC, the employer shall not have standing, in any appeal to contest the chargeability to the employer of any benefits paid in accordance with a decision pursuant

to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to the decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined.

[11.3.400.419 NMAC - Rp, 11.3.400.419 NMAC, 11/30/2016; A, 10/29/2019]

11.3.400.426 APPLICATION OF UNDERPAYMENTS:

In the event an employing unit fails to submit payment in an amount sufficient to satisfy the total amount of outstanding debt for any current or past-due contributions, interest or penalty, the amount of the underpayment shall be applied in the following order: first, to any contributions and excess claims premiums due, second, to any interest due and third, to any penalties due, from the oldest debt to the newest.

[11.3.400.426 NMAC - Rp, 11.3.400.426 NMAC, 11/30/2016; A, 10/29/2019]

11.3.400.428 EMPLOYER

RESPONSES: The employer is required to respond timely and accurately to all inquiries from the department. If the department does not receive timely or adequate responses, the department will, at its discretion, take action based on the information at hand based which may result in assessed penalties or employer liabilities. Absent a showing of good cause, the department will not reverse determinations as a result of the employer's failure to appropriately respond.

[11.3.400.428 NMAC - N, 10/29/2019]

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF**

This is an amendment to 11.3.500 NMAC, Sections 1, 7 through 10, 12, and 13, effective 10/29/2019.

11.3.500.1 ISSUING

AGENCY: New Mexico Department of Workforce Solutions, [Employment Security Division,] P.O. Box 1928, Albuquerque, NM 87103
[11.3.500.1 NMAC - Rp, 11 NMAC 3.500.1, 01-01-2003; A, 11-15-2012; A, 10/29/2019]

11.3.500.7 DEFINITIONS:

A. “Adjudicatory body” means the appeal tribunal, the board of review or other commissions or body within the department holding an adjudicatory hearing.

B. “Adjudicatory hearing” means a judicial or quasi-judicial hearing upon either the law or the evidence or both which allows the parties to present evidence, objections to evidence, documents and witnesses as well as cross-examine opposing parties’ witnesses and evidence.

C. “Administrative law judge or ALJ” means the individual who conducts appeal tribunal hearings and makes decisions on issues arising from determinations issued by the department. This term is synonymous with the term “hearing officer” as set forth in Section 51-1-8 NMSA 1978.

[E] D. “Authorized representative” means an individual who, by virtue of his position within the department, is designated by the secretary to perform certain specific tasks on behalf of the department.

[D] E. “Good cause” means a substantial reason, one that affords a legal excuse, or a legally sufficient ground or reason. In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the department may consider any relevant factors including, but not limited to, whether the party acted in the manner that a reasonably prudent individual would have acted under

the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party that prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party’s physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action. However, good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by the party’s failure to keep the department directly and promptly informed by written, signed statement of the claimant’s, employer’s or employing unit’s correct mailing address. A written decision concerning the existence of good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order.

[E] E. [“Precedent manual” means a compilation of decisions of the appeal tribunal and board of review designated significant by the secretary or the general counsel, but with the parties’ names and identifying information redacted and removed.] “Practice manual” means a resource maintained by the department consisting of department procedures and guidelines based on federal and state statutes and regulations, Department of Labor directives and guidance, and decisions of the Board of Review or district court judges.

[F.] “Administrative law judge” means the individual whose job it is to conduct appeal tribunal hearings and make decisions on unemployment insurance eligibility or employer charges. This term is synonymous with the term “hearing officer” as set forth in NMSA 1978, Section 51-1-8.]

[11.3.500.7 NMAC - N, 01-01-2003; A, 11-15-2012; A, 07-31-2013; A, 10/29/2019]

11.3.500.8 PRESENTATION OF APPEALS OF INITIAL DETERMINATIONS:

A. [Claims:] Any interested party aggrieved by a determination of the department [is entitled to] may file an appeal to the appeal tribunal within 15 days from the date of transmission of the determination. Any written communication clearly demonstrating a desire to appeal a determination of the department will be regarded as an appeal. [Any written communication intended as an] Appeals shall be transmitted to the department by U.S. mail, by fax or by electronic filing using the department’s [claims processing website] online system. All appeals should be transmitted to the department in a format indicating the interested party’s desire to appeal. For any issues of timeliness with regard to faxed appeals, the time and date affixed on the department’s receiving device will be presumptively the date and time of submission. For any issues of timeliness with regard to appeals submitted via U.S. mail, the postmark date on the appeal envelope will presumptively be the date and time of submission. For any issues of timeliness with regard to appeals filed electronically through the department’s [claims processing website] online system, the date and time that the department’s [website] online system “electronically stamps” the appeal will be presumptively the date and time of submission.

B. [Fax: In any case where a party is dissatisfied with the decision of the department, the party may, within fifteen (15) calendar days from the date of transmission of the department’s decision, file an appeal with the appeal tribunal for the department.] All interested parties will be given notice of any hearing or review before the appeal tribunal [or board of review] as provided for in 11.3.500.9 and 11.3.500.12 NMAC.

C. Unless otherwise provided by statute or a specific rule of the department, the time for the appeal of any determination from one level to another within the department

is ~~fifteen (15)~~ 15 calendar days from the date of the transmission of the decision or determination, with the first day commencing on the calendar date after the date of transmission.

D. The time for filing any appeal within the department may be extended only upon a showing of good cause.

[11.3.500.8 NMAC - N, 01-01-2003; A, 11-15-2012; A, 10/29/2019]

11.3.500.9 ADJUDICATORY PROCEEDINGS GENERALLY:

A. Right to representation: In any adjudicatory hearing before the department:

(1) Any party may ~~represent himself or self-represent~~, be represented by an attorney at law or by any other person qualified to represent the party in the matters under consideration.

The secretary may bar attorneys and authorized representatives from appearing on behalf of others in proceedings before the department if the attorney or authorized representative's previous conduct has established to the department's satisfaction that the attorney or authorized representative is unlikely to provide competent representation in future proceedings.

(2) A partnership may be represented by any of its employees, members, or duly authorized representative. A corporation or association may be represented by an officer, employee or any duly authorized representative. Any governmental entity may be represented by an officer, ~~or~~ employee, or any other authorized person.

(3) The presiding officer ~~[, including]~~ or the secretary may, for lack of qualifications or other sufficient cause, bar any person from representing any party, in such circumstances, the reasons for such bar shall be set out in the record of proceedings.

B. The unauthorized practice of law: Any party may be represented by an attorney at law licensed to practice in the courts of

this state. A representative or agent other than licensed attorneys may represent any party only to the extent that such participation does not constitute unauthorized practice of law under the statute and rules of the courts of the state of New Mexico.

C. Copies: Consistent with the provisions of ~~[NMSA, 1978]~~ Section 51-1-32 NMSA 1978 and ~~[11.3.100.109]~~ 11.3.100.106 NMAC, while any proceeding before the department is ongoing a party to such proceeding may request and receive from the department, without charge, one set of copies of the department files and records, including but not limited to investigation reports, statements, memoranda, correspondence, ~~[tape]~~ recordings or transcripts of hearings or other data pertaining to matters under consideration, ~~or~~ scheduled for hearing, or other proceeding before the department. Thereafter, copies shall be charged at the department's usual rate for copying.

D. Notice of hearing: Upon the scheduling of an adjudicatory hearing before the appeal tribunal on any appeal, a notice of the hearing shall be transmitted to all interested parties at least ~~[ten (10)]~~ 10 calendar days prior to the date of the adjudicatory hearing and shall include:

(1) a statement notifying the parties of their responsibilities and the requirements to participate in the hearing;

(2) a statement of the time, place and [nature] mode of the hearing;

(3) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(4) a short and plain statement of the foreseeable issues [so that all parties have sufficient notice] to afford each party reasonable opportunity to prepare; if any issue cannot be stated in advance of the hearing, it shall be stated as soon as practicable; in all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after statement or amendment

to afford all parties reasonable opportunity to prepare or the parties may waive notice of such issue on the record.

~~[(4)]~~ (5) Any party to an appeal before the appeal tribunal may elect, using the self-service feature of the claims processing website, to have all notices of hearing for that appeal delivered electronically rather than by paper notice through the mail. Such electronic notification shall be deemed legally sufficient notice for all purposes and the party electing that electronic notification will be deemed to have acknowledged their responsibility to exercise due diligence in checking the website for notifications. For parties electing electronic notification, such notification shall continue until the party has taken all necessary steps change their notification preference using the self-service feature of the website. Until the party's notification preference has been changed, that party's obligation to exercise due diligence in checking the website for notifications will remain in effect.

~~[(5)]~~ (6) If an adjudicatory hearing has been scheduled and a notice of hearing has already been issued to an interested party before that interested party's attorney or authorized representative has filed its entry of appearance in the matter, notice shall be deemed to be sufficient.

~~[E.]~~ Pre-hearing procedure generally:

(1) Stipulations: ~~The parties to an appeal, with the consent of the appeal tribunal, may stipulate in writing to any or all facts involved. The appeal tribunal may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence, as it deems necessary, to enable it to determine the appeal. Stipulations will only be accepted if executed on a form approved by the department. A stipulation by the employer is not a guarantee that a claimant will be eligible for payment. The claimant shall only be eligible if the facts to which the employer~~

stipulates provide a sufficient basis under the Unemployment Compensation Law to approve a claim for payment and the claimant is otherwise eligible to receive payment, i.e., has no other basis for disqualification or denial.

(2) Authority of authorized representatives regarding the gathering of evidence, issuing subpoenas, authorizing depositions, and administering oaths and affirmations: Authorized representatives of the department may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, documents, papers or other objects necessary and relevant to any proceeding before it or its authorized representative. An authorized representative may administer oaths and affirmations, and certify to official acts. An authorized representative in any proceeding may authorize the taking of depositions of witnesses, including parties within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in the district court, and the deposition may be used in the same manner and to the same extent as permitted in the district court.]

[F] E. Subpoenas: Authorized representatives of the department may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses or the production of evidence, including books, records, correspondence, documents, papers or other objects necessary and relevant to any proceeding before the department. An authorized representative in any proceeding may authorize the taking of depositions of witnesses in the same manner and to the same extent as permitted in the district court.

(1) “Subpoena” means an official directive or order by an administrative law judge or quasi-judicial official directing the recipient to appear and testify as a witness. The subpoena may require witnesses to bring

documents with them when they come to testify. Failure of a party to respond to a subpoena could result in the department filing a motion for compliance in the district court of the jurisdiction where the party is located.

(2) The department’s authority to issue subpoenas is found at [NMSA, 1978-§51-1-8(L)] Subsection L of Section 51-1-8 NMSA 1978 and Section 51-1-28 NMSA 1978. Department subpoenas can be served personally at least five [(5)] days prior to the [appearance] hearing date or by certified mail posted at least [ten (10)] 10 days prior to the [appearance] hearing date.

(3) Issuance and challenges to subpoenas: The adjudicatory body or other authorized representative of the department may issue subpoenas to compel attendance of witnesses and production of records in connection with proceedings before the adjudicatory body or department. [NMSA 1978-Sections 51-1-28 & 29] Sections 51-1-28 & 29 NMSA 1978.

(a) Who may request: Any party to an adjudicatory proceeding may make written application to the applicable adjudicatory body for the issuance of a subpoena.

(b) Contents of requests for subpoena: The party seeking the subpoena must reasonably identify and specify the evidence or documents sought and show the relevance of such evidence or documents to the issue under consideration. The proposed subpoena shall show upon its face the name and address of the party at whose request the subpoena was issued.

(c) Decision regarding issuance of subpoena: The adjudicatory body, at its discretion, may issue the subpoena upon the written application or may schedule a hearing or conference on the application to hear argument and objections from interested parties for the purpose of determining whether the subpoena should issue. If such a hearing is held, the adjudicatory

body may make a ruling on the record during the hearing, or may, in its discretion, issue a written decision, informing the parties of the decision and of their right to further appeal.

(d) Challenge to issued subpoena or a request to quash: Any witness summoned may petition the department to quash or modify a subpoena served on the witness. The department shall give prompt notice of such petition to all interested parties. After the investigation or hearing, whichever the department considers appropriate, it may grant the petition in whole or part, or it may deny the petition upon a finding that the testimony or the evidence required to be produced does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested, or for any other reason that justice requires.

(e) Appeal of disputes: The stated reason for the request for the subpoena and the stated reason for the opposition as well as the administrative law judge’s decision in regard to the subpoena shall be part of the record on appeal.

(f) Order of protection: If the department denies the petition to quash the subpoena, the aggrieved party may petition the district court of either the county where he resides, or, in the case of a corporation, the county where it has its principal office, or the county where the hearing or proceeding will be held, for an order of protection.

~~(g) Witness fees and mileage: If a written request to the secretary is made prior to appearing to testify or within five (5) days after testifying, witnesses, other than parties to a proceeding or the parties’ designated agents or representatives, subpoenaed for any appeal tribunal hearing or other department proceeding may be paid witness and mileage fees by the~~

department. Mileage and witness fees may be permitted as is deemed reasonable by the secretary based on the specific witness' situation but in no event will a witness be paid more than the statutory amount allowed witnesses appearing in the district courts of this state.]

(H) (g)

Sanctions to compel compliance with subpoenas: In case of failure to comply with any subpoena issued and served under the department's statutory authority or for the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before an adjudicatory body of the department, the department may apply to the district court either in the county of the person's residence or in the county where the hearing or proceeding is being held, for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. The prevailing party is entitled to costs of the enforcement proceeding.

(H) (h)

Sanctions against parties for witnesses' failure to comply with subpoenas: When a subpoenaed witness fails to attend or testify, if a party exercises substantial control or influence over the witness, such as an employee, relative of a party employer or a relative of a party claimant, the adjudicatory body can deem that, if the witness had appeared and testified, the testimony would have been unfavorable to the party controlling or influencing the witness.

(H) (i)

If a party or a subpoenaed witness fails or refuses to produce records or documentary evidence pursuant to an order or subpoena of the adjudicatory body, the adjudicatory body can deem that, if the records or documentary evidence had been produced, the evidence would have been unfavorable to the party failing or refusing to produce the records or documentary evidence or to the party controlling or influencing the witness who failed or refused to produce the records or documentary evidence.

(G) E. Disqualification of board of review members and appeal tribunal administrative law judges:

An appeal tribunal administrative law judge or board of review member shall withdraw from any proceeding in which the appeal tribunal administrative law judge or board of review member cannot accord a fair and impartial hearing or consideration and from any proceeding in which the appeal tribunal administrative law judge or board of review member has an interest. Any party may request a disqualification of an appeal tribunal administrative law judge or board of review member on the grounds of the person's inability to be fair and impartial, by filing an affidavit or written statement or making a statement on the record with the appeal tribunal or board of review promptly upon the discovery of the alleged grounds for disqualification, stating with particularity the grounds upon which it is claimed that the person cannot be fair and impartial. The disqualification shall be mandatory if sufficient factual basis is set forth in the affidavit of disqualification. If a board of review member is disqualified pursuant to this regulation, the remaining board of review members may appoint an appeal tribunal administrative law judge or other qualified department representative to sit on the board of review for the proceeding involved. The grant or denial of a requested disqualification can be considered in an appeal on the merits.

(H) G. Attorneys at law and authorized representatives: Prior to or at the commencement of any adjudicatory hearing, all attorneys at law or other authorized representatives shall file a written entry of appearance which shall be made a part of the record and a copy shall be furnished by the attorney or representative to the opposing party. The entry of appearance shall be signed by the attorney at law or authorized representative, whose mailing address, telephone number and other contact addresses shall be provided. An attorney or representative who has provided

notice of representation will be deemed to continue such representation until a written notification of the withdrawal of such representation is provided to all parties, the administrative law judge or the board of review. Even if an attorney or authorized representative has entered his appearance on behalf of a party, the party may appear on his own behalf without the attorney or authorized representative.

(F) H. Ex parte communications: No party or representative of a party or any other person shall communicate off the record about the merits of the case with the cabinet secretary, any administrative law judge or board of review member who participates in making the decision for any adjudicatory hearing, unless the communication is written and a copy of the communication is transmitted to all interested parties to the proceeding. The cabinet secretary, any administrative law judge, board of review member or their representatives shall not communicate off the record about the merits of an adjudicatory hearing with any party or representative of a party or any other person, unless a copy of the communication is sent to all interested parties in the proceeding.

(F) L. Requirements for hearing evidence or reviewing record: The cabinet secretary, board of review member or appeal tribunal administrative law judge shall not participate in any decision for any adjudicatory hearing unless the cabinet secretary, board of review member or appeal tribunal administrative law judge has heard the evidence or reviewed the record.

[11.3.500.9 NMAC - N, 01-01-2003; A, 11-15-2012; A, 07-31-2013; A, 10/29/2019]

11.3.500.10 HEARING PROCEDURE BEFORE THE APPEAL TRIBUNAL:

A. Conduct of adjudicatory hearings:

(1)

Adjudicatory hearings before the appeal tribunal shall be conducted

in such a manner that all parties are afforded basic rights of due process and that all pertinent facts necessary to the determination of the rights of the parties are obtained. All hearings and proceedings will be conducted informally in such a manner as to ascertain the substantial rights of the parties and will not be governed by common law or statutory rules as to the admissibility of evidence or by technical rules of procedure, but the procedures shall afford the parties equally and impartially the right to:

(a) call and examine witnesses and to cross examine the opposing party's witnesses;

(b) introduce exhibits and offer rebuttal evidence;

(c) object to questions and to the introduction of improper or irrelevant testimony or evidence; and

(d) submit written expositions of the case, within the discretion of the administrative law judge.

(2) The appeal tribunal, on its own initiative:

(a) may examine parties and witnesses;

(b) require additional evidence as it finds necessary to the determination of the issues before it;

(c) may exclude testimony and evidence which it finds to be incompetent, irrelevant or otherwise improper by standards of common reasonableness: and

(d) if it deems appropriate, the appeal tribunal may permit opening and closing statements.

B. Opportunity for fair hearing: In conducting adjudicatory hearings, the appeal tribunal shall afford all parties an opportunity for a full and fair hearing including an opportunity to respond and present evidence and argument on all issues involved; provided that the term "adjudicatory hearing" as used in this rule does not apply to fact-finding interviews conducted

by the department representative for purposes of making an initial determination of eligibility for benefits or liability for contributions, payments in lieu of contributions, interest or penalties under the Unemployment Compensation Law.

C. Continuance, adjournment and reopening of adjudicatory hearings:

(1) An adjudicatory hearing before an appeal tribunal administrative law judge, for good cause shown, may be continued or adjourned upon the request of a party or upon the appeal tribunal's own motion, at any time before the hearing is concluded. A claimant's right to a prompt determination of claimant's eligibility and payment of benefits shall not be impaired by undue delay of proceedings.

(2) If [~~the party appealing or any other~~] any party fails to appear at [any] a scheduled adjudicatory hearing, the appeal tribunal may, in its best judgment, either adjourn the hearing until a later date or proceed to render its decision on the record and the evidence then before it. Any decision shall be subject to reopening before the appeal tribunal upon a showing [within fifteen (15)] of good cause for the party's failure to appear as long as the request to reopen is received no later than 15 days [after] from the date of the decision [that there was good cause for the party's failure to appear].

(3) A reopening of any adjudicatory hearing shall be granted upon showing of good cause, including good cause for not appearing at the scheduled hearing, or may be ordered on the appeal tribunal's, the board of review's or the secretary's own motion for good cause. A request for reopening shall be made as soon as reasonably possible but in no event later than [~~fifteen (15)] 15 days after the decision of the appeal tribunal was mailed.~~

(4) A request for a continuance, adjournment or reopening shall be made to the appeal tribunal administrative law judge as

identified on the notice of hearing. If the administrative law judge finds good cause for failing to appear, the merits of the appeal shall be set for hearing. Notice of the date, time and place of a reopened, postponed or adjourned hearing shall be given to the parties or their representatives and shall include a statement of the issues to be heard. The administrative law judge shall issue a decision approving or denying a request for a continuance adjournment or reopening.

(5) A request for reopening made later than [~~fifteen (15)] 15 days after the decision of the appeal tribunal was [mailed] issued shall be heard by the secretary or the board of review on the reason for the untimely request for the reopening. If the secretary or the board of review finds good cause for the late request, the merits of the appeal shall be set for hearing before the appeal tribunal. Notice of the date, time and place of a reopened hearing shall be given to the parties or their representatives and shall include a statement of the issues to be heard.~~

D. Authority over conduct of adjudicatory hearings. The appeal tribunal shall have and shall exercise full authority over the conduct and behavior of parties and witnesses appearing before it to insure a fair, orderly adjudicatory hearing and an expeditious conclusion of the proceedings.

E. Mode of hearings:
(1) The appeal tribunal may conduct the adjudicatory hearing by telephone or in person at the discretion of the appeal tribunal. The mode of conducting the hearing will be as indicated in the notice setting the hearing.

(2) Notice of telephone hearing: If the hearing is to be by telephone, the notice shall so inform the parties and will include instructions for informing the administrative law judge of the necessary telephone numbers. If the hearing is a telephonic hearing, no party or representative will be permitted to attend in person. If the hearing is an in-person hearing, at the discretion of the administrative

law judge, a party, witness or representative will be permitted to appear telephonically.

F. Exhibits:

(1) Exchange of exhibits prior to hearings: [~~At least 48 hours prior to any hearing, a party seeking to introduce exhibits shall submit to the administrative law judge the documents or copies thereof that the party may seek to introduce.~~]

(a)

A party seeking to introduce exhibits shall provide copies of all proposed exhibits to the other party. The copies shall be transmitted by the offering party in a manner to insure their receipt by the other party at least 48 hours prior to the date and time of the scheduled hearing.

(b)

A party seeking to introduce exhibits shall provide copies of all proposed exhibits to the administrative law judge at least 48 hours prior to any hearing. [~~The copies shall be transmitted by the offering party in a manner to insure their receipt by the other party at least 48 hours prior to the date and time of the scheduled hearing.~~] In no event shall the administrative law judge be provided copies of exhibits not previously transmitted by the offering party to the opposing party.

(c)

Documents not submitted in accordance with this subsection shall be denied admission and denied consideration by the department:

(i)

unless it is apparent that the particular document was previously seen by the party whose interest is affected, that party acknowledges having seen the document and has no objection to its admission; or

(ii)

the administrative law judge, in the judge's discretion, determines that fundamental fairness and the proper administration of the Unemployment Compensation Law requires the admission of the document.

(d) In

any case where the administrative law judge determines that documentary evidence will be admitted over the

objection of a party that the party has not had an opportunity to review and consider the evidence, a reasonable continuance shall be granted by the administrative law judge to give the objecting party an opportunity to review the evidence.

(2) Marking

exhibits: All exhibits tendered to the administrative law judge shall be separately marked for identification. The employer's exhibits shall be denoted E-1, E-2, E-3 and so forth; the claimant's exhibits shall be denoted C-1, C-2, C-3 and so forth. A file, such as a personnel file, containing voluminous documents need not be separately marked, but the pages shall be individually numbered by the offering party prior to admission. Failure to sequentially number the pages of a voluminous exhibit will be grounds to deny the admission of the exhibit.

(3) Exhibits

admitted and considered by the administrative law judge shall be individually identified on the record.

(4) Exhibits

denied admission: The reason for the denial of admission of tendered exhibits shall be clearly stated on the record. Typical, but not exclusive, reasons for the denial of admission of an exhibit is lack of relevancy, immateriality, redundancy and voluminous unnumbered pages or documents. Exhibits offered and denied admission shall be retained in the record, but shall not form the basis for the decision of the administrative law judge. The written decision shall reiterate the statement of exhibits denied admission and the basis for the denial.

G. Record of hearings:

(1) Proper

record: The appeal tribunal shall ensure that all of the testimony, objections and motions or other matters in connection therewith are fully and accurately recorded, in such a manner that a complete and accurate transcript can be rendered therefrom as needed.

(2) The record

in an adjudicatory hearing shall include:

(a)

all documents in the department's files, pleadings, motions and previous rulings;

(b)

documentary evidence received or considered;

(c)

a statement of matters officially noticed;

(d)

questions, tenders of evidence, offers of proof, objections and rulings thereon in the form of a tape recording or transcript;

(e)

findings and conclusions; and

(f)

any decision, opinion or report by the cabinet secretary, board of review members or appeal tribunal administrative law judge conducting the hearing.

(3) [Tape or

~~digital recordings:]~~ The department deems that [~~a tape or digital~~] the recording of a proceeding made [~~on~~] by the department [~~'s system~~] is the official recording of the record.

(a)

Inaudible recording: If the tape or digital recording or a significant portion of it is demonstrated as inaudible or otherwise unusable, if the parties do not stipulate as to the matters which would have appeared on the recording if usable, the appeal tribunal may order a rehearing de novo of all matters or of only the matters which were on the unusable portions of recording.

(b)

Official transcript: The department or either party, at the party's expense, may prepare a typed transcript of any such tape recording for the use of the parties. Any typed transcript prepared by the department or under its supervision may be designated by the appeal tribunal as the official transcript. Typed transcripts prepared by a party shall not be deemed official transcripts unless such transcript was transcribed with the department's consent and prepared either in-person or from a department tape or digital recording by an individual approved by the department. A copy of the

typed transcript of an appeal hearing may be made available without charge to parties of an appeal pending before district court.

(c)

Availability of [~~tapes~~] recordings: Upon written application, for good cause shown, a duplicate copy of the recording of all testimony, objections and motions or other matters will be supplied to any party to the proceeding. Unless the applicant is entitled to [~~the~~] a copy of the recording without charge or otherwise shows good cause as to why the party should not be charged as provided in 11.3.100.106 NMAC, the applicant may be required to pay for a copy of the recording.

H. Factual information to be considered: All evidence, including any records, investigation reports and documents in the possession of the adjudicatory body which the department desires to avail itself as evidence in making a decision, shall be made a part of the record in the proceedings, and no other factual information or evidence shall be considered, except as provided in this section. Documentary evidence may be received in evidence in the form of copies or excerpts or by specific citation to page numbers in published documents.

I. Briefs or memoranda of law, requested findings of fact and conclusions of law: At any time during an adjudicatory hearing and prior to a decision, the parties may be afforded a reasonable opportunity to submit briefs or memoranda of law, proposed findings of fact and conclusions of law, together with supporting reasons including citations to the record and copies of case law, for the consideration of the adjudicatory body.

J. Official notice: Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the board of review or appeal tribunal administrative law judge, but whenever any such member or officer takes official notice of a fact, the

noticed fact and its source shall be stated at the earliest practicable time, before or during the adjudicatory hearing, but before the final decision, and any party shall, on timely request, be afforded an opportunity to show the contrary.

K. Specialized knowledge of department: The experience, technical competence and specialized knowledge of the department and its staff may be utilized in the evaluation of the evidence by the adjudicatory bodies of the department.

L. Decision of the appeal tribunal:

(1) Decision in writing: Following the conclusion of an adjudicatory hearing on an appeal, the appeal tribunal shall promptly announce its decision on the case. The decision shall be in writing, shall include findings of fact and conclusions of law, and shall be signed by the administrative law judge who heard the appeal.

(2) Findings of fact shall be based exclusively on the record, the evidence presented at the tribunal hearing and matters officially noted.

(3) The residuum rule shall apply in the issuance of all decisions. This rule requires that the decision of the department's appeal tribunal be supported by "substantial evidence", that is evidence which would be admissible in a court of law. A decision of the appeal tribunal cannot be made on the basis of controverted hearsay evidence alone; there must be a residuum of legal evidence which would be admissible in a court of law.

(4) Where an appeal was not filed within the statutory appeal period, the appeal tribunal shall, after review of the record conduct an evidentiary hearing with notice to all interested parties to determine whether the appellant has good cause for failure to timely appeal from an initial determination. Any decision that grants a request for reopening or finds good cause for failure to timely appeal from an initial determination cannot be appealed.

Any decision that denies a request for reopening shall include the appeal tribunal's findings and conclusions for the denial. Either party if aggrieved may file an appeal on the merits of any written decision issued by the administrative law judge to [~~the secretary~~] higher authority.

(5) Publication of decision: Copies of any decision issued by the appeal tribunal shall be promptly transmitted to all interested parties to the appeal.

M. Remand by appeal tribunal: The appeal tribunal may, in its discretion, remand any issue developed from evidence presented at the hearing or apparent from the existing record to the department with an order directing that a determination be made with regard to that issue or that additional procedures be taken to perfect a determination already issued or to make other disposition in the matter.

[11.3.500.10 NMAC - N, 01-01-2003; A, 11-15-2012; A, 07-31-2013; A, 10/29/2019]

11.3.500.12 PRESENTATION OF FURTHER APPEALS:

A. An interested party aggrieved by a decision of the appeal tribunal is entitled to appeal to [~~the cabinet secretary~~] higher authority. A written communication clearly demonstrating a desire to appeal a determination to [~~the cabinet secretary~~] higher authority shall be filed with the department. The information submitted with the appeal shall include a clear statement of the relevant facts and a clear statement of the party's basis for appeal.

B. Secretary decision: The secretary shall review the application and shall, within [~~fifteen (15)~~] 15 days after receipt of the application for appeal, either affirm the decision of the administrative law judge, remand the matter to the appeal tribunal for an additional hearing or new decision, remand to the department for further investigation and determination, or refer the decision to the board of review for further review and decision on the merits of the appeal. Issues

of timeliness shall be decided by the secretary, who may refer the decision to the board of review.

(1) Decision in writing: Following the conclusion of a review on an appeal, the cabinet secretary shall issue a decision. The decision shall be in writing, shall include findings of fact and conclusions of law, and shall be signed by cabinet secretary.

(2) Findings of fact shall be based exclusively on the record and matters officially noted.

(3) Publication of decision: Copies of any decision issued by the secretary shall be promptly transmitted to all interested parties to the appeal.

C. If the secretary takes no action within [~~fifteen (15)~~] 15 days of receipt of the application for appeal and review, the decision will be promptly scheduled for review by the board of review as though it had been referred by the secretary.

D. All appeals from a decision of the appeal tribunal filed more than [~~fifteen (15)~~] 15 days from the date of the appeal tribunal's decision shall be referred to the secretary, who may refer the decision to the board of review. In addition to the information required by Subsection A of 11.3.500.12 NMAC, all late appeals shall contain a concise statement setting forth the reasons for the late appeal. The secretary, or the board of review if the case has been referred to the board, may extend the time for filing any appeal from a decision of the appeal tribunal only upon showing of good cause.

E. Notice of review before the board of review shall be mailed to all interested parties informing them that, unless a hearing is granted pursuant to the Subsection A of 11.3.500.13 NMAC, no additional evidence shall be taken and all parties will have the opportunity to submit written statements, briefs or memorandum of law explaining why the decision of the appeal tribunal should be affirmed or reversed.

F. Applications for leave to participate or intervene in an appeal: An interested party,

if aggrieved by a decision of the appeal tribunal, but not a party to the proceeding before the appeal tribunal, may apply for leave to participate or intervene in an appeal before the board of review. The party applying for leave to participate or intervene in an appeal before the board of review shall file with the board of review an application for leave to join an appeal setting forth his interest in the matter appealed. The board of review shall have the discretionary power to approve or reject any such application.

[11.3.500.12 NMAC - N, 01-01-2003, A, 02-14-2011; A, 11-15-2012; A, 10/29/2019]

11.3.500.13 THE BOARD OF REVIEW:

A. The board of review's authority: In every case referred to the board of review by the secretary from an appeal tribunal decision the board of review may, in its discretion, hear and decide the case upon the record; it may entertain written arguments, or, after notice to all parties and in accordance with 11.3.500.9 NMAC it may conduct a hearing and take additional evidence before it.

B. Review of the record as an appellate or reviewing body: As a general practice and unless the board of review gives specific notice to the contrary, the board sits in its capacity as an appellate or reviewing body. As such, it reviews the record; it does not receive new evidence.

C. Remand by board of review to the appeal tribunal or the department: With an order directing that a determination or decision be made with regard to that issue, or that additional procedures be taken to perfect a determination or decision already issued, or to make other disposition in the matter, as the board of review, in its discretion, may deem necessary, the board of review may remand any claim or an issue involved in a claim; any issue developed from evidence presented at the hearing or apparent from the existing record:

(1) To the appeal tribunal for the taking of additional evidence or a hearing de novo. Hearings conducted by the appeal tribunal pursuant to a remand by the board of review shall be conducted after notice to all parties and in accordance with 11.3.500 NMAC. Unless directed otherwise by the board of review, the appeal tribunal shall issue a decision based upon the entire record before it, including the record of all the prior hearings. Parties to any additional hearing shall have the right to review the appeal tribunal recording made at any prior evidentiary hearing.

(2) To the department for fact-finding and issuance of an initial determination or redetermination.

D. Appeals by the secretary: Within [~~fifteen (15)~~] 15 days from the date of issuance of any decision by the appeal tribunal, the secretary, on the secretary's motion, may request the board of review to [~~review~~] reconsider a decision of an appeal tribunal administrative law judge, which the secretary believes to be inconsistent with law or the applicable rules of interpretation or which is not supported by the evidence. In such situations the board of review may, in its discretion, take additional evidence, review the matter on the record or remand the matter to the appeal tribunal for an additional evidentiary hearing.

E. Where an appeal was not filed within the statutory appeal period, the cabinet secretary shall, after review of the record and appeal, determine whether the appellant has good cause for failure to timely appeal from an initial determination. Any decision that denies a request to extend the time frame for the appeal shall include findings and conclusions for the denial of the reopening.

[~~E~~] E. Decision by the board of review:

(1) Decision in writing: [~~Following the conclusion of a review on an appeal,~~] The board of review may take the appeal under advisement, may order a transcript of

proceedings for review may afford the parties an opportunity to file memorandum briefs and proposed findings of fact and conclusions of law; or the board may issue [its] a decision. The decision shall be in writing, shall include findings of fact and conclusions of law, and shall be signed by the members of the board who heard or reviewed the appeal. If a decision of the board of review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision.

(2) Findings of fact shall be based exclusively on the record, the evidence presented at the tribunal hearing and matters officially noted.

~~[(3) — Where an appeal was not filed within the statutory appeal period, the board of review shall, after review of the record, determine whether the appellant has good cause for failure to timely appeal from an initial determination. Any decision that denies a request for reopening shall include the board of review's findings and conclusions for the denial of the reopening.]~~

~~[(4)]~~ (3) Publication of decision: Copies of any decision issued by the board of review shall be promptly transmitted to all interested parties to the appeal.

[11.3.500.13 NMAC - N, 01-01-2003; A, 11-15-2012; A, 10/29/2019]

End of Adopted Rules

2019 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXX, Issues 1-24

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

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